Final Report of the California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts

JANUARY 1997

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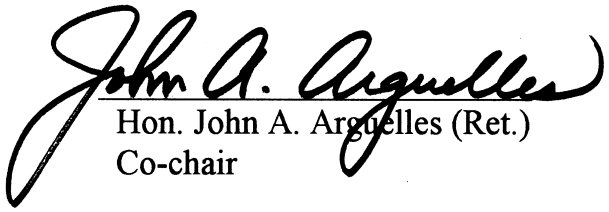
FOREWORD

The Judicial Council of California has long felt that assuring fairness in the courts to all persons is one of its greatest ongoing priorities. The state's population, from Gold Rush days on, continues to expand. Its racial and ethnic demographics have remarkably changed in recent decades. Responsible reaction by the court system to growth and the shifting racial and ethnic composition of its users are of undeniable importance if "justice for all" is to have real, rather than illusory, meaning for our citizens.

This is the fourth and last in a series of interim reports submitted to the Judicial Council by its ad hoc Advisory Committee on Racial and Ethnic Bias in the Courts. As each report in succession built on its predecessor(s), all are commended to the reader for study and reflection.

The reports have represented the unanimous findings and conclusions of the 25 members of the advisory committee, a racially, politically, and philosophically diverse group of prominent jurists and lawyers from different regions of the state. It is comforting to the committee to know that those of our recommendations adopted by the Judicial Council will be implemented in the future by its ongoing Committee on Access and Fairness in the Courts.

We dedicate this final report to our co-chair, the Honorable Allen E. Broussard, Associate Justice of the California Supreme Court (Ret.), who died during its preparation. Adequately chronicling his many substantive and personal contributions to this work is impossible. Throughout his years as a municipal and superior court judge, his presidency of the California Judges Association in the early seventies, and his later tenure on our state Supreme Court, Allen Broussard tirelessly sought an efficient and fair justice system for Californians. He personified those qualities we all seek in our public leaders.



Hon. John A. Arguelles (Ret.)
Co-chair

January 1997

DEDICATION

Hon. Allen E. Broussard (Ret.)
Co-chair, Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts
1929–1996

The distinguished career of Justice Allen E. Broussard (Ret.) spanned more than 40 years. A native of Louisiana, Justice Broussard came to California with his family as a teenager. He received his undergraduate degree and law degree from the University of California, at Berkeley. Upon graduation from Boalt Hall School of Law in 1953, Justice Broussard began to practice law in Oakland and directed his energies toward those groups working to include African Americans in the city's politics and government.

In 1964, while engaged in private practice with the firm of Metoyer, Sweeney & Broussard, he was appointed to the Oakland-Piedmont Municipal Court, where he served until 1975. He was elected presiding judge in 1968. In 1975, he was elevated to the Alameda County Superior Court, where he was serving as presiding judge when he was appointed to the California Supreme Court in 1981. Before his illness, Justice Broussard was a partner in the San Francisco law firm of Coblentz, Cahen, McCabe & Breyer, engaging an active alternative-dispute-resolution practice, and served as a member of the large Complex Case Panel of the American Arbitration Association.

In 1972, Justice Broussard was the first African American to be elected president of the California Judges Association. He received many awards, including Jurist of the Year from the John Langston Bar Association in 1988, Appellate Justice of the Year from the California Trial Lawyers Association in 1989, and the *California Law Review* Alumnus of the Year Award in 1990. In 1992 he was named Alumnus of the Year by the University of California Alumni Association.

Appointed to the Oakland Board of Port Commissioners in September 1991, Justice Broussard was elected president in July 1996. He was a former board member and director of many community, civic, and professional organizations,

including Oakland Men of Tomorrow, Alameda County Council of the National Bar Association, the Governing Board of the Center for Judicial Education and Research, and the American Bar Association's Judicial Administration Division Task Force on Minority Opportunities.

As co-chair of the California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts since March 1991, Justice Broussard brought leadership, wisdom, and profound insight to the work of the committee. His warmth, brilliance, and ability to bring diverse people together greatly influenced the advisory committee's achievements. We thank him for his commitment and caring.

On Tuesday, November 5, 1996, Justice Broussard passed from this life. Although we mourn his death, with the dedication of this report, we celebrate his exemplary life.

ACKNOWLEDGMENTS

The Advisory Committee on Racial and Ethnic Bias in the Courts wishes to take this opportunity to offer thanks and appreciation to the California Judicial Council, which, under the leadership of former Chief Justice Malcolm M. Lucas and present Chief Justice Ronald M. George, gave its support and encouragement to the committee's endeavors. The advisory committee submits this report to the council with the knowledge that the council will continue its support as the implementation committee (Judicial Council Advisory Committee on Access and Fairness in the Courts) strives to implement the recommendations contained herein.

In this endeavor, the advisory committee was privileged to have the wise counsel of Desiree Leigh, former Project Director of the Washington State Minority and Justice Task Force. Bobbie Welling, former Project Director of the Judicial Council's Gender Bias Advisory Committee, provided guidance tempered by experience and moral support to the staff of the Racial and Ethnic Bias Advisory Committee. The National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the State Courts (the consortium), under the leadership of Justice Charles Z. Smith, of the Washington State Supreme Court, provided constant support and encouragement to the California advisory committee. Consortium Coordinator Dr. Yolande Marlow freely shared her experiences and wisdom with advisory committee staff. As secretariat to the consortium, the National Center for State Courts (NCSC), under former president, Mr. Larry Sipes and current president Hon. Roger Warren, formerly of the Sacramento County Superior Court, was a valuable resource and continues to support the efforts of consortium members.

The advisory committee also extends its appreciation to others who have labored with us to complete this project. The Legal Services Unit, formerly headed by Donald Day and currently under the direction of Michael Bergeisen, provided invaluable staff support. Thanks also to the Trial Court Services Division for the "loan" to us of Trial Court Services analyst Denise Friday during the critical, early stages of the committee's life.

The actual production of this report would not have occurred without the able assistance of the Administrative Support Unit (ASU) under its former manager, Cari Templeton. Tony Wernert, current head of ASU, also has been generous with staff support from individuals such as Alfonzo Acosta and Carl Gibbs, who shepherded the voluminous mailings of research surveys, reports, public-hearing announcements, and other materials too numerous to list here. To Paula Bocciardi, Senior Editor, the committee owes a debt of gratitude for the skillful editing of several reports, including this final report. Additionally, typesetting demands were met with patience and goodwill by Sheila Ng and Suzanne Bean.

A special thanks to Lynn Holton and the Public Information Staff, now under the stewardship of Judicial Council Services manager Dale Sipes. Lynn and company were creative and patient when confronted with the demands of several task forces and subcommittees attempting to publicize their public hearings and other activities.

The committee is indebted to supervising attorney Diane Nunn, who also directs the Court Appointed Special Advocate (CASA) project, for the "loan" of project staff attorneys Jennifer Walter and Katharine Cannady to consult on Chapter 9, "Family and Juvenile Law Issues." David Halperin, former senior attorney who had retired by the time this report was being prepared, offered his services to draft

Chapters 10 and 11, "Sentencing" and "The Jury System." Staff analyst Marlene Smith, new to the Administrative Office of the Courts (AOC) when this report was being developed, took on the assignment of drafting Chapter 5, "Treatment of Counsel," and Chapter 6, "Language and Cultural Barriers." Finally, others deserving of high praise are Arline S. Tyler, project director and the principal author and editor; former administrative coordinator Steven Montano, who conducted the demographic survey of California district attorney and public defender offices and also assumed responsibility for the graphics and formatting that illuminate the text; and Romunda Price, who labored over the many revisions necessary to produce this final product. Alex Bellino, a newcomer to the AOC in 1996, serving us temporarily as administrative coordinator, provided invaluable support in the completion of this project.

Last but certainly not least, the advisory committee acknowledges the contributions of those individual committee members whose advice and counsel, research, drafting and editing, and other efforts provided tremendous support and assistance to staff in the preparation of this report. If we have failed to mention anyone's contributions to our endeavors, please accept our sincere apologies and our gratitude for your assistance.

C H A P T E R 1

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.

[1]Appearing without the assistance of counsel.

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 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 that 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 ethically 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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C H A P T E R 2

INTRODUCTION

OVERVIEW: CALIFORNIA'S CHANGING DEMOGRAPHICS

Statistics contained in *Justice in the Balance — 2020*, the Report of the Commission on the Future of the California Courts (*the 2020 Report*), evoke numerous questions about the justice system's ability to function effectively in California's future. For example, it is anticipated that by 2020 the state's population will reach 50 million, an increase of 66 percent over that recorded in the 1990 U.S. Census. Whites, who are now 57 percent of the state's population, will be 40.5 percent. Hispanic Californians will be approximately 41 percent of the total population. Asian Americans, Pacific Islanders, and Native Americans will constitute 12 percent; and Blacks will be 6 percent.[2]

California is probably the most racially and ethnically diverse state in the country. At present, 224 different languages or dialects are spoken in this state. By the year 2020 that number is likely to increase. The increase will be due primarily to immigration, which is expected to contribute approximately 65 percent of all newcomers arriving in California. While immigration from other parts of the world will increase, Californians are expected to exit the state at a greater rate than newcomers arriving from other states.[3]

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[2]Commission on the Future of the California Courts, *Justice in the Balance — 2020* (1993), p. 9. The racial categories used here are taken from the *2020 Report*.
[3]*Id.*, at p. 10.

Coupled with this trend, the state's birthrate is expected to remain above the U.S. average until 2020. By then, Californians under the age of 18 will have doubled in number, although their percentage of the total population will actually change very little. Young people between the ages of 15 and 24 will be 14.1 percent of the total population. Consequently, the number of cases involving juveniles, from dependency hearings to delinquency cases, will remain high. Further, there is a potential for growth in the crime rate and in criminal prosecutions because young people, particularly young males between the ages of 15 and 24, commit the vast majority of crimes.[4]

By 2020, this youth population will change significantly. Hispanic Californians will be 50 percent of the 15- to 19-year-olds; according to the 1990 U.S. Census, Hispanics now make up 35 percent of this group. Non-Hispanic Whites will be 32 percent of the total, compared to 46 percent currently. Asians, Pacific Islanders, and Native Americans will remain constant at 11 percent, while Blacks will decrease from 8 percent to 7 percent of the total.[5] According to the *2020 Report*,

> Merely as a corollary of their percentage in the population, the number of people of color in the criminal courts is likely to increase. The cultural competence of criminal justice will continue to be tested.[6]

In addition to their growing numbers, children are becoming increasingly poor. One in four children in California now lives in poverty. Compounding this tragic situation, the *2020 Report* states, "such children have a greater-than-average statistical chance of appearing before the delinquency and adult criminal courts of the future."[7]

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[4] *Id.*, at pp. 10, 23.
[5] *Id.*, at p. 24.
[6] *Ibid.*
[7] *Id.*, at p. 10.

Poverty, immigration, and the growing youth population are only three of the many issues that will affect our system of justice in the future. Changes in the family structure, employment opportunities in the state, technology, and the increasing numbers of the graying population will also affect the courts of the twenty-first century.

In the face of these facts and statistics, public perception about the quality of justice was an important area for the Racial and Ethnic Bias Advisory Committee to investigate. Further, recently passed California ballot initiatives on immigration and affirmative action may have created greater anxiety for minorities who attempt to use the courts or who are involuntary users of the system.

Whether or not the policies underlying the immigration or affirmative-action ballot initiatives have merit, these measures sound a warning to people of color, primarily because the debate about them has seemingly centered around Latinos, Asians, and other non-Whites. Undocumented people from England, Ireland, and elsewhere in Europe, Canada, or Australia do not receive much notice. The current political climate, coupled with recent news reports that some political figures are discussing means to restrict the rights of legal immigrants, casts doubt on whether justice is the same for everyone.

BACKGROUND

In September 1989, California Chief Justice Malcolm M. Lucas announced that an advisory committee would be appointed to study racial and ethnic bias in the state court system. The committee's mandate evolved into a commitment 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.

The backdrop for this announcement was the work completed by the commissions and task forces already in existence and discussions under way between the Conference of Chief Justices and representatives from the embryonic organization that was to become known as the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts (the consortium).

The first national meeting of task forces and commissions devoted to the study of racial and ethnic bias in the courts was hosted by the New York Commission on Minorities and chaired by the late Ambassador Franklin H. Williams. During this historic December 1988 meeting, it became apparent that the four existing commissions and task forces were examining many of the same court-related and legal issues. Further, they followed similar research paths and faced some of the same challenges. The commonalities were striking. Those attending this first meeting seized upon the opportunity to propose adoption of a formal structure that would encompass all existing and future task forces and commissions investigating racial and ethnic bias.

A follow-up meeting took place in Florida in January 1989 and coincided with the meeting of the Conference of Chief Justices. Consortium representatives met with Justice Ellen Peters of the Connecticut Supreme Court, chair of the conference's Committee on Discrimination in the Courts, expressing their desire that Chief Justices of other states consider creating task forces and commissions to examine the quality of justice rendered to racial and ethnic minorities. Justice Peters agreed to communicate this request.

Later that year, in August 1989, consortium representatives attended the Conference of Chief Justices and State Court Administrators in Lake Tahoe, Nevada. The chairs of the New Jersey, New York, Michigan, and Washington State task forces addressed the gathering and stressed the importance of the work undertaken to eliminate racial and ethnic bias from the courts.

Previously, at its 1988 meeting, the Conference of Chief Justices had adopted a resolution emphasizing the concern of conference members that all participants in the judicial system be treated fairly, and urging each Chief Justice in every state to establish separate task forces devoted to the study of (1) gender bias in the court system and (2) minority concerns as they relate to the judicial system. (See Appendix B). As a result of the August 1989 meeting, and as noted earlier, Chief Justice Lucas underscored the 1988 resolution by announcing the future appointment of an advisory committee to investigate racial and ethnic bias in the California court system.

Going beyond the study of minority concerns to recommending the establishment of action-oriented "task forces to remedy any discrimination and to implement the recommendations of the task force studies," the conference in 1993 urged further efforts to achieve equal justice. (See Appendix B). Since then, approximately 40

states and 10 federal circuits have convened gender bias task forces. (In California, the Gender Bias Advisory Committee had been established in 1987. When Malcolm Lucas became Chief Justice in 1988, he appointed additional members to the committee.) Joining the gender bias study groups, more than 20 state task forces and commissions and numerous professional legal associations and organizations have engaged in the effort to investigate racial and ethnic bias.[8]

The second annual meeting of the consortium was convened by Judge Theodore Z. Davis, Chair of the New Jersey Supreme Court Task Force on Minority Concerns, on February 10, 1990, in Cherry Hill, New Jersey. At that time, there were only four consortium member states: Michigan, New Jersey, Washington, and New York. Representatives from Arizona, California, Colorado, Florida, Iowa, Massachusetts, New Mexico, Nova Scotia, and Oregon joined the meeting to discuss the possibility of forming task forces in their respective states and territories.

In attendance at this consortium meeting were Judge Richard P. Byrne, then Presiding Judge of the Los Angeles County Superior Court, and Judge B. Tam Nomoto of the Central Orange County Municipal Court, representing the Judicial Council of California. The judges were accompanied AOC staff counsel Arline S. Tyler. These three individuals served as observers who listened carefully to the reports of consortium member states but refrained from taking a position on the conclusions presented by the members because California had not yet joined the consortium.

[8]Consortium members include task forces or commissions from Arizona, Arkansas, British Columbia (Canada), California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Ontario (Canada) Oregon, Rhode Island, South Dakota, Tennessee and Washington.

During the meeting, project directors of each of the four consortium member states were asked to summarize the work of their respective commission or task force, each of which considered the following threshold issues: Is there public perception that the state court system discriminates on the basis of race or national origin? Is there a basis for claims of bias? Do minorities encounter obstacles in gaining access to the state court system?

In addition to coming to grips with the threshold questions mentioned above, project directors identified the following major themes that were eventually explored by various task forces: (1) access to the state court system by minorities as appointed counsel or as parties to litigation, (2) diversity on the bench, (3) the impact of prosecutorial and judicial discretion on minorities, and (4) minority employment in the state courts.

Recommendations were offered to those states considering the establishment of a task force or commission. Task forces were encouraged to carefully define their charge, under the principle that what could be accomplished would define the jurisdiction of the judiciary. Further, while it was to the advantage of a task force to publicize that the highest court in the state had authorized its formation, the task force would have to, at the same time, maintain a sense of independence from the courts.

It was suggested that community leaders, technical experts, academics, and others be represented on the task forces for them to have true credibility. Court administrative personnel were also considered a vital component of task force membership because they would be on the frontlines of any proposed changes or plans for implementing recommendations.

Participants were also cautioned not to "reinvent the wheel." For example, if one task force defined a "problem" area, it was very likely that someone else had already completed exhaustive research in that area. In that case, other task forces could direct their energies to different issues. The only drawback was the likelihood that the agents of change a task force was targeting might not be convinced to act unless there was a local or state study of the issue.

One recommendation emphasized by consortium participants was that new member states, before appointing a commission, should convene a small working group for planning purposes. The importance of planning was repeatedly stressed in the reports of other commissions, usually as they expressed their regret for failing to allow time for preliminary discussions prior to the appointment of their commissions or task forces. California's representatives brought this idea back to Chief Justice Lucas, who authorized California Supreme Court Associate Justice Allen E. Broussard, the first appointed co-chair of the Racial and Ethnic Bias Advisory Committee, to assemble a working group to meet in July 1990.

The purpose of this meeting was to consider the experiences, conclusions, and recommendations of several state task forces investigating racial and ethnic bias in their respective courts and to use this information to make recommendations for the mandate, work plan, and structure of the soon-to-be-appointed Advisory Committee. In addition, it was hoped that meeting participants would identify issues that required special attention, begin to develop a methodological approach, and formulate a work plan that included staffing requirements.

CALIFORNIA PLANNING COMMITTEE

On July 27 and 28, 1990, a racially and ethnically diverse group representing various levels of the courts, AOC staff, and academia were brought together at the Bodega Bay Conference Center by the recently named advisory committee co-chairs, Justice Broussard and then Los Angeles County Superior Court Judge Lourdes Baird. The co-chairs were joined by then Stanislaus County Municipal Court Judge Augustus Accurso; then Los Angeles County Superior Court Judge Richard P. Byrne; Dr. Troy Duster, professor of sociology and Director of the Institute for the Study of Social Change, the University of California at Berkeley; Ms. Desiree Leigh, then Project Director for the Washington State Minority and Justice Task Force; Dr. Helen A. Mendes, Mendes Consultation Services; Judge B. Tam Nomoto, then of the Central Orange County Municipal Court; Justice Ramona Godoy Perez, then of the Los Angeles County Superior Court; Judge Ronald Evans Quidachay, San Francisco County Municipal Court; Judge David Rothman, then of the Los Angeles County Superior Court; Dr. Deborah Woo, of the Institute for the Study of Social Change; Ms. Diane C. Yu, General Counsel for the State Bar of California; and Mr. Phillip Lattimore III, then Staff Attorney for the National Center for State Courts.

Also present were Mr. William E. Davis, then Administrative Director of the California Courts, and Dr. Robert C. Henderson, Secretary-General of the National Spiritual Assembly of the Baha'is of the United States and selected by Director Davis to facilitate the two-day meeting at Bodega Bay. Ms. Arline S. Tyler, senior staff counsel and project director for the advisory committee, and senior staff counsels Ms. Bobbie Welling, then Project Director of the Gender Bias Advisory Committee, and Mr. Ben McClinton, then Project Director of the Court Interpreters Standing Advisory Committee, also participated.

At the end of the two-day session, the planning group had developed some long-range and short-range proposals, including that the committee consider the immediate implementation of the following actions: (1) conducting education and training activities in racial and ethnic bias for the advisory committee; (2) devising a plan to raise public and internal awareness about the purpose and function of the advisory committee; and (3) reviewing the report *Achieving Equal Justice for Women and Men in the Courts* to ascertain findings and recommendations that were applicable to the current effort.

Further, the planning group suggested that the advisory committee (1)compile, organize, and index existing data on racial and ethnic bias from other states' commissions and task forces; (2) create networks of researchers, organizations, and court systems for the purpose of gathering a wide range of expertise about the issues; (3) establish working relationships with minority bar associations; (4) establish a liaison to the Court Interpreters Standing Advisory Committee; (5) conduct public hearings in at least four counties; (6) establish a research advisory committee consisting of researchers and nonresearchers; (7) evaluate existing programs and policies for court-appointed lawyers; and (8) select a small number of social scientists to review literature on racial and ethnic bias and prepare written summaries.

The long-range plans included seven goals for the committee to consider: (1) to assess the public perception of fairness in the justice system; (2) to develop and implement a program of education and cultural awareness training for all levels of court officers and personnel; (3) to assess the treatment of minority women in the light of their compound problems of racial and gender bias; (4) to assess the representation of minorities at all levels of the justice system and devise a plan to

increase minority participation in the courts; (5) to conduct a thorough review of the research on racial and ethnic bias in other disciplines; (6) to evaluate the access and utility of formal versus informal systems of dispute resolution in minority communities; and (7) to evaluate the indications of racial and ethnic bias in the processing of drug cases for use as a case study of bias in the justice system.

The group also recommended that the advisory committee participate in the judicial education curriculum-planning process and that the California Judges Association (CJA) be urged to strengthen its opposition to membership in clubs that discriminate on the basis of race, ethnicity, gender, or religion.

The planning group also suggested that the advisory committee be no larger than 25 to 30 members. It was thought that the committee membership should reflect the regional, racial, cultural, gender, age, and class composition of the state. Additionally, the planning group concluded that in order to reach maximum effectiveness, membership should be representative of the court system and users of the court, business and community leaders, members of academia, and the state legislature.

Because of the strenuous demands the planning group envisioned would be imposed on committee members, and because of the ambitious character of the committee's mandate, it was suggested that the time and work required of the committee membership be explained to candidates to allow them to assess their capacity to serve before making the decision to accept appointment to the committee.

The planning group further recommended that subcommittees be appointed in at least three areas: (1) research, (2) communications and public information, and (3)

education and training. Additionally, the planning group felt that an administrative or executive committee should conduct business on behalf of the committee when it was not in session.

RACIAL AND ETHNIC BIAS ADVISORY COMMITTEE

These recommendations were the sole topic of discussion at the advisory committee's[9] first meeting in May 1991. After thoughtful discussion, the advisory committee adopted several planning committee recommendations. The advisory committee determined that four subcommittees should be established to work in the following areas: (1) research oversight, (2) planning for public outreach through public hearings, (3) future survey designs, and (4) cultural awareness training. An administrative committee was also appointed by the committee co-chairs, Justice Allen E. Broussard and Justice John A. Arguelles.[10]

Additionally, in furtherance of the committee's mandate and to enhance the committee's sensitivity to issues of racial and ethnic bias, committee members at an early point in the group's history engaged in a one-day seminar on diversity and cultural awareness training. The Cultural Awareness Subcommittee has continued in this vein by working with the Center for Judicial Education and Research (CJER) to enhance cultural awareness education programs for the judiciary. Further, Justices Broussard and Arguelles appointed a committee member to work as a liaison with the Court Interpreters Standing Advisory Committee.

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[9] A racially, ethnically, and geographically diverse 28-member committee, composed of judges from every level of the courts, attorneys, and public members, had already been appointed by California's Chief Justice in March 1991.

[10] Justice Arguelles was appointed to replace Judge Baird, who was appointed to the position of U.S. Attorney for the Central District of California shortly after she became co-chair of the Racial and Ethnic Bias Advisory Committee.

The committee then proceeded to diligently collect data on racial and ethnic bias in the courts from a variety of sources and began an extensive search of the relevant literature. A variety of corroborative research methods was employed to collect data on public perceptions.[11]

PUBLIC HEARINGS

The Public Hearings Subcommittee arranged for 13 days of public hearings in 12 counties throughout the state. Further, in conjunction with the State Bar, a hearing was conducted during a statewide conference of minority attorneys. At the close of the hearings, the advisory committee hired a consultant to classify, analyze, and summarize the public hearing testimony and distill this information into a written report. This was the first of the four interim reports submitted by the committee.[12]

OPINION SURVEYS

The next project, guided by the Survey Design and Research Oversight subcommittees, involved a public-opinion survey. An independent research group was hired "to objectively verify the extent to which the concerns expressed in the hearings are shared by the major racial and ethnic groups, high-level court personnel, and attorneys with interests in minority issues throughout the state."[13] The survey was designed to measure attitudes toward the state courts.

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[11]Note: Decimal amounts were rounded to the nearest tenth for consistency in this document; therefore, some sets of percentages do not exactly equal 100 percent.

[12]Judicial Council of California Advisory Committee on Racial and Ethnic Bias in the Courts and E. Drewes, *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts* (1993).

[13]Judicial Council of California Advisory Committee on Racial and Ethnic Bias in the Courts and CommSciences, *Fairness in the California State Courts: A Survey of the Public, Attorneys and Court Personnel*, p. 1-2 (1994). This was the second of the interim reports.

Accordingly, the report states in the introduction that, "while perceptions may not necessarily reflect the facts of every situation, for most people perceptions are reality whether or not they are supported by actual events."[14]

The survey had two components: (1) a random-dial telephone survey targeting adults 18 years or older, in which a total of 1,338 people participated, and (2) a mail survey of judicial officers and top administrators of the California trial courts (approximately 2,070 questionnaires) and another sampling of minority and nonminority lawyers with an interest in minority legal affairs (2,000 questionnaires). A total of 643 questionnaires were returned by judges, commissioners, and court administrators, 185 by lawyers.

DEMOGRAPHIC SURVEYS

Concurrent with the public-opinion survey, another consultant commissioned by the committee conducted a demographic survey of the California trial courts. From the public hearings the advisory committee had concluded that many citizens believe that the state court system does not reflect the diversity of California's population. The intent of the demographic survey was to test the accuracy of these perceptions. Thanks to follow-up by AOC staff, this project boasted a 100 percent response rate. The resulting report, *Racial and Ethnic Composition of the California Trial Courts*,[15] was the third in the series of interim reports submitted to the Judicial Council.

[14]*Ibid.* The relative perceptual consequences of court activities and actions experienced by the groups surveyed, rather than the activities and actions themselves, were the focus of this study.
[15]Judicial Council of California Advisory Committee on Racial and Ethnic Bias in the Courts and AR Associates, *Racial and Ethnic Composition of the California Trial Courts* (1995).

To complement the demographic survey of court personnel, AOC staff obtained demographic information on others who appear in the courts on a regular basis but are not court employees. Recognizing that district attorneys and public defenders are an integral part of the justice system, the AOC survey was intended to provide a more complete picture of the racial and ethnic makeup of these individuals because they are seen in the courts on a daily basis. Seventy-two percent of the district attorneys and 85 percent of the public defenders responded.

CASE STUDY AND JUROR SURVEY

The final and ongoing project undertaken by the advisory committee involves a case study of the outcomes of jury trials in selected counties and a juror survey. The advisory committee engaged consultants to conduct a study of the outcomes of jury trials in selected counties in California, using a sample population of defendants who were represented by both public and private counsel. The study compares the disposition of certain types of criminal cases involving, to the extent possible, similarly situated minority and nonminority first-time adult offenders. The defendant sample included a significant number of individuals from varied racial and ethnic groups. Additionally, the consultants surveyed jurors associated with recent cases to assess their perceptions of juror and judicial attitudes and behaviors. The consultants' research plan guaranteed the anonymity of the jurors polled. As of this writing, the consultants have completed Phase I of the project.

REPORTS COMMISSIONED BY THE ADVISORY COMMITTEE

The committee also hired consultants to conduct literature surveys in three distinct areas. One consultant reviewed the six final reports of the commissions and task forces that had completed their work at the time of her hire, summarizing and comparing in a written report for the advisory committee. Another consultant reviewed relevant literature on the effect of race or ethnicity, if any, on sentencing decisions. As a result of this examination, the consultant concluded that the various studies were inconclusive on the issue of bias at the sentencing stage. The third consultant examined materials related to jury composition, jury verdicts, and the participation of racial and ethnic minorities on jury panels.

REPORTS FROM OTHER COMMISSIONS AND TASK FORCES

As noted earlier in this chapter, task forces and commissions around the country are examining some of the same legal issues and facing similar difficulties. Rather than reinvent the wheel with every new study, members of the national consortium share information and learn from the research of other member states. The conclusions and recommendations of the California advisory committee were informed by reports and studies of the commissions and task forces from the District of Columbia, Massachusetts, New York, Florida, Washington State, New Jersey, Michigan, and others. In addition, valuable information to supplement the committee's knowledge base was provided by the Ninth Circuit Court of Appeals' gender bias report[16]and the gender bias report from California, *Achieving Equal*

[16]Ninth Circuit Court of Appeals, *The Effects of Gender in the Federal Courts*, Final Report of the Ninth Circuit Gender Bias Task Force. (Jul. 1993).

Justice for Women and Men in the Courts, the Gender Bias Advisory Committee's draft report (the Gender Bias Report).

From these reports the committee gathered corroborative data on the employment of minority attorneys, the treatment of women of color in the profession, linguistic and cultural barriers, some legal issues affecting Native American communities, and sentencing and charging decisions, to name but a few of the areas studied.

THE COMMITTEE'S FINAL REPORT

As early as 1992, just one year after the formation of the advisory committee, its members began to discuss how their work product, discussed above, would be presented to the council. At the suggestion of consultant Ms. Desiree Leigh, the committee reviewed the final reports from a sampling of other consortium member states and their findings, conclusions and recommendations.[17]

The committee also deliberated over whether it should submit one comprehensive final report to the Judicial Council or whether it should submit several interim reports and a summary final report including findings, conclusions, and recommendations. After much discussion over the course of several meetings, the committee selected the latter model. The committee felt that this method allowed it to present its research and keep the Judicial Council apprised of its work.

Committee members drafted the findings, conclusions, and recommendations and met several times in 1996 to discuss and vote on the results of their work. It was

[17]The following have completed final reports: Arkansas, Connecticut, Delaware, Florida, Georgia, Iowa, Massachusetts, Michigan, New Jersey, New York, Oregon, and District of Columbia.

then primarily a staff function to complete the draft of the supporting text for committee review, a task greatly simplified by the committee's well-written and detailed findings, conclusions, and recommendations.

IMPLEMENTATION

In March 1994, Chief Justice Lucas appointed the Access and Fairness Advisory Committee to monitor issues related to access to the judicial system and fairness in the state courts. This committee is responsible for overseeing implementation of the recommendations of the Racial and Ethnic Bias Advisory Committee and for continuing with the implementation of the California Gender Bias Advisory Committee's recommendations that were previously adopted by the Judicial Council.

The Access and Fairness Advisory Committee and its five subcommittees will also seek to identify barriers to full participation in the justice system for persons with disabilities and to ascertain what accommodations, beyond those already in place, may be necessary. To that end, in conjunction with the State Bar of California, a new rule of court relating to requests for accommodations in the courtroom has been developed. The Subcommittee on Access for Persons with Disabilities has conducted public hearings, personal interviews, and telephonic and written surveys to assess attitudes about and experiences with the justice system of those with and without disabilities. The results of this research and the subcommittee's recommendations were submitted to the Judicial Council in January 1997.

The Subcommittee on Gender Fairness is responsible for overseeing implementation of the recommendations of the Gender Bias Advisory Committee,

that were previously adopted by the Judicial Council. More than one-third of the 68 recommendations have been implemented over the years. The subcommittee, in conjunction with the Orange County Bar Association, has developed a brochure on gender fairness for the use of court personnel and is planning a sexual harassment education program, partially funded by a grant from the State Justice Institute (SDI). Other projects are in the developmental stage.

The Subcommittee on Racial and Ethnic Fairness is awaiting the recommendations of the Racial and Ethnic Bias Advisory Committee. Upon approval of the recommendations by the Judicial Council, the subcommittee will develop an implementation plan. Also under discussion are plans for a roundtable meeting on women of color and the justice system. A workshop on legal issues affecting Native Americans was conducted in September 1996.

The Sexual Orientation Fairness Subcommittee will examine issues of bias as they relate to sexual orientation and has already conducted five focus-group meetings. A consultant will assist the subcommittee with future research and will develop a written report for the Judicial Council.

Additionally, the committee was authorized to establish new areas of focus as are appropriate. Consequently, an Education and Implementation Subcommittee was appointed by the advisory committee chair, Judge Benjamin Aranda III of the Municipal Court, South Bay Judicial District. This subcommittee will assist in developing implementation plans as they relate to educational programs for the judiciary and court personnel. An electronic library to house fairness materials and research is also planned.

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C H A P T E R 3

PUBLIC PERCEPTION OF BIAS

JUDICIAL SYSTEM

Assuring fairness in the courts is a top priority of the California Judicial Council. Inevitably, those involved in the justice system must raise the question of what constitutes fairness in a diverse, multicultural society. Conducting public hearings was one attempt to answer the question. Participants at the previously mentioned 1991–1992 public hearings could speak before the committee or give private confidential testimony. The committee also solicited written testimony as an alternative to appearance at the hearings.

The hearings were widely publicized with the assistance of the AOC Public Information Office. At the conclusion of the hearings, a report summarizing and analyzing the recorded testimony of participants who spoke or gave confidential testimony or submitted written testimony was presented to the council. It was noted that the report was not a survey of opinion throughout the state, but rather a summary of the observations, attitudes, and convictions of the individuals who testified or submitted written, anecdotal evidence to the committee.

Many speakers at the public hearings expressed their belief that minorities do not receive justice in the California courts. According to one speaker, “the American

justice system has completely failed Black Americans. To African Americans, there is no justice."[18]

Another speaker at the San Diego hearing commented on perceived bias against the Latino community:

> I'm an American. I was born and raised in America. My parents were from America. My great-grandfather fought at the Alamo. My brother went into the service; he fought for this country. One of my ex-husbands fought for this country. We're all Americans.
>
> But when it comes to the justice system, we're treated like a nothing — like you're nothing in this world. You're just a dumb Mexican, no education — get away, do something, lock him up, throw away the key.[19]

Race and ethnicity combined with low income, in the minds of several public-hearing participants, means that poor or low-income persons, especially those of color, will not receive fairness in the courts.

Even a casual observer might note that in California's highly urbanized areas, such as Los Angeles, San Francisco, San Diego, and Oakland, a high percentage of defendants are members of minority communities. Does this indicate that minority communities are more prone to crime or that minority communities are not enjoying the benefits of effective counsel? The question has no easy answer but, one speaker testified that racism is "institutionalized"[20] and, therefore, continues "to plague our system of law enforcement and judicial administration."[21]

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[18] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra,* at p. 64. (Garry Howard, member, Latasha Harlins Justice Committee.)
[19] *Id.*, at p. 78. (Mary Lou Bevington, resident, Chula Vista.)
[20] *Ibid*. (Troy Smith, directing attorney, Legal Aid Foundation of Los Angeles.)
[21] *Ibid*. (Hon. Michael Goldman, Judge of the Hoopa Valley Tribal Court.)

TREATMENT OF VICTIMS

Anecdotal evidence of bias and expressions of the conviction that the justice system shows favoritism toward Whites were presented throughout the public hearings. Among the several Native American speakers from the Redding area in Shasta County recounted their experiences with the justice system, one speaker in particular expressed frustration that, as members of a family in which a young man was killed, he and his relatives were treated "like criminals" by court personnel:

> [W] hen my aunt's son was killed, we felt that this story or this issue, this person's life, was dealt with with extreme prejudice, in a very covert way, because the officer that arrived the night that he died did not enter the house at the time that he was called, he walked away from it, . . . the District Attorney was not called; the County Coroner never ever saw the body. . . .
>
> This went all the way into the courthouse for our family. . . . We went through the metal detectors, we were patted down and we were searched for weapons. We were the victim's family, which were treated like criminals in that courthouse. The defendant's family received a police escort into and out of that courtroom, to protect them from us..[22]

Similar comments were heard in Los Angeles. The backdrop for the Los Angeles hearings was the March 3, 1991, beating of African American Rodney King by Los Angeles police officers and the more recent shooting death of African American teenager Latasha Harlins by a female Korean storeowner. During the following months, tensions ran high and the California system of justice faced intense scrutiny. Videotapes aired repeatedly on TV news stations showed the King beating and Ms. Harlins shot while her back was turned to the store owner.

[22]Transcript of the Redding, public hearing, pp. 51–52 (Nov. 16, 1991). (Lyle Marshal, resident, Hoopa Valley Indian Reservation.)

Many members of the African American community were particularly incensed that the female proprietor of the shop, Mrs. Du, did not receive any time in prison and was placed on probation. Additionally, community members came to believe that the judge in the case treated Mrs. Du not as a defendant but rather as her personal responsibility: "[T]he Probation Department recommended . . . that she be given a prison sentence." The judge "took it upon herself to go and visit four prison facilities for her defendant."[23]

Another hearing participant resented being referred to as part of a "mob" because she and others challenged the judge's sentence. It was reported that the judge

> [R]efers to us as a mob. I beg to disagree with her. She even filed a restraining order — a blanket restraining order against us because one individual . . . picketed in front of her home with the permission from the police department in her area for about two hours, and never made any threats or [committed] any type of violence toward her.[24]

The random-dial telephone survey commissioned by the advisory committee demonstrated that the general public also believes that California courts are "fairer to Whites than they are to any other group of residents." While public attitudes did not reveal a perception that any one minority group suffered "excessively," African Americans and Native Americans were perceived to be treated less fairly than everyone else.[25]

In contrast, "judicial officers tend to believe that the courts are at least somewhat unbiased with regard to race or ethnicity," while the attorneys involved in minority

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[23]Transcript of the Los Angeles public hearings, day two, p. 83 (June 5, 1992). (Gina Rae, member, Latasha Harlins Justice Committee.)
[24]*Id.*, at p. 81. (Gina Rae.)
[25] *Fairness in the California State Courts, supra,* at p. 4-15.

affairs polled tended to believe that the courts are biased. Nonjudicial personnel appeared to be undecided on this issue.[26]

Ms. Mary Risling, an attorney with California Indian Legal Services and a member of the Hoopa Valley tribe, located primarily in Humboldt County, shared her observations about a number of issues, including complaints her office received about the handling of criminal cases, both adult and juvenile:

> [A]s to adults and juveniles . . . [there is a] perceived inconsistency in the amount of resources the system commits to a case based on the race of the parties involved. Cases involving Indian victims are poorly handled, with resources of the system being minimally applied. In contrast, cases involving Indians as defendants can be expected to result in vigorous investigation, prosecution, and sentencing.[27]

TREATMENT OF DEFENDANTS

A speaker in Stockton decried the disparate enforcement of the law on the city's south side, where minorities primarily live, and the north side, "where all the judges' sons and the police [officers'] sons are doing whatever it is they do." This same speaker reported that he got this information from a clerk working at the police department, who told him that "officers go out to North Stockton and do not pick up any drunk drivers, do not even bother to because they know . . . when the report comes out, they are going to have to just do away with the report or just not even consider it, so they concentrate on the south side."[28]

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[26] *Id.*, at p. 5-13.

[27] Transcript of the Redding, public hearing, p. 139 (Nov. 16, 1991). (Mary Risling, staff attorney, California Indian Legal Services (CILS), Eureka Office.0

[28] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 146. (Carmen Fernandez, Family Service Agency; member, Affirmative Action Committee.)

A Redding-area speaker, discussing the treatment of the African American community by the justice system, stated that whenever a crime allegedly committed by a non-White individual, described as either Mexican or Black occurs, the police pull over every Black or Brown person driving in the vicinity. The speaker maintained that "if there is a White crime, they don't pull every White somebody in Redding to find out if they got their man; it's just that when they deal with anybody that is a minority here, they are free to do that." The speaker continued, "The problem is that they got a saying in Shasta County, 'Come here on vacation, leave on probation.'" [29]

Mr. Robert Bloom, an attorney practicing in the area of criminal law who had been working on the Geronimo Pratt case, one that he felt clearly illustrated judicial bias based on race, addressed the advisory committee during the San Francisco public hearings. A former member of the Black Panther Party, Pratt was accused of robbery and murder in 1968. His attorneys claim to have new evidence that would exonerate their client. In addition, Mr. Bloom, believes that the police originally "buried" evidence that would have cleared Pratt. After a somewhat lengthy discussion of the case, Bloom charged that despite an Order to Show Cause issued by one judge, defense attorneys have been unable to obtain a hearing on what is claimed to be the mounting new evidence in this case, even in the face of pressure from Amnesty International, noted former Harvard professor Derrick Bell, public figures such as Alice Walker and Danny Glover, and the National Black Police Association. Notes Bloom:

> So what we have is a very substantial petition with compelling evidence of innocence; not just an unfair trial; that, too, but compelling evidence of innocence and we

[29] Transcript of the Redding, public hearing, p. 107 (Albert Canfield, resident.)

> cannot get a judge to direct the government to substantively respond and . . . give this man a fair hearing.[30]

One purpose of the previously mentioned random-dial telephone survey was to gauge public beliefs about judicial decisions and whether the general public believed that court decisions were racially and ethnically blind. Survey results revealed that most Californians are divided on the question of whether the courts would reach the same decision, under similar circumstances, regardless of the race or ethnicity of the defendants.[31] African Americans clearly feel that the same outcome is not guaranteed, while Asians and Whites are close to being evenly divided on this issue.[32]

The results of the written surveys indicate that judicial officers generally, and to some extent nonjudicial personnel, believe that the courts are somewhat able to guarantee the same decision regardless of the race or ethnicity of the parties. The attorney group, however, was very pessimistic about the ability of the courts to ensure color-blind decisions.[33]

CHARGING AND BAIL

In Chapter 10, "Sentencing," statistics issued by the Sentencing Project in October 1995 reveal that on a national level, almost one in three (30.2 percent) young African American men between the ages of 20 and 29 is under the jurisdiction of the criminal justice system on any given day. The comparable rate for Latinos is 12.3 percent and for Whites 6.7 percent.[34] Further, although minority groups

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[30] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra,* at pp. 79–81. (Robert Bloom, attorney.)
[31] *Fairness in the California State Courts, supra,* at p. 4-26.
[32] *Id.,* at p. 4-27.
[33] *Id.,* at p. 5-15.
[34] M. Mauer and T. Huling, *Young Black Americans and the Criminal Justice System: Five Years Later,* (The Sentencing Project, Oct. 1995). Table 1 at p. 3.

constitute only about 20 percent of the U.S. population, 60 percent of the prison population is composed of minority-group members, primarily African Americans.

California statistics are not much different. In fact, in 1990 a slightly larger number of African American men between the ages of 20 and 29 were under the control of the criminal justice system (33.2 percent). For Latinos the percentage was less than the national rate (9.4 percent), or 1 out of every 11 young men, for young White males it was only 1 out of 19.

Given these figures, which are widely quoted, not surprisingly members of the public believe that African American males are charged with crimes more frequently than other people. A speaker from Oakland went on to wonder how discipline would have been administered if those attending the Navy's Tailhook Convention for aviators in 1992 had been predominantly young African American men:

> Naval aviators . . . harassed every woman that came down the hallway; fondling, groping, touching and disrobing. . . . [¶] Had that been . . . 200 young Black males, every policeman in that town would have been there to arrest them. That's a harsh reality. And the judicial system is going to have to at some point, take that into account.[35]

In Stockton, the president of the local National Association for the Advancement of Colored People (NAACP) told the story of a young African American male, 18 years old and an honor student, with a four-year scholarship to the University of Southern California. His girlfriend was a White female, not quite 18. Two months after his 18th birthday, the young man was charged with statutory rape for having sex with his girlfriend. According to the speaker, in addition to facing criminal charges, the young man was suspended from school. The speaker

[35] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 121. (William Love, psychologist, Citizens Emergency Relief Team.)

commented that "we don't hear about too many of these kind of cases involving young White males. Haven't heard of any myself."[36]

In a somewhat similar vein, a juvenile-court referee from the Fresno area reported that an "Anglo" public defender once petitioned the bench to "come on, give him a break, he's just a nice White kid," evidently losing sight of the fact that the young man's color should not have been an issue and that the bench officer was a person of color.[37]

The telephone poll produced corroboration for the perception that race or ethnicity may make a difference in treatment: it disclosed the strong consensus among the general public that young people who look like gang members are treated less fairly than others. Gang colors, style of clothing, and paraphernalia are often part of the description of African American and Latino gangs. A similar manner of dress is often worn or adopted by non-gang members. The diverse attorney group shares this belief with the public. Judicial officers and nonjudicial personnel are divided on the issue.[38]

An attorney in Stockton recounted an experience that caused him to refile a case (formerly charged as misdemeanor counts of breaking and entering, disturbing the peace, and battery) as felony counts:

> [A] Filipino court clerk was carrying groceries into her house when some Nazi types . . . [¶] yelled, "let's get the boat people," charged the house; kicked the front door in; chased the family around in the house; there was the mother, father, and a 9, 10-year-old boy; stomped the husband in the face with their hiking boots; the walls of the house were spattered with blood. I saw the pictures.[39]

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[36] *Ibid*. (Todd Summers, tax accountant; president, NAACP, Stockton.)
[37] *Ibid*. (Glenda Allen Hill, juvenile court referee; former deputy district attorney.)
[38] *Fairness in the California State Courts*, *supra*, at p. 5-57.
[39] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 122. (Stephen E. Taylor, deputy district attorney.)

As a deputy district attorney, the speaker, a White male, was able to refile the case as a felony assault with a deadly weapon. Such a refiling was rare, but the attorney spoke with the victims and also realized that the defendants were likely to be released on their own recognizance (OR) or low bail because they were "only" charged with misdemeanors. The attorney pointed out that minority attorneys "react in a flash to this kind of nonsense." He implied that all attorneys must take notice and not let this kind of "undercharging" occur in the future.[40]

The testimony of an attorney in San Diego County highlighted capital charging decisions made in the area:

> None of the victims of capital defendants prosecuted in San Diego County and now on death row was African American. This conforms to nationwide statistics concerning the value, the relative value — and that is the only way to really talk about it — about the race of the victim; . . . a very strong inference is drawn about the race of defendants and the race of victims in capital cases charged in San Diego . . . .
>
> I've heard you ask the question, what can you do? As the United States Supreme Court has repeatedly said, "Death is a different kind of punishment." It is the extreme. In order to determine whether it is being administered in a racially and ethnically unbiased manner, we should have a statewide data base which could be used to make these determinations and by which a truly independent — and I stress the words "truly independent" — research group could look at the data to determine whether capital charging decisions are truly being made on other than a racial and ethnic origin basis.[41]

The issue of charging and race was also raised during the San Francisco public hearing when an attorney member of the audience commented that "charging is very often a function of who the victim is, and in many instances, in many

[40] *Id.*, at p. 123. (Stephen E. Taylor.)
[41] *Id.*, at p. 83. (Elizabeth Missakiam, attorney; Ph.D., experimental psychology.)

counties throughout this country, capital charges are lodged only where the victim is White or mostly where the victim is White." As the attorney also pointed out:

> I think that it certainly bears attention that in many of the DA offices throughout this country, the majority of the staff attorneys are White. Now, that may, on the face of it, not seem like such a terrible thing, except when you consider the fact that racism manifests itself in very subtle ways, of thought, action, perception, logic, and consequently, will eventually have an impact on charging practices.[42]

Dennis Schatzman, a reporter and editorial writer from the *Los Angeles Sentinel* and a former district court justice from Pennsylvania, specifically addressed the misuse of bail bond procedures and arrest warrants. Citing 20 years of experience as a reporter and three as a judge, Mr. Schatzman complained that judges too easily issue arrest warrants to law-enforcement officers who present incomplete information in order to "hold" a suspect until evidence can be gathered.

Stating that he had set bail in hundreds of criminal cases and preliminary hearings and had issued as many arrest warrants and search warrants, Mr. Schatzman went on to critique bail decisions premised on judicial bias and "perpetrated primarily against African Americans and other minorities in the Los Angeles area on a regular basis, without explanation and often without apologies, every day."[43]

Mr. Schatzman went on to recommend that:

> all judges, prior to ascending to the bench, . . . should be required to take a basic course in fundamental procedures concerning bail bonds and search and arrest warrants. I think that oftentimes judges use these tools as a means to punish people as opposed to a means to assure that people show up for court.[44]

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[42] *Ibid*. (Aundre Herron, attorney.)
[43] *Id.*, at p. 97. (Dennis Schatzman, reporter and editorial writer, *LA Sentinel;* former district court justice, Commonwealth of Pennsylvania.)
[44] *Id.*, at p. 98. (Dennis Schatzman.)

A San Francisco attorney related the story of an African American woman, the victim of domestic violence on several occasions, who was eventually murdered by her husband, also African American. The husband was charged with murder and bail was set at $30,000. During that same time, a White female attorney was brutally raped by four African American males. In that case a judge set the bail at $1.5 million. The African American's attorney concluded her story by saying:

> You know, I don't believe that White judges, or any judges, sit on the bench and say, "I'm going to set a higher bail in this case because it's a Black-on-White crime, and a lower bail in this case because it's a Black-on-Black crime." But what I think judges have to understand is that the result is still the same, and to those who look at this system from the outside, it clearly looked like a White woman's honor was more sacred than a Black woman's life.[45]

PLEA BARGAINING

In a 1991 random-sample survey of judges, district attorneys, and public defenders conducted by the *San Jose Mercury News*, a majority of prosecutors polled (98 percent) agreed strongly or somewhat strongly that the race or ethnicity of a defendant makes no difference in a decision about whether to agree to a plea bargain or go to trial.[46] District attorneys also reported that the plea-bargaining system operates fairly and is color-blind.[47]

In contrast to the opinion of district attorneys polled by the newspaper, a legal-services attorney speaking at the Redding public hearing pointed to her

[45] *Id.*, at p. 104. (Aundre Herron, attorney.)
[46] *San Jose Mercury News*, "California Criminal Justice Survey" (Nov. 1991).
[47] *Ibid*.

observations of discriminatory practices at the initial stages of a criminal investigation:

> [C]lients will take the plea bargain because they don't realize if they challenge the case at a fair hearing, they might have a chance of avoiding the criminal charges. . . .
>
> [A] large part of this problem is grounded in some racially discriminatory practices by the investigators, and is further exacerbated by the district attorney's refusal to carefully scrutinize the basis of the allegations. . . . They basically rubber stamp the investigator's report and issue the complaint.[48]

In Los Angeles, a speaker expressed his fears about plea bargaining and its impact on the lives of young African American men who are caught up in the criminal justice system:

> They're afraid of going into the courts and so therefore they'll plea bargain out and now we have young men who are going to be part of the system and will never, ever be able to get out.[49]

Speakers at both the Los Angeles and Stockton public hearings also offered their opinions about plea bargaining. One speaker commented on judges, advising defendants that if they change their pleas and decide to go to trial they will not get "any less time . . . and . . . stand to get considerably more time"[50]:

> [I]n misdemeanors, we have on a daily basis thousands of people in Los Angeles brought into court, held in custody and being offered the following deal: Plead guilty, get probation and go home; plead not guilty and remain in custody until your trial, sometimes within 30 days in the future. Thereafter, when the person pleads guilty, the court goes out of its way to

[48] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra*, at p. 126. (Cindy Babby-Smith, attorney, Legal Services of Northern California.)
[49] *Id.*, at p. 127. (Jerry Lee, Jr., resident, Los Angeles.)
[50] *Id.*, at p. 126. (Doris Jones, resident, Stockton.)

> make sure the plea is free and voluntary. That is obviously coercive and it's hypocrisy, and that type of hypocrisy is breeding contempt for the courts and contempt for our system.[51]

Recognizing that other factors may influence court proceedings, a speaker in San Diego commented:

> I realize that because the courts are overtaxed in terms of public defenders having to represent so many people, and there being so little money, that often public defenders are willing to just — [T]hey don't know much about the case, and . . . they're not properly prepared, so it's easier for them to rush a person through. It's easier for them to make a deal.[52]

TRIAL

The public hearings were instructive on public attitudes and beliefs about what happens during a trial involving plaintiffs and defendants who are members of minority groups. To someone not affiliated with the legal profession, there may be no sharp delineation between the police, the prosecutor, the judge, and others who are actors within the justice system. As one speaker put it, they are "all in cahoots." The police, the prosecutors, and the judges are viewed as part of a continuum that often does not lead to justice for people of color.

A speaker from a rural southern California community stated:

> And the reason I feel that way is because all these judges and lawyers here, they're all, you know, friends of one another and, you know, as an outsider or somebody that's . . . trying to get justice . . . they're not gonna give you a fair chance.[53]

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[51] *Id.*, at p. 127. (Richard Millard, attorney; member, Board of Governors, California Attorneys for Criminal Justice in Los Angeles.)
[52] *Id.*, at p. 128. (Terry Mason, musician, resident, San Diego.)
[53] *Id.*, at p. 67. (Fay Hartfield, businesswoman; member, Afro-American Parent Coalition.)

One speaker who had observed court proceedings thought that the judge "consistently rules with the district attorney's office and overrules the defense attorney consistently throughout the trial,"[54] while a civil rights activist from Ventura County stated:

> [I]t's a total farce to have public defenders who are working for the same agency, who are receiving the money from the same agency and then they both switch from one side, public defender, to a prosecutor, or over to the DA side, and then you expect for them to not have friends that they work with, talk with, play with, shoot pool or golf with, and not make a decision that affects our lives. And I think it's fact. And any DA or public defender needs to realize that they are part of that court system because most of them go from there to being judges, and so they do not forget their friends.[55]

It was the perception of a speaker from Oakland that "a lot of minorities, when they come into the judicial system, are discounted. The judge looks at them as an individual to be discounted. Their information is not believed."[56]

This comment was echoed by another Oakland speaker, Valerie Lewis, past-President of the California Association of Black Lawyers, who stated:

> I think next we characterize some of the comments as having to do with the perception that when minority members are in the courtroom testifying, they are lying. And, we think that there is still a problem that judges are not always sensitive to cultural differences and that the fact that someone looks different from us . . . [even] someone . . . of the same race as you, but if they are unattractive, there is a tendency to assume that person is lying.[57]

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[54] *Id.*, at p. 66. (Todd Summers, tax accountant; president, NAACP, Stockton.)
[55] *Id.*, at p. 67. (John R. Hatcher III, President, NAACP, Ventura County Branch.)
[56] *Id.*, at p. 82. (Fred Whitaker, board member, Legal Aid Society in Oakland.)
[57] *Ibid*. (Valerie Lewis, attorney; past-president, California Association of Black Lawyers.)

Another former litigant from Sacramento felt that the deck was stacked against him because of the racial and ethnic composition of the jury hearing his case — 2 Hispanics and 10 Whites:

> And their perceptions of me as a Black man, bringing litigation against a White defendant in my particular instance — I felt that I had to overwhelmingly convince them that I was a credible person in order to get a fair trial, taking several days of testimony.[58]

Finally, on a number of occasions and in several different forums, speakers commented on the credibility accorded police officers by the courts and a presumption that the defendant is lying. That testimony is best summarized by a speaker from Los Angeles, who commented:

> Citizens who are victimized on the streets by illegal stops, detentions, searches and seizures, arrests and abuse, are later taken to our courts, hoping for fair hearings, only to find they are victimized again by our judges, who refuse to apply the same standard of credibility to police officers as those that are applied to others. Lies to justify the admissibility of evidence are commonplace and repeatedly accepted. Objections to the contrary are ignored. All of this is done in the name of justice, law and order.[59]

This section of the report does not answer the threshold questions concerning the amount of crime in minority communities or the existence of institutionalized racism in the California system of justice. Rather, it highlights opinions about the system and its treatment of victims, criminal defendants, and others to provide a brief snapshot of the California public hearings and the wealth of information obtained from them by the advisory committee.

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[58] *Ibid*. (Ralph Johnson, investment broker/banker.)

[59] *Id.*, at p. 149. (Richard Millard, attorney; member, Board of Governors, California Attorneys for Criminal Justice in Los Angeles.)

CONCLUSIONS (BASED ON PUBLIC-HEARING TESTIMONY)

1. **Some minorities and non-English-speaking persons believe that judges are not held accountable for conduct demonstrating insensitivity toward racial, ethnic, and linguistic minorities.**

2. **Some minorities and non-English-speaking persons believe that judges are not held accountable for the actions of court staff that evidence bias toward racial, ethnic, and linguistic minorities.**

3. **Some members of the public believe that the justice system shows favoritism toward Whites.**

4. **Some members of the public believe that there is disparate enforcement of the law and that police officers often target members of minority groups.**

5. **There is some public perception that minority males, and African Americans in particular, are charged with crimes in circumstances where White males would be released with a warning.**

6. **There is some public perception that minority males are less likely to be released on bail or on their own recognizance (OR) than White males apprehended in similar circumstances.**

7. **Some members of the public believe that race or ethnicity makes a significant difference in the outcome of a plea bargain.**

8. **Some members of the public believe that there is no sharp delineation between the authority of the police, the prosecutor, the public defender, and the judge. The perceived close relationships between those holding these offices are viewed as problematic for minorities.**

RECOMMENDATIONS

The advisory committee requests that:

1. **The Judicial Council widely disseminate this report:**

   a. **to educate judges and court personnel about the public perception that bias and insensitivity toward minority and non-English-speaking litigants and their attorneys exist; and**

   b. **to reassure the public that their views are taken seriously.**

2. **The Judicial Council direct the Center for Judicial Education and Research and the Judicial Administration Institute of California to incorporate the findings, conclusions, and recommendations of this report into its educational programs for bench officers and court staff.**

* * *

CHAPTER 4

COURTROOM EXPERIENCE

JUDICIAL DEMEANOR

In 1992, the Judicial Council commissioned a random-sample telephone survey, as part of the *2020 Report*, of 1,002 English-speaking California residents, 253 Spanish-speaking California residents, and 251 lawyers residing in the state, in which California judges received high marks for being well qualified and well trained. Nevertheless, the survey revealed that a majority of nonattorney Californians polled had an "only fair" or "poor" opinion of the state court system.[60] The only a "fair" attorneys, on the whole, gave the courts a considerably higher rating.

The sample was representative of California's population with respect to age, race, gender, income, and geographic distribution. The survey revealed that women and African Americans have the least amount of confidence in the courts, while attorneys give the courts a higher rating than any other group. Further, in contrast to the general population, attorneys, who presumably have greater exposure to and knowledge of the court system, do not feel that the courts give preferential treatment to White males.

[60]Commission on the Future of the California State Courts, *Surveying the Future: Californians' Attitudes on the Court System* (1992), p. 27. (Survey,— conducted by the firm of Yankelovich, Skelly and White/Clancy Shulman.)

The 1991–1992 public hearings conducted by the advisory committee preceded the *2020 Report* by three months. Articulate and sometimes damning testimony concerning the behavior of bench officers, attorneys, and court personnel was received by the committee. This was particularly the case in Los Angeles, primarily because of the response to the Rodney King beating and the death of Latasha Harlins as discussed in Chapter 3.

One speaker, Mr. Ray Johnson, then President of the Howard University Law Alumni in Los Angeles, described his experiences a few years earlier while representing the family of a young African American male who died after receiving electric shock treatment at Camarillo Hospital. According to Mr. Johnson, the judge in that case called the attorneys into his chambers and said:

> You metropolitan Los Angeles attorneys come up here and think you're going to rip off the county. . . . ¶ We don't pay nothing for wrongful death up here. Tractors run over people in the fields all the time. We don't pay nothing for that.[61]

Mr. Johnson was struck by the fact that those field workers "picking the lettuce and whatnot" were "some Mexican, some Blacks — minorities"

> [T]his indicated, I think to everybody who happened to be in the chambers at that time, that this judge definitely has a feeling . . . about race, ethnic[ity], poverty . . . things which I was very fearful would have [a] way of intervening into the court proceedings.[62]

In addition to concerns about the overall fairness of judges, speakers expressed a belief that judges are sometimes not inclined to deal with difficult issues. One

[61]Transcript of the Los Angeles public hearings, day two, p. 61 (June 5, 1992). (Ray Johnson, president, Howard University Law Alumni)
[62]*Id.*, at p. 62. (Ray Johnson.)

attorney suggested that judges cannot "see" discrimination unless it is blatant, which it rarely is:

> It has to do with the way judges handle claims of discrimination. I am very distressed that in all of the cases that I have been involved in, what I run up against is a judge who simply does not believe that discrimination occurs; that they can't see it. They expect that in a claim of discrimination, you're going to prove it by coming in with a bold-faced statement of someone saying "I hate niggers," or "No more Mexicans." Of course, it doesn't occur that way. That does happen — don't get me wrong. But the more common comments of discrimination are a lot of what could be called neutral conduct — policies and procedures that actually have a discriminatory effect on people.[63]

Another attorney testifying before the committee noted a judge's toward the substance of a discrimination case:

> But there was — during the status conference, I really got the sense that the judge was incredibly hostile to just the substance of the case, just that simply it was a race discrimination case. . . .[¶] I just never have picked up this sort of just blind reaction to a case. And sure, it shocked me.[64]

An example of what one speaker identified as arrogance by some court personnel when dealing with Asian American litigants was brought to light by another speaker at the Los Angeles public hearing:

> What is the perception of the court system? Asian clients are often met with insensitivity and impatience by some clerks, and especially judicial personnel. And we all know judges who are arrogant and abrupt, especially when they are trying

[63] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra,* at p. 109. (Michael Bush, attorney, Redding.)
[64] *Ibid*. (Patrick Cooper, attorney, Universal City.)

> to clear their calendars, and who fire off rapid questions in efforts to quickly get to the truth.[65]

Other speakers at the public hearings addressed the need for judges to be sensitive to the poor and unsophisticated individuals who come before them and are, perhaps, frightened by the courtroom proceedings. These individuals may not respond in a manner that the judge expects or to which the judge is accustomed. A further complication may be the individual's lack of fluency in English or perhaps bewilderment at dealing with a justice system that embodies concepts that are completely unfamiliar. One speaker noted:

> Sometimes, again, judges are insensitive to the poor client's position and that's deeply disturbing. . . . [T]he judge was not at all sensitive and indicated that "your client lives in America and must sink or swim in the business world because they should understand, you know, what the business world requires when it comes to signing documents."[66]

Another commented:

> And I think it's particularly important for judges to be sensitive to the fact that we have people who don't come in contact with the court system often, or if they have had any contact with the court system or knowledge of that system, it's one that gives them an uneasy feeling; and that people do respond differently and it doesn't necessarily mean that they are lying. . . . "They're not looking straight at me; they're not sitting straight up in the chair."[67]

The California public hearings provide us with anecdotal evidence of a judge who has referred to Latino litigants in his courts as "wetbacks." The judge apparently saw nothing wrong with using this term because he knew the Latino attorney representing the litigants and was always courteous to him. In fact, when the

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[65] *Id.*, at p. 110. (Estelle Cynthia Chien, staff attorney and deputy director, Asian Pacific American Legal Center of Southern California.)
[66] *Id.*, at p. 112. (Troy Smith, directing attorney, Legal Aid Foundation of Los Angeles.)
[67] *Ibid*. (Valerie Lewis, attorney; past-president, California Association of Black Lawyers.)

attorney representing these clients objected, the judge's response was, "Jose, I do not understand why you worry about it. I would never call you a wetback."[68]

As previously noted, indications of bias are rarely overt; therefore, it is difficult for individuals affected by the biased behavior to specifically articulate their concerns. When overt, however, such conduct has been brought to the attention of the Commission on Judicial Performance, the entity charged with making determinations about complaints of judicial misconduct and prescribing the appropriate discipline or remedial action.

For example, an Alameda County judge received a public reproval in 1994 for the following insensitive comments to a Japanese American attorney:

> No, no. Listen, you filed your papers. . . . Do you have something to add to those papers which isn't in there, some brilliant case you found somewhere in the Upper Tokyo Reports or somewhere that nobody knows about, tell me about it. Otherwise, there is no need to argue over what you already have.[69]

Further, the commission ruled that the judge's comment "was suggestive of racial or ethnic bias." Because of the negative media coverage generated by the incident, the commission noted that the judge's conduct tended to diminish public confidence in the judiciary.[70]

The following year, in 1995, a judge in Contra Costa County was publicly admonished for improper conduct after making the following comment to an

[68]Id., at p. 215. (Jose Villarreal, director, Fresno County Public Defender's Office.)
[69]State of California, *Commission on Judicial Performance, 1994 Annual Report*, p. 15.
[70]*Ibid.*

African American adult male: "When he asks you a question, I want you to answer only that question. Got it? Okay. Good boy. Go ahead, please."[71]

On account of the tone reportedly used by the judge and the content of the remark, the commission found that the "good boy" comment to the in-custody adult African American defendant was indicative of racial insensitivity.[72]

OTHER COURTROOM PERSONNEL

Judges were not the only individuals cited for making biased remarks. When Jose Villarreal, then Director of the Fresno County Public Defender's Office, was first appointed as a deputy public defender, another attorney was heard to say, "Now that we have Jose Villarreal as a county public defender, we are going to have to wear sombreros and serapes."[73]

Judicial officers also report that they are not immune from hearing biased comments:

> I want to point out as a judicial officer, sometimes I think the attorneys forget that I'm also an African American and a member of a minority group, and sensitive to certain issues. So I hear a lot of ethnic jokes and I have to tell people that they have to take that outside of my courtroom.[74]

[71]State of California, *Commission on Judicial Performance, 1995 Annual Report,* p. 20.
[72]*Id.* at p. 21.
[73]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra,* at p. 215. (Jose Villarreal, director, Fresno County Public Defender's Office.)
[74]*Id.*, at p. 216. (Glenda Allen Hill, juvenile court referee; former deputy district attorney.)

Before the litigants or plaintiffs and defendants interact with the judge, they may face a myriad of other court personnel. Court personnel can negatively affect the public's perception of the justice system if they do not appear fair or neutral:

> There is a strong prosecutorial mentality among the personnel there, inside the courtroom — the bailiff, the court reporters, the clerks, all the people that have specific duties within the process, from the beginning to the end.[75]

At the Los Angeles public hearing in June 1992, held in conjunction with the State Bar during a statewide conference of minority attorneys, a Fresno attorney reported that court personnel initially would not talk to him because they did not recognize that Latino attorneys were practicing among them. As one attorney describes it, "So I go to check in with the clerk and the bailiff stops me and says, 'Where are you going? . . . [¶] Well, are you a lawyer?'"[76] As Raul Granados, then President of the Mexican-American Bar Association who related the practice, noted that he might be asked to show his bar card even after producing his business card and despite his business attire.[77]

Members of minority groups frequently comment on the seeming inability of persons outside of their groups to distinguish between individuals. "They all look alike to me" is a frequently heard "joke." As if to verify that "they" do all look alike, an African American deputy district attorney in Contra Costa County, arriving early to court after lunch, was asked by the arresting officer, "What are you doing out of custody?"[78]

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[75]*Id.*, at p. 218. (Ralph Avila, attorney, Fresno County Public Defender's Office; president, La Raza Lawyer's Association.)
[76]*Id.*, at p. 60. (Raul Granados, attorney, president, Mexican-American Bar Association.)
[77]*Ibid*. (Raul Granados.)
[78]*Id.*, at p. 61. (Hendrick Crowell, attorney; chairman, Solano County Juvenile Justice/Delinquency Prevention Commission.)

Ms. Glenda Veasey, an African American woman, then a member of the State Bar Board of Governors, spoke about her personal experiences as a practicing attorney and of often being the "token minority woman." Ms. Veasey stated that she sometimes "felt angry and resentful, since I'm just as good and oftentimes better than those who are attempting to pander my skills and attributes . . . ."[79]

Ms. Veasey, who has often been mistaken for White while in the presence of nonminorities, offered further compelling testimony:

> Because of this fundamental misperception, people say and do things that they would not . . . if they knew an African American person was present — racial jokes, stereotypical comments and innuendo, and downright racist remarks and comments.
>
> I have repeatedly seen and heard this done at depositions, in client meetings, at arbitrations, in settlement conferences, in law offices, in courthouse hallways, in courtrooms, and in judicial chambers. And the parties involved in this conduct have included judges, lawyers, court personnel, clients, and observers.[80]

Ms. Veasey went on to say that nonminorities were not the only ones engaged in this kind of conduct, but that members of racial and ethnic minority groups were as well: "We all have our prejudices and biases, but when they are expressed in contexts where people may question the fairness of the legal system . . . it is harmful and it's wrong, regardless of the source."[81]

Another speaker, who identified herself as a Shawnee Indian and an attorney, spoke of not being recognized by others as a Native American because of her

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[79]Transcript of the Los Angeles public hearings, day three, p. 63 (June 13, 1992). (Glenda Veasey, State Bar Board of Governors)
[80]*Id.*, at p. 64. (Glenda Veasey.)
[81]*Id.*, at p. 65. (Glenda Veasey.)

White appearance. According to her testimony, many individuals have stereotyped ideas about how a Native American should look and may not take seriously an individual's self-identification as Native American if he or she appears to be White:

> I am a mixture of many ethnicitie's. American Indian is one of them, and one of the things I am often confronted with is being told that I am not Indian enough. . . . [¶] I have had more than one judge say this to me and, you know, this is at a dinner and not in the courtroom, obviously. "Well, you don't look Indian at all." . . . [¶]And I just find that kind of remark totally offensive, because, I mean, obviously my self-identification is my choice and my culture is very important to me.[82]

JUDICIAL EDUCATION

For the past 23 years, the California judiciary has made a concentrated effort to address issues of fairness as they affect judicial administration. Since 1973, the judiciary in this state has worked to improve the administration of justice by furthering the education and professional growth of California judges and broadening their experiences. The California Center for Judicial Education and Research (CJER) was established in 1973 for this purpose.[83]

More than 20,000 judicial officers have participated in CJER programs over the years. Over 500 judges volunteer annually to serve as faculty at CJER programs, help plan programs, and write and review publications. CJER's video department,

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[82] *Id.*, at p. 123-124. (Sherry Lear, attorney; cofounder and president, Minority Bar Association of Greater Long Beach.)

[83] Judicial Council of California, *Judicial Council 1995 Annual Report to the Governor and the Legislature*, p. 25.

with the help of volunteer judges, has produced at least 270 audiotaped and videotaped educational programs for the use of the judiciary.[84]

CJER provides training for new bench officers, helps facilitate a mentoring program to assist new trial judges, and provides continuing-education programs for experienced judges. A formal fairness-and-bias education program began in 1981 with a course on gender fairness, which evolved into a course entitled "Judicial Fairness" offered twice a year as part of the continuing-education program.[85]

CJER's fairness-and-bias education program has expanded to include issues of race, ethnicity, gender, sexual orientation, culture, disability, age, and class. A policy directing that fairness issues be incorporated into all CJER programs, as appropriate has been in place since 1991. The expansion of fairness programs has been limited only by budget constraints; however, continuing efforts to develop programs in the area of fairness are mandated by the dramatically changing demographic landscape of California.[86]

Despite CJER's accomplishments in educating bench officers on fairness and access issues, bias and insensitivity toward minorities still exist in the courts. More than ever, judicial officers and other court personnel should be made increasingly aware of how their demeanor or behavior affects those who pass through the courts. In the advisory committee's experience, studies have shown that a large number of minorities in California, just as elsewhere in America, do not believe they will receive the same justice as Whites.

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[84] *Ibid*.
[85] *Id.*, at p. 26.
[86] *Ibid*.

CONCLUSIONS

1. **While most judges believe that no problem exists with regard to judicial demeanor toward minority and non-English-speaking litigants, some members of the general public do not share that opinion.**

2. **Judges should be vigilant against personally exhibiting or allowing court personnel or attorneys to exhibit behavior based on stereotypical, negative views toward minority-group members.**

3. **An essential component of judicial demeanor is manifest respect for everyone involved in the court system. Such respect demands that judges foster an atmosphere of fairness and neutrality in the courts for litigants, witnesses, and other court users, whether minority or nonminority.**

4. **Judges and court personnel may benefit from cultural competency training; therefore, judges should be encouraged to participate in CJER fairness programs. Comparable programs should be developed for court personnel.**

RECOMMENDATIONS

The advisory committee recommends that:

1. **The Judicial Council direct CJER, the Judicial Administration Institute of California (JAIC), and the Access and Fairness Advisory Committee to work together to develop additional fairness programs with a special emphasis on issues related to minority and non-English-speaking litigants.**

2. **The Judicial Council encourage the judiciary to participate in periodic cultural competency training.**

3. **Tribal court judges should be included as faculty in diversity training programs and be permitted to attend CJER education programs.**

4. **The Judicial Council encourage the local courts to develop outreach programs designed to enhance access to the courts by minority and non-English-speaking persons.**

5. **The Judicial Council direct CJER to work with CJA, JAIC, the California Continuing Judicial Studies Program (CJSP), and other educational programs, to offer courses on issues related to minorities and non-English-speaking persons to both new and sitting bench officers and court staff.**

    a. **Fairness courses should be introduced initially at the New Judicial Officer Orientation Program, the Mentor Judge Program, and at other formal training programs for judges.**

    b. **Consideration should be given to making fairness education or cultural competency training part of the mandatory educational requirements for judges.**

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CHAPTER 5

TREATMENT OF COUNSEL

PATTERNS OF BIAS

Public-hearing participants in California and elsewhere cited gender, race, ethnicity, career concentration, and law schools as common factors people often use to judge the credibility and effectiveness of minority attorneys. This chapter discusses how the buildup of negative attitudes about these categories, "when left to manifest [themselves,] can affect the quality of justice."[87]

> [S]tereotypes about the behavior, worth and credibility of men and women are not neutral. . . . Such stereotypes, which are not likely discarded at the court house door, form a part of the individual's socialization.[88]

RACIAL AND ETHNIC BIAS

> Part of the process of being a social engineer means developing an understanding, an appreciation, of the context in which we operate. The success we achieved in the civil rights movement came in part because ordinary people sought to vindicate their rights in court because they knew that in the political climate *at the time*, the court system, more than the executive or the legislature, offered the greatest opportunity for social change. . . . [¶]Change came because ordinary Negroes took advantage of their right to a day in court to

[87]District of Columbia Courts, *Final Report of the Task Forces on Racial and Ethnic Bias and Gender Bias in the Courts* (1992), p. 88.
[88]*Id.*, at pp. 79–80.

> force the nation to come to grips with the contradictions within itself.[89]

In that speech, the late Justice Thurgood Marshall pointed out that ordinary African American people viewed the court system as a potential agent for social change. But the legal arena has become a much different place, in terms of demographics, since Justice Marshall first practiced law.

Currently, a variety of racial and ethnic groups have the same expectations of the court system as did the ordinary African Americans in Marshall's era. In her Margaret Brent Award acceptance speech before the American Bar Association, Ms. Barbara Jordan commented that her first-year class at Boston University Law School contained only six women. "Our very presence is witness and testament to a transition in our society," Jordan noted. "How [else] did we get from that day in 1956, when 2 percent of my law school class was female, to this day . . . when we can look around the room and see men and women of many races, creeds and colors in a close approximation of their numbers in American society where we live, work and play?"[90]

Recent law school statistics support Jordan's referenced "transition in society." Statistics obtained from the National Association of Law Placement (NALP), indicate that 3,169 minorities graduated from ABA-accredited law schools in 1984.[91] Between 1984 and 1994, the number of minority law school graduates almost doubled, to 6,099, or from 8.6 percent to 15.5 percent of total graduates. Those categorized as Asian/Pacific Islanders experienced the most dramatic

[89]Speech by the late U.S. Supreme Court Justice Thurgood Marshall before the Individual Rights and Responsibilities section of the American Bar Association, San Francisco (1992).
[90]Margaret Brent Women Lawyers of Achievement Award Acceptance Speech by Barbara Jordan before the American Bar Association's Commission on Women in the Profession, New Orleans (1994).
[91]From 1964 to 1986, a small number of schools did not include minority statistics in their reports of total number of graduates.

increase, from 1.5 percent to 4.5 percent of the total. African Americans went from 4.3 percent to 6 percent of total graduates. Hispanics and Native Americans increased from 2.5 percent to 4.4 percent and 0.3 percent to 0.6 percent, respectively.[92]

Figures for the class of 1994, developed by NALP, demonstrate that a higher percentage of minority graduates than White graduates enter academic fields, government, and the public sector after law school. Business and industry attract a roughly equal percentage of minorities and nonminorities, 11.4 compared to 11.7 percent. Approximately 12 percent of minority graduates and 13.3 percent of nonminority graduates chose clerkships over the other areas. Minorities entered private practice at the rate of 46.2 percent compared to Whites at 58 percent.[93]

The statistics do not indicate whether graduates going into private practice first sought employment at small, medium, or large firms, or if they went into practice for themselves. From information issued as late as December 1995, however, it is clear that minorities are not making their way to the top of the nation's major law firms. For example, minority partners account for 2.8 percent of the total, or 1,160 nationwide. Women constitute 13.4 percent of partners.[94]

It should be noted that San Francisco and Los Angeles are among the leading cities in numbers of women and minorities at all levels in law firms, but they do not leas in minority partnerships. Miami, with only 508 partners in the city, has a higher percentage of minority partners (12 percent) than any other city, including San Francisco and Los Angeles. Minorities accounted for 4.3 percent of the 1,329

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[92]National Association of Law Placement, *Class of 1994 ERS Sampler — Diversity* (1995).
[93]*Ibid.*
[94]National Association of Law Placement, *Women and Minority Representation in Law Offices,* News release of 1995 NALP data (data are based on the *Directory of Legal Employers,* which consists primarily of large firm listings with demographic information on approximately 80,000 attorneys in 570 firms).

partners reported in offices in San Francisco, and 5.7 percent of the 2,670 partners in Los Angeles.[95]

Regardless of the increase in minorities entering the legal profession, biased treatment of minority attorneys in the courtroom, which appears to taint their professional effectiveness, is still a reality. Testimony at the public hearings before the advisory committee revealed instances of courtroom personnel behaving in a condescending or patronizing manner toward minority attorneys. Such behavior, it was noted, resulted from the belief that minority attorneys were unfamiliar with their jobs and the law:

> [Y]oung lawyers, especially young Black lawyers, feel that when they make appearances, the judge will remark, "I know you are young; I know new" or still use terms of "dear" or "honey," and we get these from women judges talking to young black women attorneys. [¶]They [judges] then proceed to give very lengthy explanations about the matter and the instance [to minority counsel] . . ., it had to do with motion hearing. But [these were] lengthy explanations that would be more appropriate for a law school discussion as opposed to a discussion or an argument on any given pleading, especially when [minority] counsel felt they were very well prepared; they had prepared the pleadings; and they knew better than anyone what the gray areas were and what the burdens were [that] they had to meet or that opposing counsel had to overcome in order for them to prevail.[96]

Suits and briefcases apparently are not enough to assure a minority attorney's professional recognition inside the courtroom.[97] Testimony at the California

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[95]*Ibid.*

[96]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 58. (Valerie Lewis, attorney; past-president, California Association of Black Lawyers.)

[97]*Id.*, at pp. 58–59, 60, and 61. (Eugene Boggs, attorney, professor, Western State College of Law) (Joel Murillo, attorney, chair, Chicano Civil Rights Network of Fresno County) (Raul Granados, attorney, president, Mexican American Bar Association) (Brenda Johns Penny, attorney, president, Black Women Lawyers) (Belinda D. Stith, attorney, president, California Association of Black Lawyers) (Hendrick

public hearings disclosed instances in which minority attorneys were mistaken for messengers, interpreters, and even defendants:

> [C]ourt personnel assume that we [minorities], and no one else in the party of lawyers that we may be with, are something other than a lawyer — despite our having all the trappings that are appropriate for a lawyer, such as a suit and a briefcase.[98]

Some attorneys testified before the committee that they tolerated racist remarks to avoid retaliation by a judge. "The fear of retaliation is more acute with young lawyers," one participant noted.[99] "It is more acute within the criminal justice system due to the number of appearances a particular attorney may have to make before a particular judge."[100] Some public-hearing participants did recognize the existence of current mechanisms to remedy discriminatory behavior (such as reporting to the Commission on Judicial Performance). Others expressed dissatisfaction with the commission's lengthy complaint process and noted its inability to adequately protect the privacy of complainants: "By the time you get sufficient evidential details, the judge in a recent incident is going to be able to put the face and the name to the attorney who brought that complaint," one speaker commented. "[E]ven when people are assured privacy, they are unwilling to bring complaints."[101]

Not only was biased behavior reported among some judges, but also among White lawyers and courtroom personnel (including bailiffs, law-enforcement officers,

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Crowell, attorney, chairman, Solano County Juvenile Justice/Delinquency Prevention Program) (Susan Roe, attorney, co-chair, Asian Concerns Committee of the Asian Bar Associations of Los Angeles County)
[98] *Id.*, at p. 60. (Brenda Johns Penny, attorney; president, Black Women Lawyers Association.)
[99] *Id.*, at p. 213. (Margaret Grover, attorney; president, Barrister's Club of San Francisco.)
[100] *Ibid.* (Margaret Grover.)
[101] *Id.*, at p. 214. (Margaret Grover.)

and clerks). One participant testified, "Some court personnel will not talk to a Hispanic lawyer . . . it was not recognized that there were attorneys of our [Latino] descent practicing among them."[102]

Testimony presented at the California public hearings indicated that racial bias on the part of court personnel had a two-pronged effect on minority attorneys: damage to their reputations and reduction of their effectiveness in front of clients. Some minority attorneys reported inner struggles between their desires to nurture their own self-esteem and promote the best interests of their clients because they believed that the mere presence of minority counsel could affect the outcome for a client, regardless of the strength of the case:

> I then have to sit there and make a decision; put my ego aside and think of what's the best interest of my client and really consider . . . dispensing myself and substituting another attorney so that he can get some compensation for my client.[103]

The failure of courtroom personnel to treat minority attorneys with dignity may adversely affect not only the outcome of the attorney's case but also his or her ability to attract future clients. Minority attorneys now find themselves battling a public perception that they are unable to serve a client's legal needs as well as White attorneys. Examples of this public perception included the narration of one hearing participant who noted that Asian people will not hire Asian American attorneys to represent them in court. "Asian clients," the participant stated, "believe they will get better results if they hire Caucasian attorneys."[104]

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[102] *Id.*, at p. 60. (Joel Murillo, attorney; chair, Chicano Civil Rights Network of Fresno County.)
[103] *Id.*, at p. 212. (Raul Granados, attorney; president, Mexican-American Bar Association.)
[104] *Id.*, at p. 213. (Rina Hirai, attorney; member, Board of Directors, Asian American Bar Association of the Greater Bay Area.)

Dean Ito Taylor, Executive Director of Nihonmachi Legal Outreach and an instructor at New College of California Law School, stated at the public hearings that "[O]nce again, we must inquire whether the attorney who speaks with a heavy accent or whose mannerisms may be cultural in origin is perhaps even subconsciously given less credit than one whose background is much more similar to that of the judge."[105]

As the Federal Glass Ceiling Commission report reminds us:

> America — which has always been a nation containing wide diversity and profound differences — has been bound together by the shared promise of expanding opportunity. We cannot allow ourselves to be detoured from the next stage of our national journey. The inclusive values that modeled our past, and the economic imperatives of a challenging future, both require us to overcome the "glass ceiling."[106]

GENDER

Some common stereotypes about women — that they are passive, emotional, and timid — erode the credibility of professional women despite their numerous social, political, and educational contributions to society. In its 1995 report *Good for Business: Making Full Use of the Nation's Human Capital*, the Federal Glass Ceiling Commission[107] noted that stereotypes that have been applied to women of all races and ethnicitie's also describe them as not wanting to work, not as

[105]*Id.*, at p. 54. (Dean Ito Taylor, attorney; executive director, Nihonmachi Legal Outreach, a State Bar Trust Fund organization; instructor, New College of California Law School.)
[106]The Federal Glass Ceiling Commission, *Good for Business: Making Full Use of the Nation's Human Capital*, (Mar. 1995), p. V.
[107]The Federal Glass Ceiling Commission, a 21-member, bipartisan body appointed by President Bush and congressional leaders and chaired by the Secretary of Labor, was created by the Civil Rights Act of 1991. Its mandate was to identify the glass ceiling barriers that have blocked the advancement of minorities and women and to develop the successful policies that have led to advancement for minority men and all women into decision-making positions in the private sector.

committed as men to their careers, not tough enough, unwilling or unable to work long or unusual hours, unwilling or unable to relocate, unwilling to make decisions, not sufficiently aggressive, too aggressive and lacking quantitative skills.[108] Female attorneys are not exempt from these stereotypes.

The problem is further compounded for minority women attorneys who must battle not only sex-role stereotypes but also racially biased treatment. In testimony from the public hearings on racial and ethnic bias and from the earlier gender bias study, women spoke out about experiences that demonstrated to them that they had less credibility than their White male or female counterparts. These combined with other factors adversely affected their practices and self-esteem. The voices of minority women are heard in Chapter 8, "Women of Color and the Justice System."

CAREER CONCENTRATION (PUBLIC SECTOR VERSUS PRIVATE SECTOR PRACTICE)

Bias in the courtroom toward minority attorneys who work in the public sector and for public-interest organizations is common, according to the public-hearing testimony. The consensus was that lawyers working in the public sector or in non-profit arenas are not considered "real" lawyers. This attitude is further compounded by the higher percentage of minority attorneys than White attorneys and female than male attorneys in public-sector practice in California. "Real" lawyers in private practice are regarded and treated as superior advocates of their clients, causes:

[108] *Good for Business: Making Full Use of the Nation's Human Capital, supra* at p. 148.

> [A]lthough we work very hard in the public sector, what I observed is that public sector lawyers are perceived by some courts as not being quite good enough, and therefore, maybe what you have to say maybe shouldn't be believed, or you say it about all your clients so it doesn't really matter.[109]

The California public hearings uncovered a perception that private-sector attorneys receive more professional respect than their public-sector counterparts:

> [S]omehow lawyers in public institutions, like CRLA [California Rural Legal Assistance], working on behalf of the poor, are not real practitioners of the law; that somehow we are not real lawyers and that only real lawyers in private practice are able to press issues on behalf of clients.[110]

The hearings also disclosed a belief that heightened respect for private counsel results in favoritism on the part of court personnel toward the clients who can afford to hire private attorneys:

> There is a perception that if you have enough money and the interest to hire private counsel, perhaps you should be given probation or the opportunity to do community service as opposed to going to jail.
>
> I also see the difference in sentencing . . . having also been in private practice, and now at the public defender's office. I see people, who have [hired] private counsel, I think, getting better deals.[111]

The logical conclusion is that in order to receive the "better treatment" apparently allotted to private attorneys and the "perks" accorded to their clients, an attorney must complete the educational training necessary for private-sector jobs and direct

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[109] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 211. (Cynthia Calvert, deputy public defender.)
[110] *Id.*, at p. 210. (Valeriano Saucedo, attorney; director, CRLA, Migrant Farm Worker's Project.)
[111] *Id.*, at p. 211. (Cynthia Calvert, deputy public defender.)

his or her job search to this area of employment. Nevertheless, studies indicate that minority attorneys are being precluded from enjoying the rewards of the private sector despite attaining the necessary prerequisites for success.

In 1990, the Washington State Minority and Justice Task Force and the Washington State Bar Association conducted a survey to ascertain the current numbers of minorities and women in the legal profession and to determine whether any unwarranted racial, ethnic, or gender differences existed in the occupations and incomes of attorneys in the State Bar.[112]

The findings demonstrate that the highest-paid attorneys in the state were educated at out-of-state, top-ranked[113] law schools and found employment in the private sector.[114] Twenty-one percent of the White attorneys who responded to the survey attended the 20 top-ranked schools in other states. Thirty-seven percent of African American attorneys, 25 percent of Asian American attorneys, and 21 percent of Hispanic attorneys responding attended the 20 leading schools. Only 8 percent of Native American attorneys who responded attended one of those schools.[115]

While a higher proportion of minority lawyers attended out-of-state, top-ranked law schools than White lawyers, their numbers were not proportionately

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[112] Office of the Administrator for the Courts, *Washington State Minority and Justice Task Force Final Report* (1990).

[113] *Id.*, at p. 68. One of the ranking systems of law schools considered for the Washington State survey was Scott Van Alstyne's "Ranking the Law Schools: The Reality of Illusion?" *American Bar Foundation Research Journal,* no. 3 (1982): 649–84. The Van Alstyne ranking method bases its rankings on empirical and current data such as median LSAT scores and grade-point averages of students. Van Alstyne ranks the top 20 percent of all accredited law schools, which he defines as the best law schools in the country.

[114] *Id.*, at p. 70. "Typically, these differences in legal education do not necessarily translate into different types of legal practice. The only important difference is that attorneys from out-of-state, top ranked law schools were less likely than others to work as government attorneys or public defenders. Perhaps as a result, they typically reported higher incomes."

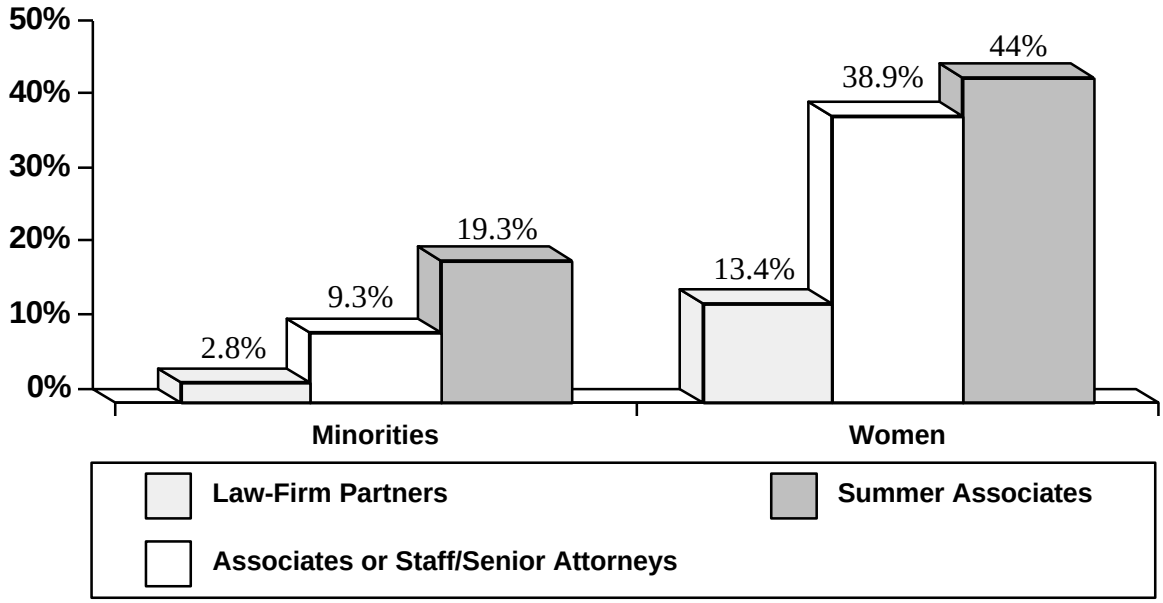
[115] *Ibid.*

represented in the private sector. Higher percentages of White attorneys worked in the private sector than did minority attorneys. Of the 5,904 White attorneys who responded to the questionnaire, 3,955 (66.9 percent) were employed in the private sector. Of the 127 Asian American respondents, 57 (44.9 percent) were employed in the private sector. Thirty -two of the 63 (50.8 percent) African American respondents, were represented in the private sector. Of the 62 Hispanic respondents, 33 (53.2 percent) were employed in the private sector, and 17 (68 percent) of the 25 Native American respondents were employed in the private sector.[116]

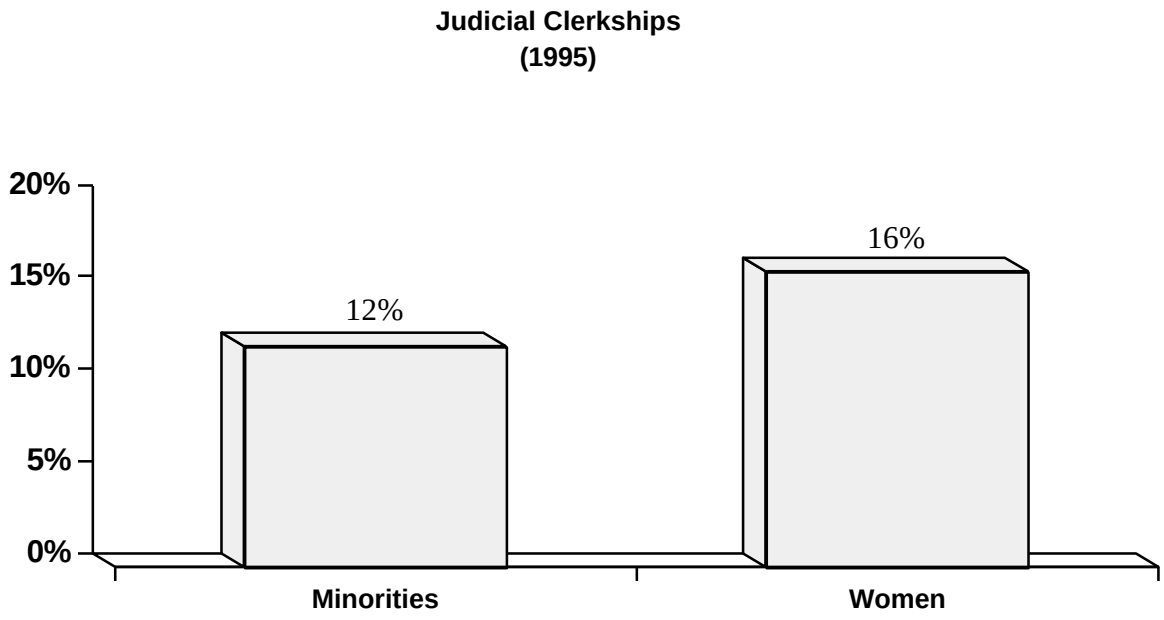
Statistics support the contention that few minority and women attorneys are employed in the nation's largest law firms. As revealed earlier in this chapter, research conducted by NALP in 1995 showed that only 2.8 percent of the partners were minorities, while 13.4 percent of the partners at these law firms were women. NALP research also revealed that only 9.3 percent of the associate attorneys at the nation's major law firms were minorities, while 38.9 percent were women.[117]

[116] *Id.*, at p. 63.
[117] *Women and Minority Representation in Law Offices, supra*

Percentage of Women and Minorities in Largest Law Firms (1995)



Data from NALP also illustrates that although private-sector firms are able to recruit minority attorneys initially, they often do not retain them in permanent positions. In 1995, 19.3 percent of summer associates were minorities and 44 percent were women. However, comparing these data to the law school graduate statistics discussed earlier in this chapter, one can clearly see the diminishing number of minority attorneys working at the associate level (9.3 percent minorities, 38.9 percent women, and 51.9 percent nonminorities.) (Data from NALP also revealed that 12 percent of judicial clerkships went to minorities and 16 percent to women.)



An explanation for the inability of private firms to retain minority attorneys was one topic of many explored in a 1994 report prepared by the ABA Commission on Women in the Profession and the Commission on Opportunities for Minorities in the Profession. In *The Burdens of Both, The Privileges of Neither: A Report of the Multicultural Women Attorneys Network,* female attorneys of color expressed frustration at the lack of respect and support they experienced in the law firm environment from both professional colleagues and staff. Minority-women attorneys participating in the study believed that the private sector operates on the basis of stereotypes and negative assumptions about a minority woman's competence and fitness to practice law. "Popular belief is that affirmative action is alive and well," the report stated. "The Network [Multicultural Women Attorneys Network] found that multicultural women today encounter the same barriers to employment and advancement as their predecessors who entered the profession decades ago:"[118]

[118]American Bar Association's Commission on Women in the Profession and the Commission on Opportunities for Minorities in the Profession, *The Burdens of Both, The Privileges of Neither: A Report of the Multicultural Women Attorneys Network* (Aug. 1994), p. 14.

> [O]ther problems encountered by minority lawyers [include] (1) "cultural shock" or acute anxiety about what the rules and expectations are in the law firm, (2) absence of conscious efforts by the firm to recognize and value differences through diversity training or other means, (3) lack of clear and bias-free evaluation criteria and sufficient feedback on one's performance, and (4) the negative impact of tokenism — still a major consideration because of the low numbers overall of minority partners and associates.[119]

The ABA report also noted that an additional barrier for minority-women attorneys in the private sector included the lack of mentors or role models at higher levels to help provide encouragement and support. "Without the experienced counsel of mentors many [minority] women attorneys suffer from isolation, frustration or despair," the report stated. "They [multicultural women] feel trapped beneath the 'glass ceiling,' underappreciated for their efforts and achievements."[120] In the 1993 report *Goals and Timetables for Minority Hiring and Advancements*, the Bar Association of San Francisco interviewed some mid-level managers who alluded to a kind of "golden boys club" in which White male associates were sought out by White partners for lunch or golf, thereby becoming the beneficiaries of an informal mentoring relationship. The relationship develops a "halo effect" for those young associates, who soon receive more favorable case assignments.[121]

Other studies have been conducted to gauge the treatment of minorities by law firms on issues ranging from hiring to relationships with colleagues. The Los Angeles County Bar Association's Committee on Minority Representation in the Legal Profession and the Los Angeles Minority Bar Task Force recently commissioned a report titled *Ethnic Diversity in Los Angeles County Law*

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[119] *Id.*, at pp. 23–24.
[120] *Id.*, at p. 23.
[121] Bar Association of San Francisco's Committee on Minority Employment, 1993 Interim Report *Goals and Timetables for Minority Hiring and Advancements*, (Dec. 1993), p. 12.

Firms.[122] The report was the result of a survey in which attorneys at 48 Los Angeles law firms were asked to describe the work environment of their firms in the areas of minority hiring, retention, and promotions. The comments offered in response to the survey reflect an undercurrent of tension on issues of race in large Los Angeles firms.

For example, some responses in the Los Angeles survey indicated that minority associates generally believe that their prospects for career advancement are worse than those of nonminority associates. Another respondent who identified himself as Asian wrote: "Most racial incidents are not mean-spirited, but simply reflect a deep-seated, unconscious bias or ignorance." Dolly M. Gee, Task Force Chairwoman, stated, "What this [report] points out is that there are a lot of [White] people who have strong perceptions of unfair treatment as a result of affirmative action but it is actually belied by the [small] numbers of minorities [in the firms] and the actual perceptions of those affected by it."[123]

[122]D. Levin, "Minority, Majority Split Over Race Issues," *San Francisco Daily Journal*, (Feb. 15, 1996), p. 7.
[123] *Ibid.*

PUBLIC-SECTOR ATTORNEYS IN THE COURTS

To accurately reflect the comments offered at the California public hearings, our discussion of the employment of minority attorneys is not limited to attorneys in private practice. Also included are the deputy public defenders, deputy district attorneys, and others who are in the courts on a daily basis. At the San Diego public hearing, John Warren, publisher of the *San Diego Voice and Viewpoint*, commented:

> We have not scratched the surface here today in terms of what I consider the blatant inequity in employment in the district attorney's office, county counsel, city attorney's office. There is no statistical way to explain the absence of young professional Black people being in those positions or the pattern, for instance, in the DA's office, where they seem to only hire one Black female every so many years, and there are people signed up waiting to go in and no one can get in. My last observation is that when I came to San Diego in '84, '85, '86, I had an opportunity to work as a law clerk with county counsel in the city's attorney's office. And I was very concerned at what I saw where I heard there was all of this formal expression of concern to find qualified young Blacks to work within these positions.[124]

A similar theme was echoed in Fresno and El Centro. Jose Villarreal, then Director of the Public Defender's Office in Fresno, pointed out that out of 70 deputy district attorneys, only 3 were members of minority groups.[125] In Imperial County, a heavily Latino area (approximately 65 percent), there were no minority attorneys working in the public defender's office, and out of 17 attorneys

[124] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra*, at p. 137. (John Warren, publisher, *San Diego Voice and Viewpoint.*)
[125] *Ibid.* (Jose Villarreal, director, Fresno County Public Defender's Office.)

employed in the district attorney's office there were 4 women and 1 Latino male.[126]

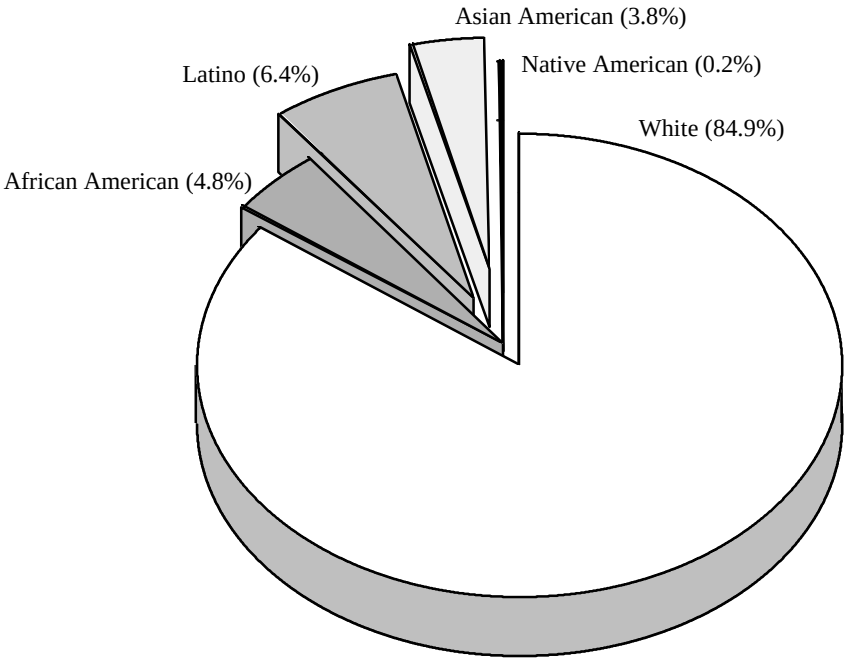
Based on this and other testimony received during 12 days of public hearings throughout the state, it became apparent that the perception of how justice is administered in the state court system is influenced by the complexion of those who work within the justice system. Recognizing that district attorneys and public defenders represent an integral part of the justice system and that obtaining demographic information on personnel who work in these offices would complement the information on employment of minority attorneys, the AOC conducted its own examination of these offices.

To conduct the study, AOC staff obtained mailing labels from the California District Attorneys Association and the Public Defenders Association. At the time of this writing, 72 percent of the surveys mailed to district attorneys and 85 percent of the surveys mailed to public defenders were returned to the AOC.[127] This additional information should provide a more complete picture of the racial and ethnic makeup of those persons seen in our courts on a daily basis.

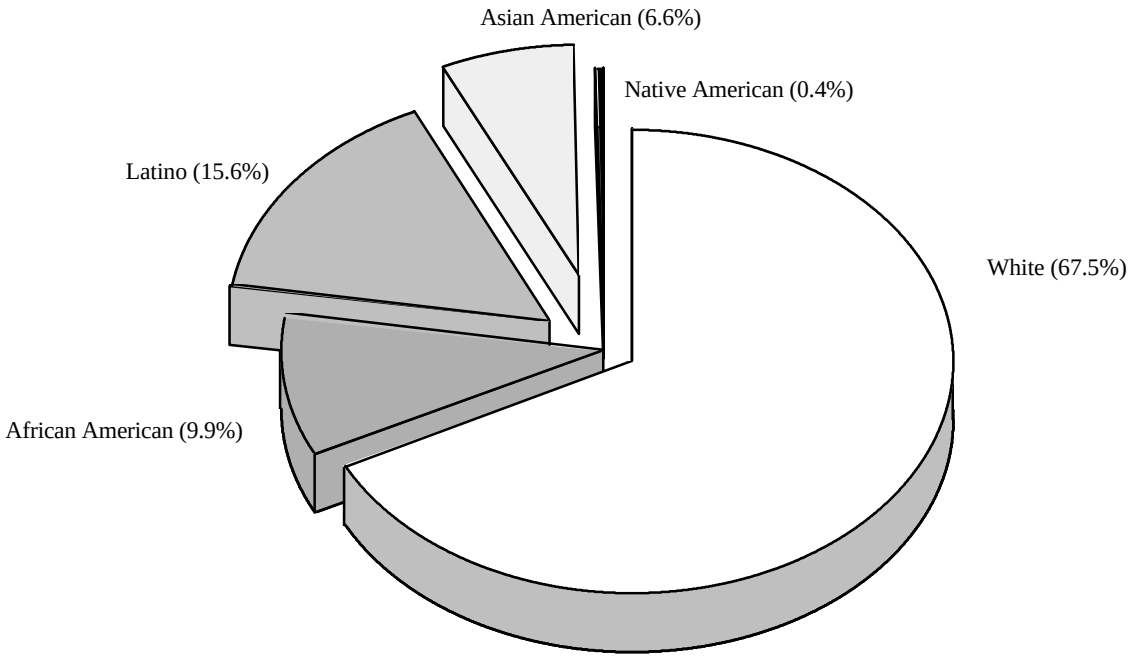
[126]Transcript of the El Centro, public hearing, p. 75 (February 21, 1992). (Donal Donnelly, deputy district attorney, Imperial County District Attorney's Office).

[127]The Judicial Council of California Advisory Committee on Racial and Ethnic Bias in the Courts and S. Montano, *Racial and Ethnic Composition of the California District Attorney and Public Defender Offices* (1996). The AOC did not receive surveys from district attorney offices in the following counties: Del Norte, Glenn, Imperial, Kern, Madera, Mariposa, Modoc, Nevada, San Benito, San Francisco, San Joaquin, Santa Barbara, Santa Cruz, Solano, Tulare, and Yolo. The AOC did not receive surveys from public defender offices in the following counties: Alpine, Colusa, Kings, Lassen, Marin, Plumas, San Bernardino, Sierra, and Sutter.

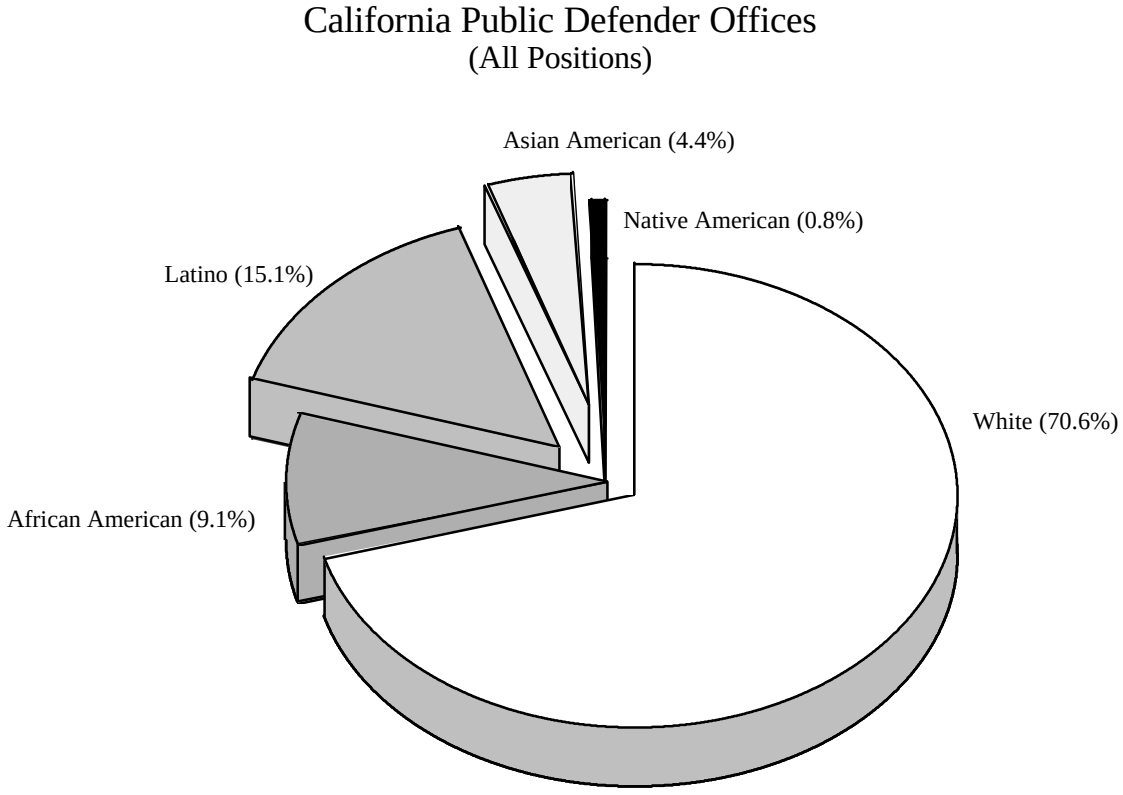
Attorneys in District Attorney Offices
(Attorneys Only)



California District Attorney Offices
(All Positions)



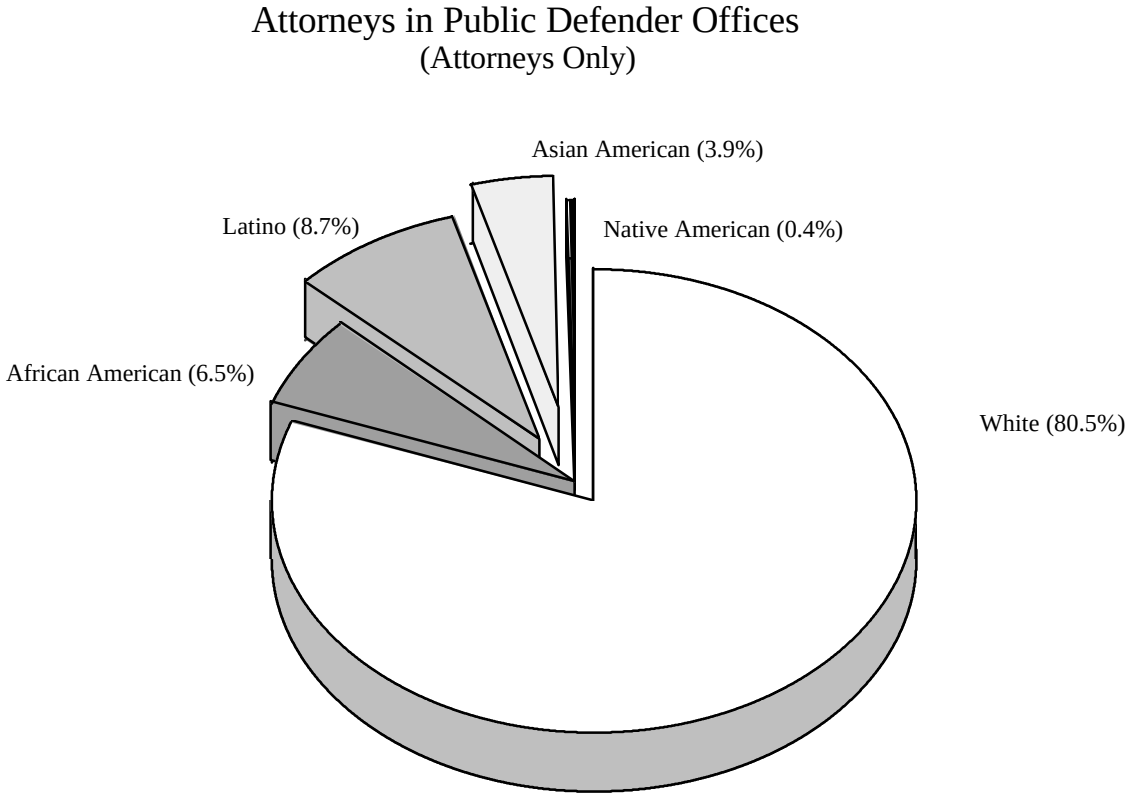
The AOC compiled information in five racial and ethnic categories: White, African American, Latino, Asian American (including Pacific Islanders), and Native American. Nearly 85 percent of all attorneys working in California district attorney offices are White, 4.8 percent are African American, 6.4 percent are Latino, 3.8 percent are Asian American, and fewer than 1 percent are Native American.[128] Of the district attorney offices that responded, 67.5 percent of all office personnel are White, 9.9 percent are African American, 15.6 percent are Latino, 6.6 percent are Asian American, and less than one percent are Native American.



Of the public defender offices that responded, 70.6 percent of all office personnel are White, 9.1 percent are African American, 15.1 percent are Latino, 4.4 percent

[128] *Id.*, at p. 5.

are Asian American, and fewer than one percent are Native American. Nearly 81 percent of all attorneys working in California public defender offices are White, 6.5 percent are African American, 8.7 percent are Latino, 3.9 percent are Asian American, and fewer than one percent are Native American.[129]



A further comparison of district attorney offices and public defender offices in Alameda County, Los Angeles County, and San Diego County is instructive on the issue of the workforce racial and ethnic composition of those who appear in our courts but are *not* part of court staff.

[129] *Id.*, at p. 8.

DISTRICT ATTORNEYS

ALAMEDA COUNTY

Among office personnel, including attorneys, working in the Alameda County District Attorney's Office, 76.3 percent are White, 9.4 percent are African American, 8.7 percent are Latino, and 5.6 percent are Asian American. Nearly 85 percent of attorneys working in the Alameda County District Attorney's Office are White, 9.9 percent are African American, 2.3 percent are Latino, 3 percent are Asian, and zero percent are Native American.[130]

LOS ANGELES COUNTY

Among office personnel, including attorneys, working in the Los Angeles County District Attorney's Office, 47.5 percent are White, 23.8 percent are African American, 20.4 percent are Latino, 8.6 percent are Asian American, and fewer than 1 percent are Native American. Nearly 77 percent of attorneys working in the Los Angeles County District Attorney's Office are White, 7.3 percent are African American, 8.9 percent are Latino, 6.3 percent are Asian American, and fewer than 1 percent are Native American.[131]

[130] *Id.*, at pp. 6–7.
[131] *Id.*, at p. 8.

AN DIEGO COUNTY

Among office personnel, including attorneys, working in the San Diego County District Attorney's Office, 68.5 percent are White, 6.5 percent are African American, 15.1 percent are Latino, 9.2 percent are Asian American, and fewer than 1 percent are Native American. Among attorneys working in the San Diego County District Attorney's Office, 91.5 percent are White, 2.6 percent are African American, 5.7 percent are Latino, 1.1 percent are Asian American, and zero percent are Native American.[132]

PUBLIC DEFENDERS

ALAMEDA COUNTY

Among office personnel, including attorneys, working in the Alameda County Public Defender's Office, 62.2 percent are White, 20.1 percent are African American, 11 percent are Latino, 6.7 percent are Asian American, and zero percent are Native American. Approximately 73 percent of attorneys working in the Alameda County Public Defender's Office are White, 11.8 percent are African American, 10 percent are Latino, 5.5 percent are Asian American, and zero percent are Native American.[133]

[132] *Ibid.*
[133] *Id.*, at pp. 11–12.

LOS ANGELES COUNTY

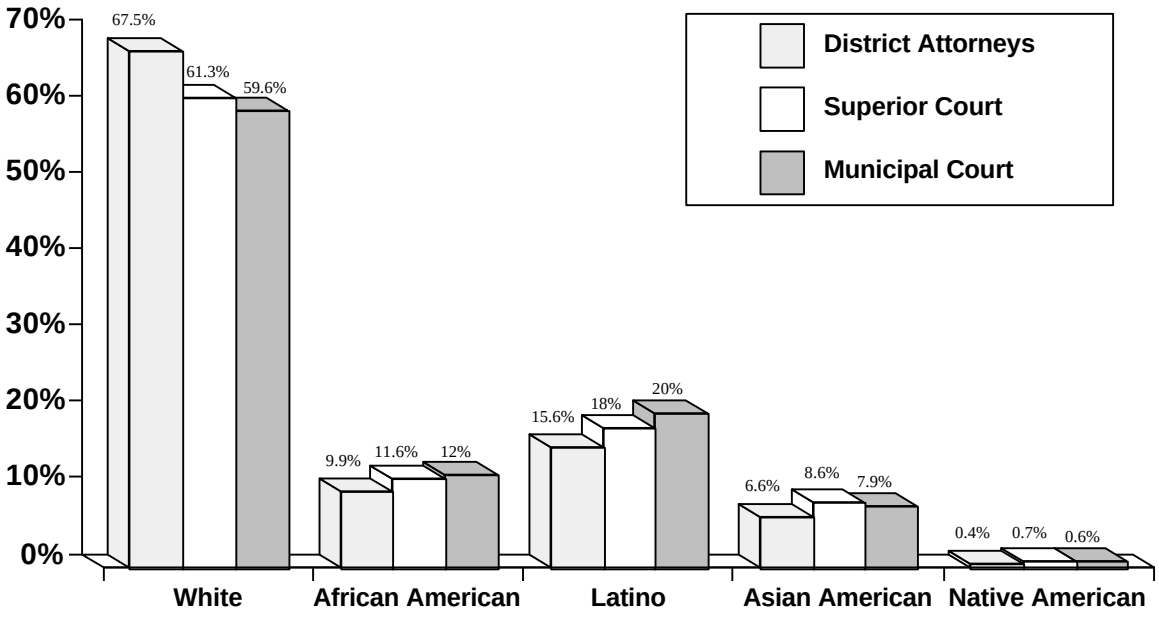
Among office personnel, including attorneys, working in the Los Angeles County Public Defender's Office, 60.5 percent are White, 15.8 percent are African American, 16.5 percent are Latino, 6.2 percent are Asian American, and fewer than 1 percent are Native American. Seventy-four percent of attorneys working in the Los Angeles County Public Defender's Office are White, 9.6 percent are African American, 10.7 percent are Latino, 5.8 percent are Asian American, and zero percent are Native American.[134]

SAN DIEGO COUNTY

Among office personnel, including attorneys, working in the San Diego County Public Defender's Office, 70.3 percent are White, 7.6 percent are African American, 18.4 percent are Latino, 3.7 percent Asian American, and zero percent are Native American. Nearly 78 percent of attorneys working in the San Diego County Public Defender's Office are White, 6.2 percent are African American, 12.9 percent are Latino, 3.1 percent are Asian American, and zero percent are Native American.[135]

[134] *Id.*, at p. 12.
[135] *Id.*, at p. 13.

Racial and Ethnic Composition of Persons Employed in California District Attorney Offices, Superior Courts, and Municipal Courts (Percentage of All Personnel)



The chart above compares the racial and ethnic staff composition of the California trial courts and district attorney offices responding to the AOC survey. As in the courts, the "authority figures" (in this case the attorneys) are predominantly White, nearly 85 percent of the total. The racial and ethnic composition of all personnel in the courts is comparable to that of the district attorney's offices.

CONCLUSIONS

1. Minority attorneys have reported instances of biased treatment in the courtroom. Biased treatment is evidenced by:

a. condescending or patronizing treatment by courtroom personnel (including judges);

b. instances when minority attorneys are not identified as counsel and are mistaken for messengers, staff, interpreters, or defendants;

c. racist remarks by judges, lawyers, and other courtroom personnel (including bailiffs and law-enforcement officers); and

d. obvious preferential treatment of nonminority attorneys.

2. Biased treatment of minority attorneys impairs their professional effectiveness, reputation, self-confidence, and self-esteem.

3. Minority attorneys are reluctant to use the existing mechanisms to report discriminatory behavior for fear of retaliation.

4. There is a public perception that because of racial bias in the courts, nonminority attorneys obtain better results for their clients from judges and court personnel than minority attorneys. This belief affects the professional standing of minority attorneys and their ability to attract and retain clients.

5. There is a public perception that attorneys in private practice are held in higher esteem than attorneys working in the public sector. This belief operates against the interests of minority attorneys, who are statistically more likely to work in the public sector.

6. There are few minority attorneys in the nation's largest law firms. When they are hired by such firms, there are apparent difficulties in the retention and advancement. Part of the explanation for this phenomena may lie in the barriers that minority lawyers may face, unlike their White counterparts, in majority law firms.

RECOMMENDATIONS

The advisory committee recommends that:

1. The Judicial Council direct CJER and JAIC to conduct diversity training for all court personnel. These courses should be designed to

ensure that all court personnel are competent to deliver services to a culturally and ethnically diverse population.

a. Diversity training should be a part of new employee orientation programs.

b. Consideration should be given to making diversity training mandatory for all employees.

2. Pursuant to Section 1 of the Standards of Judicial Administration, judges should monitor their courtrooms and intervene when instances of racial bias are manifested. Accordingly, judges should consider referring court personnel who manifest biased behavior to diversity training.

3. The Judicial Council direct staff to draft a proposed amendment to section 1(c) of the Standards of Judicial Administration to ensure that no retaliation against any parties to a complaint of discrimination will be tolerated.

a. The courts should be urged to develop discrimination complaint procedures that permit the resolution of complaints on the local level, eliminate the possibility of retaliation, and protect the rights of the accused employee.

4. The Judicial Council transmit to the State Bar, and urge consideration of the recommendation that diversity training become a greater part of the mandatory continuing legal education program (MCLE) for attorneys.

5. The Judicial Council transmit to the State Bar the recommendation that the State Bar, in conjunction with private law firms and public sector agencies that employ attorneys, strengthen and develop efforts to attract and retain qualified minority attorneys.

* * *

C H A P T E R 6

LANGUAGE AND CULTURAL BARRIERS

LITIGANTS

The public hearings scheduled throughout California by the Judicial Council Racial and Ethnic Bias Advisory Committee resulted in substantial public comment regarding barriers to fair access to the judicial system. This section specifically addresses language and cultural barriers as hindrances to court access by non-English-speaking persons. As defined in the *2020 Report* "[l]ack of [language] comprehension is perhaps the greatest single barrier to justice."[136]

A review of California's dynamic demographics effectively demonstrates the possibility of communication failure caused by language barriers. In 1993, the U.S. Census Bureau reported that 224 languages and dialects are spoken in California. The largest non-English-speaking population is the state's Spanish-speaking community. Approximately 5 million Californians speak Spanish. Of this population more than 650,000 speak no English.

Nineteenth-century legislative authorities recognized and celebrated this linguistic diversity. At the time of the state Constitution's adoption, it was required that all California laws be published in English and Spanish.[137]

[136] *Justice in the Balance — 2020, supra,* at p. 55.
[137] Cal. Const. of 1849, art. XI, § 21.

According to a 1993 random-dial telephone survey of California adults[138] outside of the legal profession, *Fairness in the California State Courts: A Survey of the Public, Attorneys and Court Personnel*, California's general public believes that people with a good understanding of English are treated better by the courts than people who speak little or no English.[139] Judicial and legal personnel were divided on this issue. While only 37 percent of the judicial officers polled felt that English-speaking persons were treated better than non-English-speaking persons, 86 percent of the attorneys polled believed that a good understanding of English afforded better treatment by the courts.[140]

JURORS

Biased treatment toward both courtroom litigants and prospective jurors was perceived as prevalent. According to public-hearing testimony, the public believes that judges and nonminority attorneys view a prospective juror's accent as a language deficiency. Some minority jurors, it was believed, were removed for cause or considered unqualified to serve on juries because of their accents. For example, one speaker observed:

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[138]"The telephone survey incorporated an equally stratified, random dial sample of 1,338 people consisting of approximately 300 people from each of four major ethnic/racial groups (Whites, Hispanics, Asians, and African Americans) plus an over sample of approximately 100 American Indians." *Fairness in the California State Courts, supra*, at p. 3-2.

[139]*Id*., at p. 4-35. (Telephone survey respondents were asked the question "In the courts, people with a good understanding of English are treated better than people who speak little or no English. Please tell me if you agree or disagree with this statement." The overall survey sample showed a 68.6 percent agreement rate; 65 percent of African Americans, 76 percent of Asian, 74 percent of Hispanics, 68 percent of Native Americans, and 60 percent of Whites agreed with this statement.)

[140]*Id*., at p. 5-49. (Judicial and legal personnel survey respondents were asked to give their response to the following statement: "The courts treat people with a good understanding of English better than people who speak little or no English. Please rate your level of agreement with this statement." Of the attorneys who answered the survey, 86 percent of them agreed with the statement. Nonjudicial personnel represented an agreement rate of 42 percent; judicial officers, 37 percent. Figures for disagreement with the statement are as follows: 8 percent of attorneys polled, 39 percent of the nonjudicial personnel polled, and 44 percent of the judicial officers polled disagreed.)

> The problem that I have . . . is that plaintiff's attorneys use a person's perceived language deficiency as a tool to strike these jurors for cause or as unqualified. . . . And if the courts play along with counsel's game in saying "this Asian, because he or she has an accent, should be excused or dismissed from a trial," without really considering the actual qualifications of the juror, then we are just playing into the game of racially patterned jury selection.[141]

The same speaker noted that if all potential jurors who had accents were excused, the court system would be adversely affected. "[W]e'll miss a lot of intelligent, very dedicated, and interested and very capable — not to mention qualified — individuals from jury service."[142]

Language barriers are often prevalent both inside and outside the courtroom. Attorneys and judges are rarely bilingual, and too often court interpreters do not possess the necessary language skills to competently interpret legal proceedings. Forms and informational services offered in English pose obstacles to non-English -speaking people before they go to court, and nonjudicial personnel are frequently unable to assist them in their native languages.

FORMS, PAMPHLETS, AND BROCHURES

People with limited English comprehension cannot navigate the complex levels of administrative activities leading to a court appearance. Consumer-law pamphlets, public notices, or publications of legislative changes and updates are to those who cannot read them. Forms and instructional materials are generally not

[141] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra,* at p. 181. (Larry Lowe, attorney.)
[142] *Id.,* at p. 182. (Larry Lowe.)

multilingual; therefore, non-English-speaking persons or those with limited English comprehension are unable to understand their content or purposes and are substantively disadvantaged.

INFORMATION AND REFERRAL SERVICES

When non-English speakers find it necessary to pursue legal action, access to adequate information and referral services is either scarce or nonexistent. Information on attorney services and alternative-dispute-resolution options and processes is generally unavailable to them at public places (libraries, schools, government facilities) in a language they understand. Bilingual referral services and agencies are understaffed; and publicly funded legal assistance is usually among the first services slated for cutbacks for budget-balancing purposes. As noted by a speaker at the Oakland public hearing:

> People with limited English often cannot communicate well enough to even find an attorney to help them. . . . [¶]Other people, however, get referred to attorneys through community agencies or through walk-in clinics such as ours. But there are very few agencies with the language capacity to interview and refer people to attorneys.
>
> At the minimum, we are forcing [persons] who don't speak English, or whose English is limited, to rely on community workers to provide the legal assistance that should be available from trained attorneys or other legal staff in the administrative agencies mandated to protect their rights. We are also imposing such extraordinary burdens on people just to file claims that often workers decide not to pursue the claims at all.[143]

[143] *Id*., at p. 26. (Rina Hirai, attorney; member, Board of Directors, Asian American Bar Association of the Greater Bay Area.)

SIGNS

The physical floor plans of today's courthouses are often confusing and intimidating, veritable maze for English and non-English speakers alike. Judicial-branch facilities contain multiple offices, courtrooms, and meeting areas and often lack directional signs or maps. Inaccessibility is heightened for non-English speakers, who are unable to find directional signs leading to courtrooms or offices in their languages.

Public testimony before the Massachusetts Commission to Study Racial and Ethnic Bias in the Courts corroborates California findings, also revealing that while a limited number of courthouses in Massachusetts have foreign-language signage available, the signs are grammatically incorrect. "This carelessness is perceived by non-English speakers as further evidence of the justice system's indifference, thereby diminishing the system in their eyes."[144]

NONJUDICIAL PERSONNEL

The majority of Californians believe that employees in court administration need to be trained to understand the special needs of minority groups and should possess multiple language skills so they can assist non-English speakers through the judicial system.[145] Interaction with nonjudicial personnel is an essential first step for persons seeking justice. One study reported: "[T]he Courts, particularly, the clerk's office, must be able to answer questions for persons seeking

[144]Massachusetts Supreme Judicial Court Commission to Study Racial and Ethnic Bias in the Courts, *Equal Justice: Eliminating the Barriers* (Massachusetts Supreme Judicial Court, 1994), p. 40.
[145]*Fairness in the California State Courts, supra,* at pp. 4-76, 4-79.

information and help them complete routine legal forms. . . . Such services cannot be provided without an effective means of communication."[146]

The importance of hiring bilingual nonjudicial staff is not unique to California. A 1992 report by the Task Force on Racial and Ethnic Bias in the District of Columbia noted that the court's need for bilingual staff to assist non-English-speaking persons was increasing at a faster rate than that at which qualified bilingual employees were being found and hired.[147] The unfortunate consequence of this trend in the District of Columbia has been to increase the responsibilities of existing bilingual staff to act as interpreters in addition to their regular duties. The public testimony also acknowledged that this increase in responsibilities rarely translated into an increase in compensation based on skills.

The results from the District of Columbia study also showed that non-English-speaking plaintiffs and defendants were being denied access to a number of programs offering alternatives to incarceration, for which they qualified.

LINGUISTIC INTERPRETERS

Any review of language barriers inside a court of law must take into account the availability of foreign-language interpreters qualified for service at court proceedings. Without qualified interpretation of courtroom proceedings, the trial is a "babble of voices," the defendant is unable to understand the nature of the

[146] *Equal Justice: Eliminating the Barriers, supra,* at p. 37.
[147] *Final Report of the Task Forces on Racial and Ethnic Bias and Gender Bias in the Courts, supra,* at p. 18.

testimony against him or her, and counsel is unable to conduct effective examination.[148]

California currently administers a program providing statewide coordination of the functions essential to providing competent court interpreter services (recruitment, testing, certification, renewal of certification, and continuing education).[149] The program now has 1,675 certified interpreters[150] who routinely attend continuing-education programs that enhance the quality of their interpretive services and improve court access for non-English-speaking persons.[151]

California interpreter certification and testing programs are currently available in the following languages: Spanish, Arabic, Cantonese, Japanese, Korean, Portuguese, Tagalog, and Vietnamese.[152] Growing diversity in the California language landscape means that the need for interpreters will continue to increase in coming decades. The U.S. Census projects that the number of languages spoken in California will exceed the current level of 224 known languages used in the state by the year 2020.[153]

The New York State Judicial Commission on Minorities noted that the great variety of languages used by litigants hinders a court's ability to find qualified interpreters:

> [L]itigants must resort to other measures in order to understand what is happening inside the courtroom. This commission has received numerous reports of friends or

[148] *Equal Justice: Eliminating the Barriers, supra,* at p. 34.
[149] *Judicial Council 1995 Annual Report to the Governor and the Legislature, supra,* at p. 7.
[150] *Judicial Council 1996 Annual Report to the Governor and the Legislature, supra,* at p. 30.
[151] *Judicial Council 1995 Annual Report to the Governor and the Legislature, supra,* at p. 7.
[152] *Court Interpreter Services in the California Trial Courts: A Report to the Governor and the Legislature, supra,* at p. i.
[153] *Justice in the Balance — 2020, supra,* at p. 56.

> family members — even children — being used to interpret court proceedings with such interpretation being accepted by the court.[154]

In the courtroom, interpreters specially trained in legal terminology and court procedures are needed to accurately convey the nature of the proceedings for non-English-speaking persons. Courtroom interpreters also must be trained to address and translate Western legal terminology when a particular concept does not exist in the indigenous culture or language of the claimant or defendant. The translation of legal concepts may be inaccurate if left to an unskilled interpreter such as a family member as revealed by a speaker who addressed the Massachusetts Supreme Judicial Court Commission:

> [I] was in court when an interpreter was needed. The judge asked the courtroom at large if there was anyone who spoke Spanish. There not having been anyone, the judge requested the husband to interpret for his wife, who was seeking a restraining order against him. It is not surprising that the woman did not prevail and that her request for a restraining order was denied.[155]

Pursuant to article 1, section 14 of the California Constitution, a person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings. Fees associated with interpretive services in criminal cases are paid for by the county in which the trial takes place.[156]

The California Evidence Code states that "[w]hen a witness is incapable of understanding . . . or expressing himself or herself in the English language so as to be understood directly by counsel, court and jury, an interpreter whom he or she

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[154]New York State Judicial Commission on Minorities, *Report of the New York State Judicial Commission on Minorities*, Vol. II (1991), p. 203.
[155]*Equal Justice: Eliminating the Barriers*, *supra*, at pp. 45–46.
[156]Gov. Code, § 68092(a).

can understand and who can understand him or her shall be sworn to interpret for him or her."[157] The Evidence Code also stipulates that an interpreter shall be present to interpret proceedings in civil actions under the Family Code, under the Uniform Parentage Act, or for dissolution of marriage or legal separation of the parties in which a protective order has been granted or is being sought, and in which a party who is present does not proficiently speak or understand English.[158] Fees for interpreters utilized during these proceedings are paid for by the litigants in the case.[159]

Public testimony at the California public forum revealed that non-English-speaking litigants seeking relief in civil court are ill prepared to understand the nature of the proceedings because certified court interpreters are not required in civil matters:

> [T]hey [monolingual Spanish-speaking persons] walk into court and they are unaware that they need [to bring] an interpreter because they are involved with a civil suit as opposed to criminal; they are not entitled to an interpreter as opposed to a criminal defendant [who is afforded the right to an interpreter]
>
> When you have families who are going through the terrible reality of divorce, and there are serious questions involved with respect to custody and visitation; there's a lot of animosity involved, there's a lot of hurt feelings, there's a lot of misunderstandings that at that particular point in time, you need some good communication.[160]

California's Standards of Judicial Administration, sections 18.2 and 18.3 state that courtroom interpreters must swear to uphold ethical standards that guarantee non-

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[157]Evid. Code, § 752(a).
[158]*Id.*, at § 755(a).
[159]Gov. Code, § 68092(b).
[160]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra*, at p. 167. (Robert Tafoya, attorney, Bakersfield.)

English speakers accuracy in what is being translated for them in court.[161] When an interpreter is not available during court proceedings, the use of a volunteer or an uncertified interpreter can seriously breach the fair administration of justice:

> [I]n a contested divorce action, the judge directed the husband's privately paid interpreter to interpret for the wife as well. The judge eventually ruled in favor of liberal visitation rights for the husband because the interpreter misstated the wife's testimony. When the wife violated the visitation order, the judge again directed the husband's interpreter to interpret for the wife, who eventually lost custody of her children. She hired her own interpreter and once her testimony was properly received, the judge reversed the contempt order.[162]

CULTURAL INFLUENCES

Cultural barriers contribute to confusion about the court system by non-English-speaking persons about. Cultural values often prevent individuals from using litigation to settle differences. Some Asian societies, for example, regard the courts as something to be avoided; these communities prefer to settle legal disputes through informal mediation:

> [M]any Asian cultures are based on values of non-confrontational dispute resolution developed to preserve individual honor. Asians with these values find it difficult to participate in an advocacy system where every statement is subject to challenge, thus questioning one's veracity, and discovery ranges far beyond the limited issue at hand, invading one's privacy.[163]

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[161]Cal. Standards Jud. Admin., §§ 18.2, 18.3.
[162]*Equal Justice: Eliminating the Barriers*, *supra*, at p. 46.
[163]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 32. (Rina Hirai, attorney; member, Board of Directors, Asian American Bar Association of the Greater Bay Area.)

Moreover, cultural mannerisms unrecognized by the courts and court personnel also lead to unfair treatment. Some cultures have different ways of writing dates[164] that could result in missed court dates. Other cultures have different ways of writing names[165] that could result in file-processing nightmares or incorrect identification of persons involved in a legal proceeding. Some Asian cultures show their respect for authority figures by avoiding eye contact; in the United States, this behavior is construed as dishonesty. The Massachusetts State Commission to Study Racial and Ethnic Bias in the Courts reports similar findings: "[B]ehavior and attitude are often misinterpreted. Greater understanding of and respect for the sources of these confusions is necessary. . . . [T]he courts must deliver equal justice in spite of them."[166]

Compelling testimony was presented before the advisory regarding the manner in which historical events from the non-English-speaking person's background can affect attitudes toward the courts:

> The judicial system is very new to many Indo-Chinese refugees, especially for the Hmong and many of the Lowland Laos refugees who . . . came from the rural area. All their life they have been fighting one war after the other. In 1954, the Hmong, Laotians and Cambodians fought along with the French. After 1960, they sided with the Americans. Many of the Hmong people were recruited and trained by the U.S. government, Central Intelligence Agency, to fight for 15 years. . . . [T]heir entire life is fighting.[167]

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[164]The style of numerically writing dates in some European countries is different from the U.S. style. In these countries, the *day* of the month precedes the *month* of the year. For example, January 12, 1996, in the United States is written as 1/12/96. In Germany, that same date is written as 12/1/96.

[165]In Mexico, some married women adopt the tradition of adding the word *de* before their married last names (e.g., Margarita *de* Escontrias). Persons unfamiliar with this custom, may incorrectly alphabetize or address correspondence to such a person (e.g., "Deescontrias"), thus creating confusion during court processing and making formal notification difficult.

[166]*Equal Justice: Eliminating the Barriers*, *supra*, at p. 48.

[167]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 34. (Tony Vang, Fresno Center for New Americans.)

Economic conditions in a non-English-speaker's homeland can also affect the temperament with which they approach the court system:

> [T]hey came principally from the Highlands of Laos, and came from a "slash and burn" society. . . . [A] "slash and burn" society owns no real estate, no real property. Ownership was very limited. They moved every seven years from one patch of forest to another. They had no currency other than a few silver bars, and they had no written language.
>
> I was called to try to unravel a failing Federal Credit Association, the only one in town that granted credit to the Hmong community. The credit association had difficulty in sending out statements to Hmong for what they owed. The Hmong, when they received them, did not have a clue what they meant . . . because the Hmong language did not contain such words as "promissory note" and "installment payment."[168]

Different societal norms and laws in a court user's country of origin directly affect his or her ability not only to fairly access the justice system, but also to fundamentally understand the reasons that brought him or her to court in the first place. Defendants find themselves charged with crimes that are not crimes in their homeland:

> I see families in danger now. . . . [I] believe that if a parent abuses the children, either because they are not aware or they are not educated to distinguish what child abuse is, then we educate. . . . [W]e will make a plan that the children will be returned.
>
> [T]here is a court process that takes place when you remove children, when you return children, when you make a [reunification] plan for families. . . .[B]ut what I am seeing lately is that. . . . mono-lingual [Spanish-speaking] parents who do not understand the system. . . . are lost in that system.

[168] *Id.*, at p. 33. (Sam Palmer, president, Fresno County Bar Association.)

> They do not know how to deal with it. . . . [T]hey do not understand English. They are poor and cannot hire lawyers.
>
> [T]his child may not be returned. The unification process is not taking place correctly. . . . [T]hey don't have anyone that they can talk to, to let them know what happened or what didn't happen.[169]

Unfortunately, many immigrants come from countries where their only experience with the judicial system was one of suspicion and fear. Judicial and law-enforcement systems in their countries were perceived to be "corrupt." Under such circumstances, understanding why immigrants would be skeptical of the United States legal system is not difficult:

> In Guatemala, judges exercise little control in human rights cases because of the military stronghold on the government. If a judge gets too "uppity" . . . he is threatened to be killed or in fact killed. Coupled with the fact that the judicial profession is grossly underpaid and underesteemed, few make the effort to confront the military. [¶]The result is that judges face . . . the tremendous opportunities for corruption. The Guatemalan public views the courts as a place where justice is bought by those who can afford it and denied to everyone else.[170]

Legal systems in some countries are also destroyed by civil strife and war. When basic human rights are transgressed and cities and buildings are lying in ruin, the country's respect for the law disintegrates as well. When such events are the rule and not the exception in one's homeland, the legal system in the United States may well be met with anxiety or fear:

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[169]Transcript of the Fresno, public hearing, pp. 220–223 (Mar. 7, 1992). (Josephine Fabela, social worker, Amigas Program.)

[170]H. Goldblatt, "Recording the Horror: DePaul Project Aims to Bring War Criminals to Justice," *Human Rights* (Fall 1994).

> [W]ith signs of the civil war apparent in the rubble of roads and buildings, you could see how people were visibly affected by the war. [¶]It's surprising how quickly [in civil war] civilization can break down and the rule of law can crumble. People who did business together and lived next door to each other one day are doing unmentionable things to each other the next. . . . [¶]What kind of answers can you give to man's inhumanity to man? There are no amount of political answers that will justify human misery.[171]

Legal systems in other countries do not necessarily embody the adversarial principles found in the United States; therefore, court users may be presented with an entirely new system:

> [The justice systems in] Central and South America . . . follow the old model of the European civil codes, in which lawyers do not directly question witnesses at trial. The proceedings consist of a lengthy investigation on paper, with the judge acting as both an adjudicator and an investigator seeking evidence. From behind closed doors, the judge issues a ruling on paper without the accused ever confronting the accuser.[172]

Bench officers at all levels and court staff must assume responsibility for learning about and understanding cultural differences and linguistic barriers in order to deliver the level and quality of services needed.

> [E]ffective communication involves more then just multilingual interpreters in an actual court proceeding. . . . [F]or non-English-speaking individuals and/or immigrants to the U.S. who do not share an understanding or belief in the western legal tradition embodied in our justice system, the linguistic and cultural barriers to equal justice are formidable . . . .[¶] Many other public institutions, from schools to hospitals, have taken steps to eliminate language and cultural

[171] *Ibid.*
[172] *Ibid.*

barriers. No less should be expected of the judicial branch of government.[173]

CONCLUSIONS (LANGUAGE BARRIERS)

1. **The statewide public hearings and research data support the conclusion that non-English speakers have inadequate access to and information about the courts.**

2. **An inadequate number of qualified interpreters are available to assist non-English speakers.**

RECOMMENDATIONS

The advisory committee recommends that:

1. **The Judicial Council urge the courts to make a substantial effort to hire and train personnel who can effectively provide directions and basic information regarding the court, essential court forms, and court procedures to non-English-speaking persons.**

2. **The Judicial Council encourage local courts, with the assistance of local fairness committees, to establish mechanisms to identify and resolve problems encountered by non-English-speaking people in the court system.**

    a. **Local courts and individual judges should initiate and encourage regular dialogue with lawyers and community leaders who represent non-English-speaking communities to ensure that avenues of communication remain open.**

3. **The Judicial Council transmit to the Court Interpreters Standing Advisory Committee and urge consideration of the recommendation that local courts, in consultation with the committee, should ensure that**

[173] *Equal Justice: Eliminating the Barriers, supra,* at pp. 34, 48.

an adequate number of trained interpreters are available to assist non-English speakers in both criminal and civil cases.

4. **The Judicial Council support legislation to amend Code of Civil Procedure Section 1033.5 (Costs — Items Allowable and Not Allowable) to include the cost of interpreter services under allowable costs.**

5. **The Judicial Council direct staff to draft a proposed amendment to California Rules of Court, rule 985(i) to provide that the cost of court interpreters for litigants in civil actions be a waivable cost for litigants proceeding in forma pauperis.**

6. **The Judicial Council transmit to the Court Interpreters Standing Advisory Committee for consideration the recommendation to develop a rule of court further ensuring that the trial courts guarantee the careful translation of all proceedings to preserve the rights of litigants.**

CONCLUSIONS (CULTURAL BARRIERS)

1. **The courts are not sufficiently proactive in identifying cultural barriers that threaten to impede access to the courts.**

2. **The courts generally have not developed outreach programs to the immigrant communities to educate their members regarding their rights and responsibilities under California's legal system.**

3. **Judges and court personnel often are not sensitive to situations in which culturally derived mannerisms may be a barrier to justice.**

4. **Extensive efforts are needed to:**

   a. **identify the significant laws and regulations that may come in conflict with the traditions of large immigrant and culturally diverse populations; and**

   b. **work with these communities to attempt to resolve such conflicts.**

RECOMMENDATIONS

The advisory committee recommends that:

1. **The Judicial Council urge fairness committees to make a concerted effort to assist immigrant and culturally diverse communities in understanding their rights and responsibilities under the California legal system.**

    a. **The fairness committees should work to identify any cultural barriers that would inhibit access to the justice system.**

    b. **Alternative dispute resolution in lieu of litigation and alternatives to incarceration, where appropriate, should be available to all Californians.**

2. **The Judicial Council urge the local courts to engage in outreach programs with leaders of local immigrant and culturally diverse communities to educate their members regarding their rights and responsibilities under the California legal system.**

3. **The Judicial Council urge the local courts, in consultation with CJER and JAIC, to develop educational programs to sensitize the courts as to how customs and culturally derived mannerisms may affect the individual's ability to achieve justice.**

4. **The Judicial Council urge the local courts to work with the local fairness committees to:**

    a. **identify major conflicts resulting from differences in the customs and traditions of immigrant and culturally diverse communities as compared to United States society and laws; and**

    b. **determine how to approach these differences and prevent them from inhibiting conflict resolution.**

* * *

C H A P T E R 7

THE MATTER OF DIVERSITY

INTRODUCTION

California is a diverse state racially and ethnically and is becoming more so at a rapid rate. Diversity is an important issue in all occupations and callings, but especially in our legal system, which depends on the public's trust in it and the adherence to the laws of the community. As stated in the *2020 Report*:

> Ensuring that those who work within the courts — both judicial officers and other judicial branch personnel — are representative of the populations they serve can have a salutary effect on public confidence in justice.
>
> The virtues of a culturally diverse court system need no argument. Through its inclusiveness such diversity promotes public trust in justice. Through its diversity such a court system enhances its own cultural competence. Even simple daily interactions among justice personnel from different cultures can create an unequaled educational opportunity, one that spans gender, racial, ethnic, and other lines.[174]

This section will address the issue of diversity in the legal profession and in the courts.

[174] *Justice in the Balance — 2020*, *supra*, at p. 75.

THE RACIAL AND ETHNIC COMPOSITION OF CALIFORNIA

The advisory committee commissioned AR Associates to conduct a comprehensive examination of the racial and ethnic composition of the California trial court system's workforce. The resulting report, *Racial and Ethnic Composition of the California Trial Courts: A Report to the Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts*, was submitted to the advisory committee in 1994. Much of the information in this section is taken from that report.

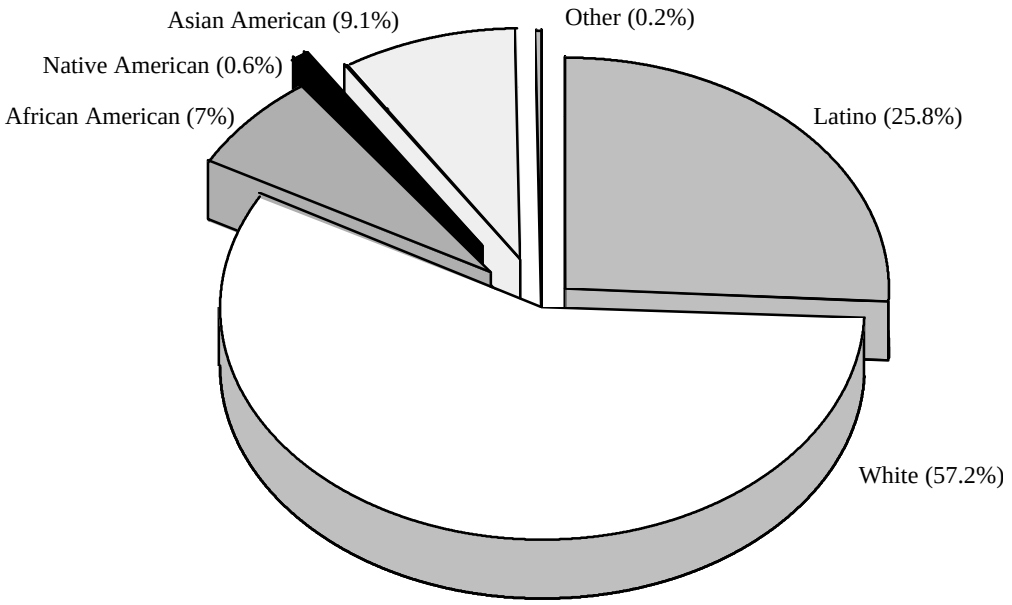
The 1990 U.S. Census was used to provide the basis for the statistical information set forth below. Some adjustments were necessary to more accurately identify California's significant Latino population as a separate, discrete category and to facilitate comparison with statistical information obtained from the California trial courts, most of which utilize Equal Employment Opportunity Commission (EEOC) racial and ethnic categories.[175]

The total population was divided into five categories: White, Latino (includes Spanish, Mexican, Mexican American, Hispanic, Chicano, Central and South American, and Puerto Rican,), Asian American (includes Chinese, Japanese, Korean, Vietnamese, Filipino, and Pacific Islanders,), African American, and Native American.[176]

In 1990, California's total population was 57.2 percent White, 25.9 percent Latino, 9.1 percent Asian American, 7 percent African American, and 0.6 percent Native American, the remainder, .2 percent were classified as "Other."

[175] *Racial and Ethnic Composition of the California Trial Courts*, *supra*, at pp. 14-15.
[176] *Id*., at pp. 16–18. (The report recognizes that racial and ethnic categories are somewhat arbitrary and ambiguous and subject to various interpretations.)

California Census: Total Population



The percentage of a racial or ethnic group within a population can vary according to the age categories included or excluded. For example, the percentage of Whites in the total population of California is 57.2 percent. If the population is restricted to those 18 years of age and older, the percentage of Whites rises to 61 percent. It becomes 67 percent White if only those over age 34 are included.[177]

Correspondingly, Latinos represent 25.8 percent of the total California population. However, the Latino population drops to 22.5 percent if only those 18 years of age and older are counted, and it drops further to 17 percent if 34 years of age and older is the dividing point.[178]

[177] *Id*., at p. 25.
[178] *Ibid.*

California Census:
Racial and Ethnic Population Distribution by Age
(Expressed as Percentages of Total Population)

	White	*African American*	*Latino*	*Asian American*	*Native American*
Total Population	57.2	7.0	25.8	9.1	0.6
18+ years	61.2	6.7	22.5	8.9	0.6
34+ years	67.4	6.2	17.0	8.7	0.6
Range	10.2	0.8	8.8	0.4	0

Population cannot be viewed in isolation when considering the numbers of minority attorneys in California. For example, specialized training and advanced degrees are mandatory for attorneys and judges. Few attorneys are admitted to the bar before age 25, municipal court judges seldom attain their positions before a minimum age of 29 years (an attorney must be admitted to the bar for at least five years to be eligible for the municipal court bench), and few superior court judges are younger than 34 years of age (for a superior court post ten years of practice is a prerequisite). Also, even where specialized training is not required, employment for most nonjudicial positions within the trial court system is unlikely before an applicant reaches age 18 and has earned a high school degree.[179]

[179] *Id.*, at p. 26.

DIVERSITY IN THE STATE BAR OF CALIFORNIA

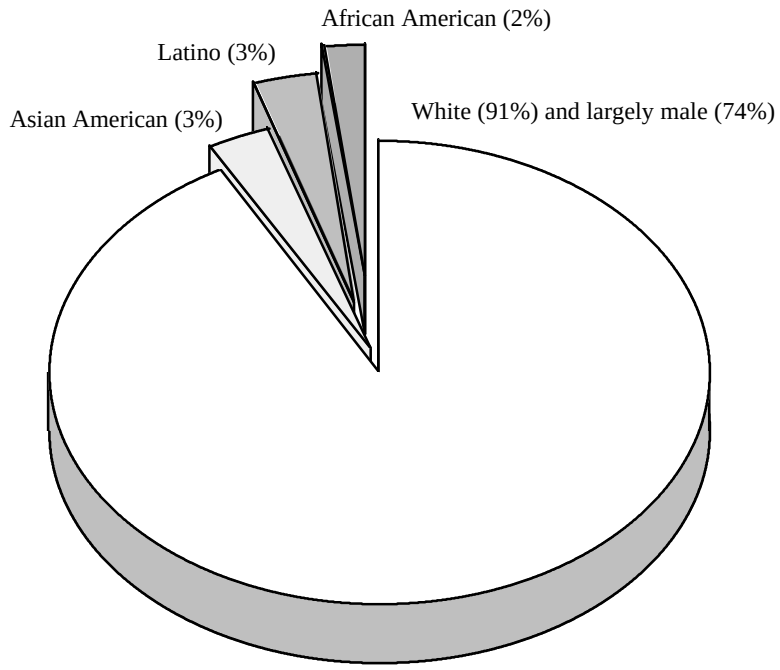
The State Bar of California does not collect or maintain statistics on the racial and ethnic composition of its members[180]; however, in 1991 the bar commissioned SRI International to collect quantitative information on demographic and professional characteristics and professional liability insurance issues of the State Bar membership and to develop a demographic profile of California lawyers.

A 28-item questionnaire was mailed to a random sampling of 14,300 active members of the State Bar. The response rate was 73 percent. Inactive members — for example, attorneys who are on inactive status while working, perhaps, as teachers, research attorneys, court commissioners, or referees, or in other positions that do not require them to give advice to or make courtroom appearances on behalf of clients — were not polled. SRI concluded that 91 percent of the bar was White, 3 percent was Asian American, 3 percent was Latino, and 2 percent was African American, 74 percent was male.[181]

[180]The State Bar of California (State Bar), the unified bar to which all licensed members of the California legal profession belong, does not conduct an official census derived from mandatory reporting as part of its membership records function. Public information available from the State Bar about California lawyers is essentially limited to their name, official address, year of birth, year of admission, law school attended, and public record of discipline.

[181]SRI International, *Demographic Survey of the State Bar of California*, Final Report, pp. 6-7 (Aug. 1991).

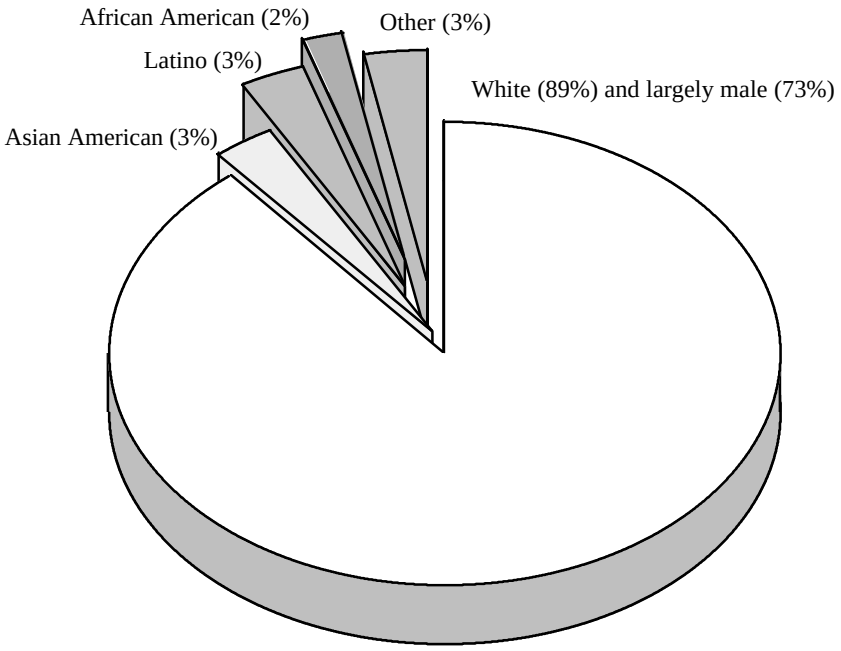
State Bar SRI Survey



Another survey of bar membership was undertaken in 1994. Early that year, the State Bar and the Commission on the Future of the Legal Profession engaged the Institute for Civil Justice at RAND Corporation to survey bar membership on a variety of topics related to their views on the current state of the profession, future challenges they anticipate, and how the State Bar can best serve the public and the profession currently and in the future. The sampling was randomly taken, once again, only from all active State Bar members. The 25-item questionnaire, which contained numerous subparts, was sent to 5,000 California attorneys. The response rate was 54 percent (2,698 completed surveys).

Based on its sample, RAND concluded that the State Bar was 89 percent White, 73 percent male, 3 percent Asian American, 3 percent Latino, and 2 percent African American; 3 percent were classified as “Other.”

State Bar RAND Survey



REPRESENTATION OF MINORITIES AMONG COURT EMPLOYEES

In Chapter 8, "Women of Color and the Justice System," Judge Roger Warren, former Presiding Judge of the Sacramento County Superior Court, is quoted as stating that in total numbers, the minority workforce in his court exceeded the county goal of 23 percent by 5 percent. He noted, however, that at the supervisorial, managerial, and executive levels, only 10 percent of the workforce in that court was drawn from the minority community.[182]

[182] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, supra, at p. 138. (Hon. Roger K. Warren, president, National Center for State Courts)

A clerk at the San Diego Municipal Court, Traffic Division, expressed her opinion concerning the difficulty minority employees have in gaining the kind of experience that will qualify them for promotion. She testified, "You have to have so many supervision skills behind you . . . but they don't give you the opportunity. . . [to get] those skills."[183]

In his testimony, Leon Ross, then Affirmative Action Officer of San Joaquin County, mentioned a "glass ceiling" that denies equal opportunity to minority employees in the courts when it comes to receiving diverse assignments and obtaining enough relevant experience to be promoted.[184]

A mail survey of attorneys interested in minority affairs found strong consensus that minorities are not adequately represented among court personnel. Further, according to the survey, the greatest racial and ethnic diversity appears among lower-level staff such as interpreters, clerical staff, and technicians. The higher up the ladder, the less diversity was seen..[185] Conversely, judicial officers across the board feel that there are sufficient numbers of minority court personnel while nonjudicial court personnel are more divided on the issue.[186]

As part of its assignment, AR Associates conducted a demographic survey to determine the actual numbers of minorities in the various job categories in the trial courts. AR's report noted that each trial court system is free to set racial and ethnic classification categories for its employees, possibly subject to some determinations by either the county or state government. However, the survey responses indicated that most courts utilize the five Equal Employment Opportunity Commission racial and ethnic categories identified earlier in this

[183]*Id*., at p. 142. (John Warren, publisher, *San Diego Voice and Viewpoint*)
[184]*Ibid*. (Leon Ross, affirmative action officer, San Joaquin County, Disadvantaged Business Liaison Officer)
[185]*Fairness in the California State Courts, supra*, at pp. 5-9 to 5-12.
[186]*Ibid*.

section. The report also recognized that racial and ethnic categories are somewhat arbitrary, ambiguous, and subject to various interpretations, and that the designation was left entirely up to the individuals being surveyed. Court employees determined how they would identify themselves in racial and ethnic terms.

Data for the survey were collected for 1993; the rate of return for the survey instrument was 100 percent. Follow-up telephone calls to the trial courts and other checking methods were utilized to ensure the accuracy of the database. After being subjected to several reviews and corrections, the database is now generally accurate, and it has been verified that the overwhelming majority of California trial courts submitted reliable information. The database is sufficiently extensive so that if some small, undiscovered discrepancies are later revealed, they will not affect the general findings and conclusions of the study.

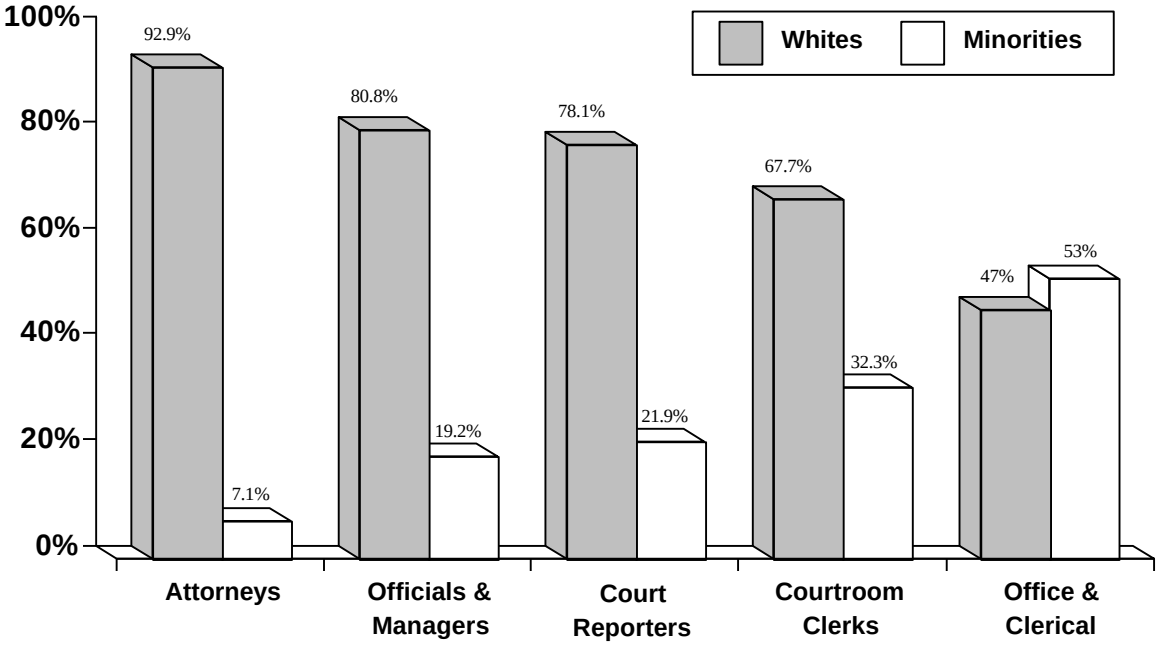
Overall, AR Associates found that 58 percent of the nonjudicial superior court personnel are White, 12.4 percent are African American, 19.7 percent are Latino, 9.3 percent are Asian American, and 0.6 percent are Native American.[187]

Among nonjudicial superior court positions, Whites constitute 80.8 percent of superior court officials and managers and 92.9 percent of court research attorneys. Whites also occupy 78.1 percent of the highly visible court reporter positions. Even more highly visible is the position of courtroom clerk, of which 67.7 percent are White, 9.6 percent are African American, 14.9 percent are Latino, and 7 percent are Asian American. In office and clerical positions, Whites are 47 percent of the total workforce, while African Americans are approximately 18.1

[187] *Racial and Ethnic Composition of the California Trial Courts*, *supra*, at Appendix B.

percent; Latinos 22.6 percent; Asian Americans, 11.6 percent; and Native Americans, fewer than 1 percent.[188]

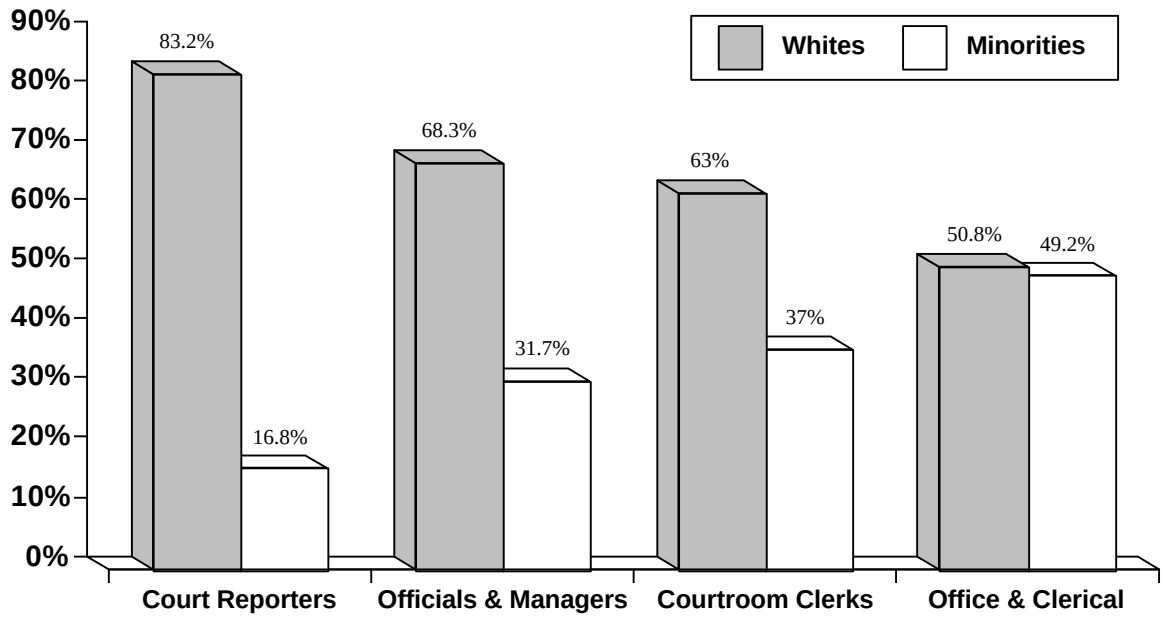
Percentage of Whites and Minorities in Five Superior Court Job Classifications



Whites also hold the largest proportion's of nonjudicial municipal court positions: courtroom clerks, 63 percent; officials and managers, 68.3 percent; court reporters, 83.2 percent; and office and clerical employees, 50.8 percent. Whites, hold slightly more than 50 percent of the lower-level office and clerical positions, the largest category of nonjudicial municipal court employment,. Latinos hold 24.2 percent; African Americans, 14.4 percent; Asian Americans, 9.6 percent; and Native Americans 0.6 percent of these positions.[189]

[188] *Id*., at Appendix C.
[189] *Ibid*.

Percentage of Whites and Minorities in Four Municipal Court Job Classifications



If we take a closer look at three California counties — Alameda, Los Angeles, and San Diego — a clearer picture of workforce racial and ethnic composition emerges.

NONJUDICIAL PERSONNEL

ALAMEDA COUNTY

The Alameda County Superior Court reported 10 attorney positions, 100 percent of which are held by Whites. Of the court reporters, 58 percent are White, 32 percent are African American, 2 percent are Latino, 6 percent are Asian American,

and 2 percent are Native American. Fifty-two percent of courtroom clerks are White, 26 percent are African American, 15 percent are Latino, and 7 percent are Asian American. There are no Native American courtroom clerks. Out of 151 office and clerical positions, 42 percent are held by Whites, 34 percent by African Americans, 5 percent by Latinos, 18 percent by Asians, and less than 1 percent by Native Americans.[190]

LOS ANGELES COUNTY

In Los Angeles County Superior Court, 84.6 percent of the 13 reported attorneys hired by the court are White, 7.7 percent are African American, and 7.7 percent are Asian American. There are no Latino or Native American attorneys. Of the 293 court reporters, 64.5 percent are White, 16.4 percent are African American, 11.6 percent are Latino, 7.2 percent are Asian American, and 0.3 percent are Native American. Of the courtroom clerks, 59.1 percent are White, 17.7 percent are African American, 17.4 percent are Latino, 5.6 percent are Asian American, and 0.3 percent are Native American. Out of 1,165 office and clerical positions, 21.7 percent are held by Whites, 29.4 percent by African Americans, 32.2 percent by Latinos, 16 percent by Asian Americans, and 0.8 percent by Native Americans.[191]

[190] *Id*., at Appendix L.
[191] *Ibid*.

SAN DIEGO COUNTY

The San Diego County Superior Court reported 39 attorney positions. Whites are 94.9 percent of the total, 2.6 percent are African American, and 2.6 percent are Latino. There are no Asian American or Native American attorneys. Of the court reporters, 85.9 percent are White, 3 percent are African American, 7.1 percent are Latino, 3 percent are Asian American, and 1 percent are Native American. Of courtroom clerks, 67.9 percent are White, 8.2 percent are African American, 12.7 percent are Latino, and 11.2 percent are Asian American. There are no Native American courtroom clerks. Out of 295 office and clerical positions, 57 percent are White, 13.6 percent are African American, 15.9 percent are Latino, 12.9 percent are Asian American, and 0.7 percent are Native American.[192]

DIVERSITY ON THE BENCH

As stated in the *2020 Report,* only 56 percent of all Californians believe that judges make evenhanded decisions and that one can expect consistent decisions from the courts regardless of their location or the identity of the judge.[193] This advisory committee's report, *Fairness in the California State Courts: A Survey of the Public, Attorneys and Court Personnel*, corroborates that finding.[194] The telephone survey asked whether the courts ensure that the public can expect the same decisions regardless of race or ethnic origin — a question that again measures public perceptions concerning the quality of justice. The results of the survey reveal that 50 percent of Whites and 45 percent of Asian Americans feel

[192]*Ibid*.
[193]*Justice in the Balance — 2020, supra*, at p. 13.
[194]*Fairness in the California State Courts, supra,* at p. 4-27.

that one can expect the same decisions regardless of race or ethnicity. In contrast, 72 percent of African Americans, 65 percent of Native Americans, and 62 percent of Latinos believe that the courts do not ensure consistent decisions.[195]

The testimony in the public hearings indicated that the public perceives a lack of diversity throughout the legal system, particularly on the bench. From Los Angeles:

> Let me start off with diversity on the bench. It's unfortunate because even at this modern day and age and time, the perception of the bench (and I think the statistics will bear out) — it appears to most people that the bench is still comprised of White male WASPS.[196]
>
> I haven't seen an American Indian appointed to the bench here, and as far as I know, there are none and there never has been a federal court judge who is American Indian.[197]

From San Francisco:

> We have to move away from the sense that, you know, one Black judge on the bench is enough, and that we've done our duty when we have one person from a particular racial group. We have to really get past those kinds of notions and until we do, I think we're going to continue to see these problems of racial and ethnic bias manifested in this court system, and therefore, find it difficult to gain the trust and faith in the system that we'd all like to see all of us have.[198]

Lack of judicial diversity is seen as affecting employment of court personnel. As Judge Joseph Littlejohn of the San Diego Municipal Court reports,

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[195] *Id.*
[196] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra*, at p. 38. (Michael Yamaki, attorney; past-president, Japanese American Bar Association.)
[197] *Ibid.* (Sherry Lear, attorney; cofounder and president, Minority Bar Association of Greater Long Beach.)
[198] *Ibid.* (Aundre Herron, attorney.)

> [O]n our bench I am the only African American judge, Ms. Henderson is the only African American court reporter, Ms. Logan is the only African American supervisor, and we have a judicial secretary on our bench who is African American, one out of seven. So I think that as judicial representation — we also have one African American commissioner — as the judicial representation increases you're probably going to get a correspondingly greater number of minorities throughout the ranks . . . in various levels of management throughout the court.[199]

This view was echoed by the president of the Earl B. Gilliam Bar Association (a San Diego County local African American attorney association):

> The lack of diversity in the judicial branch affects other areas of the criminal justice system. Court clerks, grand jury members, court reporters are selected by judges. When a governor has made virtually all White appointments, that attitude permeates all the way through the justice system.[200]

Lack of diversity is seen as having a negative effect on court users. Testimony at the public hearings indicates that this causes a lack of trust in the legal system by people of color:

> I don't think there's any question that if the person in the street sees a diverse police department, and sees a diverse judiciary, and a diverse bar, the perception that they're frozen out before they ever walk in is at least partially alleviated.[201]

Another speaker commented:

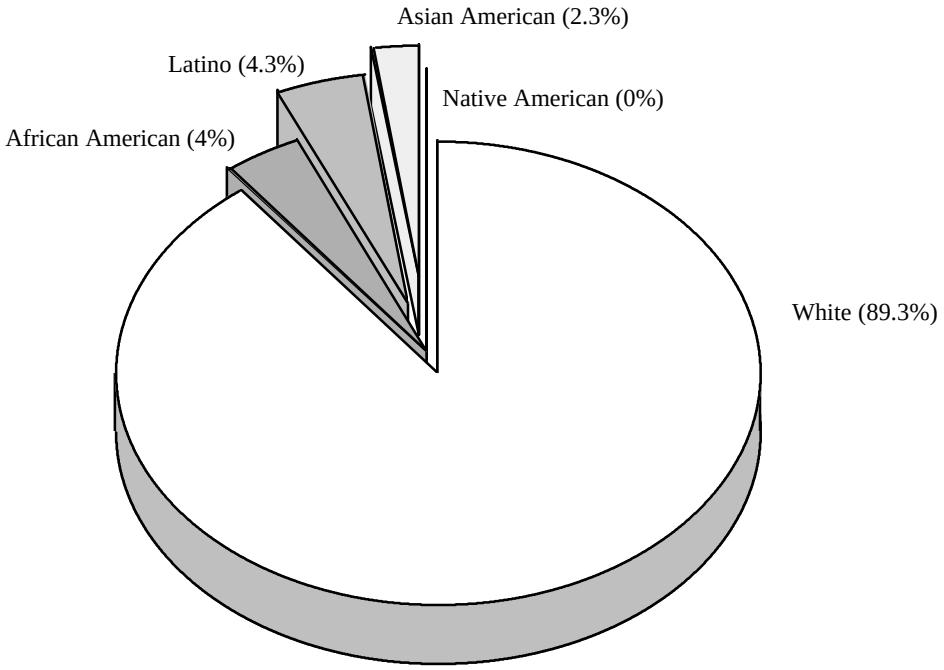
> But what [nondiversity] goes to has to do with clients coming through this system: they are disenfranchised, they are disillusioned. They have to have a feeling that there is some sort of justice when they walk into court. It's not that this Black judge or Hispanic judge is going to give the person

[199] *Id.*, at p. 41. (Hon. Joseph Littlejohn, municipal court judge, San Diego.)
[200] *Ibid.* (Douglas A. Oden, attorney; president, Earl B. Gilliam Bar Association.)
[201] Id., at p. 42. (Michael Yamamoto, attorney; member, Japanese American Bar Association.)

> some type of break and give the person less of a sentence. What it means is, if a person goes through court, he knows he'll get the same sentence as a nonminority.[202]

To test these perceptions, the advisory committee's demographic survey conducted by AR Associates measured the actual numbers of minorities in judicial job categories in the trial courts.[203] The survey disclosed that 89.3 percent of 768 judges in the California superior courts are White: White males hold 77.3 percent and White females 12 percent of superior court judicial positions. Four percent of superior court judges are African American, 4.3 percent are Latino, and 2.3 percent are Asian American. There are no Native Americans among superior court judicial personnel. Further, 90 percent of superior court commissioners and 86 percent of referees are White.[204]

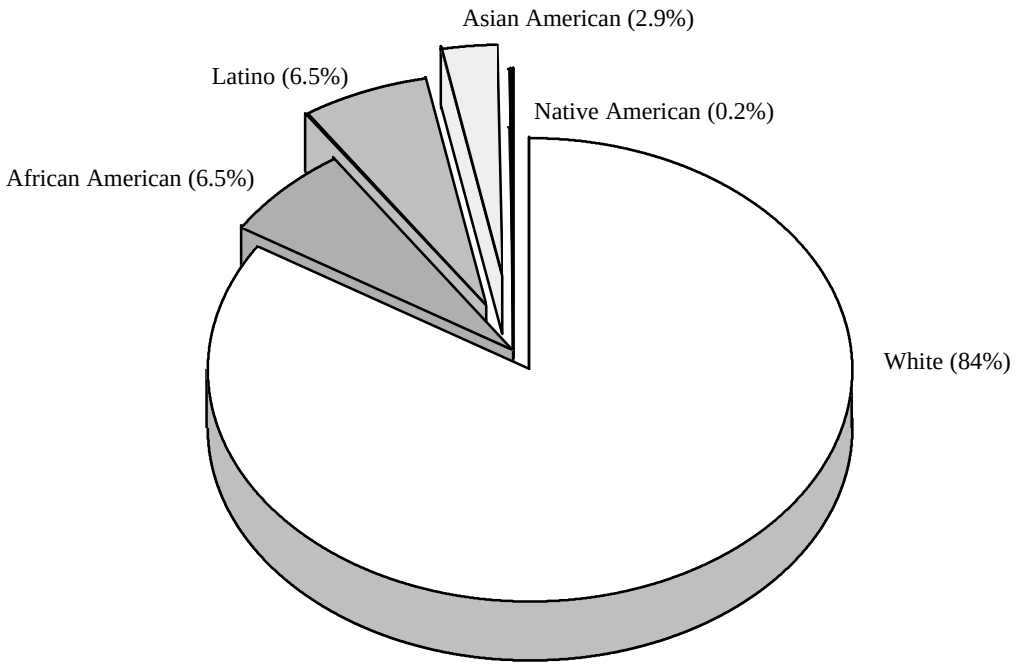
California Superior Courts: Judges



[202]*Ibid*. (Jesse Morris, attorney; representative, Wiley Manuel Bar Association, Criminal Defense Lawyers of Sacramento.)
[203] Data for the demographic survey is current until 1993.
[204]*Racial and Ethnic Composition of the California Trial Courts*, *supra*, at pp. 29–30, 35.

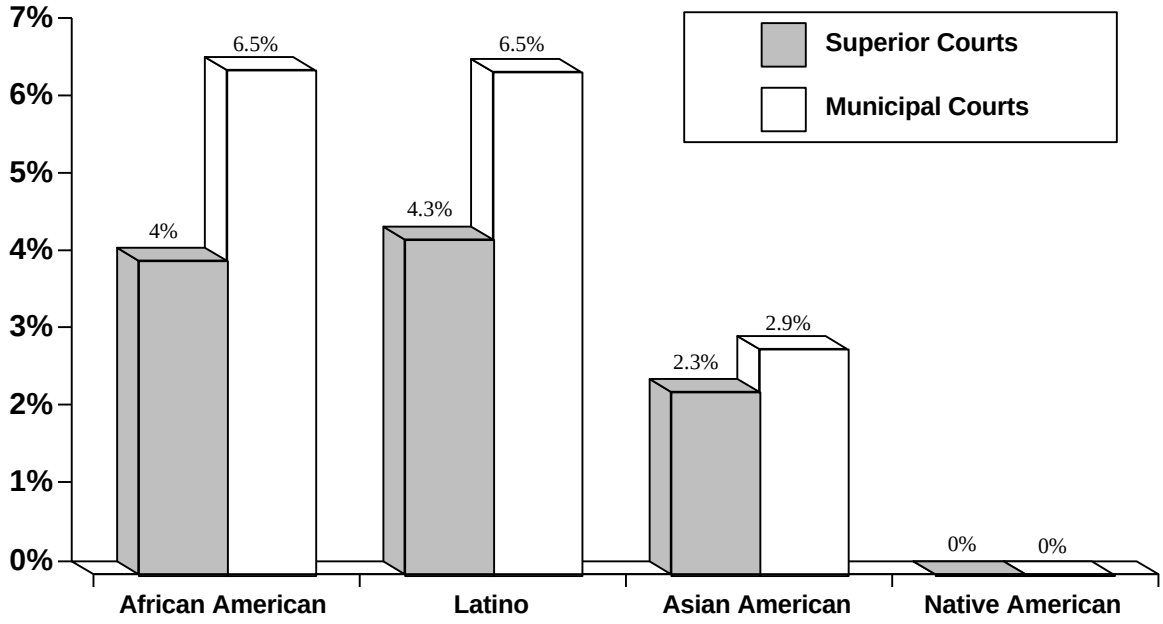
Municipal court judicial data show that 84 percent of the 585 municipal court judges and 81 percent of all municipal court commissioners are White. White males hold 69 percent and White females 15 percent of municipal court judge positions, compared to Latinos and African Americans (6.5 percent each). Asian Americans are 2.9 percent and Native Americans are 0.2 percent of the municipal court judicial population.[205]

California Municipal Courts: Judges



[205] *Ibid.*

Percentage of California Minority
Superior and Municipal Court Judges



African Americans represent 4 percent of the superior court judges and 6.5 percent of municipal court judges. Of this number, there are 4 female superior court judges (0.5 percent) and 16 female municipal court judges (2.7 percent).[206]

Asian Americans represent 2.3 percent of superior court judges and 2.9 percent of municipal court judges. Of these, 4 superior court judges (0.5 percent) and 8 municipal court judges (1.4 percent) are women.[207]

At 26 percent of the population, there are only 2 Latina superior court judges (0.3 percent) and 5 Latina municipal court judges (0.9 percent). Latinos and Latinas constitute 4.3 percent of superior court judges and 6.5 percent of municipal court

[206] *Id.*, at p. 35.
[207] *Ibid.*

judges. At the time of this study, there were no Native American judges at the municipal court level.[208]

JUDICIAL APPOINTMENTS: HISTORICAL RECORDS

As stated earlier in this chapter, an attorney must be a member of the State Bar for five years before becoming eligible for a judgeship in the municipal court, ten years for the superior court. Having met these minimum requirements, an individual may be appointed to a judgeship by the Governor of the state or may run for election, either to fill a vacant position or challenge incumbent judge who is up for election at the expiration of his or her term of office. The vast majority of jurists attain their positions by appointment rather than through the electoral process. This is the case for minority judges as well.

The advisory committee undertook its own historical research to determine the number of minority judges appointed in Los Angeles County from the 1940s and 1950s to 1996.[209] Los Angeles was selected as the county to highlight in this section for the following reasons: [210]

1. To our knowledge, this type of historical data had not been previously collected for any county, and original research was required.
2. Los Angeles is the largest county in the state, with the largest number of judges in the state (approximately one-third of the state's total judges)
3. Los Angeles is the most racially and ethnically diverse county in the state.

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[208] *Ibid.*

[209] The historical summaries of minority judges in Los Angeles County were prepared with the assistance of the staff of the Municipal Court Judges Association. (See Appendix A.)

[210] Court commissioners and referees were not included in this analysis because they are appointed to their positions by the courts in which they serve and not by the Governor.

4. The collection of accurate verifiable data was feasible.
5. Historically, there have been members of each minority group on the bench in Los Angeles.
6. Generally, there is likely to be a higher concentration of minority attorneys in larger metropolitan areas than in smaller or more rural counties and consequently a larger pool of qualified attorneys available for judicial appointment.

From 1941 to 1971 approximately 13 African Americans were appointed to the Los Angeles municipal bench. There were 12 appointments between 1972 and 1978. In the three years from 1979 to 1981, 16 African Americans, an all-time high, were appointed to the municipal court bench. Between 1982 and 1996, a period of 15 years, 18 African Americans were appointed.

In the Los Angeles Superior Court, 7 African Americans were appointed from 1948 to 1970. Between 1971 and 1978, there were 13 appointments, 10 from 1979 to 1981. In the period from 1982 to 1996, only 10 additional appointments of African Americans were made to the superior court bench.

Three Asian Americans were appointed to the Los Angeles County Municipal Court from 1953 to 1973. Only 2 Asian Americans were appointed to the superior court in that same period. From 1973 to 1981, 9 Asian Americans were appointed to the superior court, 14 to the municipal court. Between 1982 and 1996, 13 Asian Americans were appointed to the Los Angeles Superior Court, 16 to the Los Angeles Municipal Court.

The historical summary of Latino jurists begins in the year 1850 with the election of Augustín Olvera to the Los Angeles county bench. In 1863, Pablo de la Guerra

was also elected to the Los Angeles County bench, followed by Ignacio Sepulveda, elected in 1879.

In the twentieth century, from 1956 to 1975, 13 Latinos were appointed to the Los Angeles Municipal Court bench, 9 to the superior court. From 1976 to 1981, 8 Latinos were appointed to the superior court, 14 to the municipal court. In the years from 1982 to 1996, 21 Latinos were appointed to the municipal court and 16 to the superior court.

With regard to Native American jurists in Los Angeles County, only 1 was appointed to the municipal court, and he was defeated during a contested election in 1980.

This report would not be complete without pointing out that 5 African Americans, 1 Asian American, and 3 Latinos from the Los Angeles court system have served or are serving on the appellate court. According to the historical summaries, the years in which the five African American jurists were appointed are 1961, 1976, 1980 (two), and 1982. One Asian American jurist was appointed to the Court of Appeal in 1988 and then elevated to the California Supreme Court in 1989. Two of the 3 Latino judges were appointed in 1988 and 1993. The third was appointed to the Court of Appeal in 1984 and elevated to the California Supreme Court in 1987.

The advisory committee also conducted its own study to determine the number of minorities in the appellate courts of California. As of September 1996, the Supreme Court had 3 minorities (2 Asian Americans and 1 African American) out of 7 positions; the First Appellate District had 1 Native American out of 19 positions; the Second Appellate District had 4 minorities (1 Asian American, 2 Latinos, and 1 African American) out of 20 positions; the Third Appellate District had 1 African

American out of 10 positions; the Fourth Appellate District had 2 Latinos out of 18 positions; the Fifth Appellate District had no minority justices in its 9 positions; and the Sixth Appellate District had 1 Asian American out of 6 positions.

In California, there have been peak periods for judicial appointments of members of some minority groups, one of them the year 1980. For the most part, however, the percentage increase and actual number of appointments have not varied that dramatically over the years. In contrast, the number of minority law school graduates has not remained constant. Statistics obtained from the Office of the Consultant on Legal Education of the American Bar Association (ABA) show that between 1984 and 1994, the number of minority law school graduates almost doubled, from 3,169 to 6,099, or from 8.6 percent to 15.5 percent of total graduates. Those categorized as Asian/Pacific Islanders experienced the most dramatic increase, from 1.5 percent to 4.5 percent (274) of the total. African Americans went from 4.3 percent to 6 percent (366). Latinos and Native Americans increased from 2.5 percent to 4.4 percent (268) and 0.3 percent to 0.6 percent (36), respectively. It would be expected that as the number of minority attorneys with five and ten years of practice increases, the number of judicial appointments of minority attorneys would also increase,[211] but this has not been the case.

In 1941, there were 12,304 (active and inactive) attorneys on the State Bar membership rolls. By February 1971, the number had increased to 32,956. As of January 1979, there were 64,020 active and 6,224 inactive State Bar members. By December 1984, there were 83,882 active and 11,169 inactive members of the bar. For 1988 and 1993, active bar members numbered 98,201 and 114,637,

[211]As noted earlier, five years of State Bar membership is required for municipal court judgeships, and 10 years of bar membership and/or prior service as a judge of a court of record in California for selection to other courts.

respectively, while the inactive members were 13,741 and 24,386, respectively. As of April 1996, 119,271 were listed as active, 31,245 as inactive.[212]

As previously stated, both the SRI demographic survey and the RAND survey of the State Bar indicated that the percentages of Asian American, African American, and Latino attorneys who were active members of the State Bar did not change from 1991 to 1994. The percentages were 3 percent, 2 percent, and 3 percent, respectively.

Applying these percentages and the total number of active bar members for these years leads to the following estimates of racial and ethnic minorities in the State Bar from 1990 to 1996: By December 1990 there were approximately 3,256 Asian Americans, an equal number of Latinos, and approximately 2,170 African Americans in the state bar. Using the same percentages, conservative estimates of the number of active minority lawyers in 1994 would be approximately 3,439 Asian Americans, and Latinos, and 2,293 African Americans; in 1996, approximately 3,578 Asian Americans, 3,578 Latinos and approximately 2,385 African Americans.

From 1984 to 1994 and up to the present, the pool of minority attorneys with five or more years of active membership in the State Bar has increased significantly. Moreover, attorneys with 10 years of bar membership and/or prior experience as judges are also on the increase. Attorneys in this category are eligible for appointment to other courts; yet judicial appointments of Asian Americans, African Americans, and Hispanics have not increased significantly, if Los Angeles County may be viewed as representative of the state. Because the great majority of judges are appointed to the bench, it is clear that any material increase in the number of minority judges will be brought about only through the appointment process.

[212]State Bar of California, Membership Records.

This report does not suggest that any particular racial or ethnic configuration within the California court system would lead to bias. Nor does it assume that bias is rampant in our courts and that a change in the current configuration will lead to greater fairness. Nevertheless, the public-hearings report, the public-opinion survey commissioned by this committee, the demographic survey, and the historical summaries of judicial appointments, coupled with other data, lead to the conclusion that the public perception, that the courts do not reflect the diversity found in the population of this state, is correct. This lack of diversity tends to lead to a lack of confidence, primarily on the part of minority-group members, in the ability of the justice system to judge them fairly.

The views of the advisory committee were succinctly stated in the *2020 Report*:

> California has a long way to go in achieving an ethnically representative bench. Today, of California's 1,554 judges, 5 percent are Black, 5 percent are Hispanic, 3 percent are of Asian or Pacific Islander descent, and 0.1 percent (a single judicial officer) is Native American. In a state in which only 57 percent of the population is White, Whites constitute 87 percent of the bench. The causes of this imbalance aside, its effect is to create the impression of a justice system run by and for White Californians.
>
> Equally worrisome is the fact that at the speed the state's demographic profile is changing, the racial and ethnic disparity between the bench and the population at large seems likely to increase. Unless significant changes in the pattern of judicial appointments occur soon, a truly representative bench is far in the future indeed.[213]

[213] *Justice in the Balance — 2020*, *supra*, at p. 75.

RECOMMENDATIONS[214]

The advisory committee recommends that:

1. **The Judicial Council and State Bar work collaboratively with local bar associations and community groups to develop workshops on judicial selection and the election process.**

2. **The Judicial Council seek the advice of the Governor's office to determine what the council can do to assist in the development of a pool of qualified judicial candidates who are from varied racial and ethnic groups.**

3. **The Judicial Council, in recognition of the importance of diversity on the bench, consult with the Governor and request that the Governor increase his efforts to improve diversity.**

4. **The Judicial Council direct staff to draft a Standard of Judicial Administration urging local courts to develop a racially and ethnically diverse pool of court commissioners and referees.**

5. **The Judicial Council urge local courts to widely publicize job openings and the availability of court commissioner and referee positions in community newspapers.**

6. **The Judicial Council transmit to the appropriate law school officials the recommendation that law schools encourage and actively recruit law students from racial and ethnic minority groups for judicial clerkships and student internships in the courts.**

7. **The Judicial Council direct Staff to develop a standardized reporting form consistent with Census Derived racial and ethnic classifications for the courts.**

    a. **The local courts should specifically designate an employee or department to collect and report diversity data to the Judicial Council;**

[214]The Racial and Ethnic Bias Advisory Committee decided not to include "conclusions" in this chapter.

b. The local courts should assist the Judicial Council in developing better job descriptions for the standardized reporting forms; and

c. Data on diversity should be collected and submitted to the Judicial Council every three years.

8. The Judicial Council review diversity data to determine whether diversity has increased or decreased in the court system.

9. The Judicial Council work with the local courts to increase programs encouraging school-age children to visit and learn about the courts.

10. The Judicial Council make improving the public perception of the courts a priority and work with the local courts to gauge public perception.

a. Local courts should develop, distribute, collect, and review public evaluation forms to measure whether service has been courteous and satisfactory and to receive suggestions of enhancing service.

b. Local courts should create a volunteer ombudsperson program to assist the public, particularly in the clerk's office. Pamphlets in other languages or tape-recorded messages could be of assistance for non-English-speaking users of the courts.

c. The Judicial Council, the State Bar, and local bar associations should cooperate with and assist the local courts in developing public information programs and media campaigns to educate the public about the judicial system, such as through public television and radio programs, local cable television and radio programs, and local public-access television channels.

* * *

C H A P T E R 8

WOMEN OF COLOR AND THE JUSTICE SYSTEM

The draft report authored by the Advisory Committee on Gender Bias, *Achieving Equal Justice for Women and Men in the Courts,* notes the dearth of statistical information about women of color:

> Statistics are often delineated by gender and by race or ethnicity, but within the gender categories there is no further breakdown by race and ethnicity. Quite literally, women of color are not counted. Thus, the committee has not addressed these issues comprehensively but recommends this area as one that is vital to any study of racial and ethnic bias in the courts.[215]

Although women in general applaud the work of gender bias committees and their ability to focus attention on the issues affecting women, it is generally agreed that they have not addressed the issues as they affect women of color.

In fairness to the gender bias committees, their charge is usually limited to issues concerning women specifically. In contrast, an investigation of racial and ethnic bias requires the participation of many different communities. It would, the Advisory Committee on Gender Bias notes, "necessarily consist of different individuals with special expertise in the applicable fields of study. A different methodology might well be required to discern the subtleties and the complexities of the problem."[216]

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[215] Judicial Council of California Advisory Committee on Gender Bias, *Achieving Equal Justice for Women and Men in the Courts: The Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts* (1990), § 10, p. 10.
[216] *Id.*, at § 10, p. 3.

Unfortunately, task forces and commissions on racial and ethnic bias are facing limited funding and time. Further, the study of racial and ethnic bias in the courts involves complex issues, competing interests, and the necessity of striking a balance that all committee members can accept. Concerns specific to women seldom survive the negotiations, and women themselves have made the decision to let projects go forward rather than force the issue. Thus far, the Florida Supreme Court Commission on Racial and Ethnic Bias is the only judicial commission to conduct separate studies on women of color. California has been able to conduct only a limited literature review on women of color and the criminal justice system.

TREATMENT IN THE COURTS

DOMESTIC VIOLENCE

The committee is well aware of public opinion. At the California public hearings, those speaking on behalf of women of color in Los Angeles and Oakland expressed the belief that women of color are not treated seriously by the criminal justice system when they are victims. Using African American women as an example, one speaker noted that "[i]nevitably, judges appeared to believe that in the African American community, violence was much more acceptable 'culturally' and, therefore, there was not the same seriousness paid to the testimony of African American women."[217]

[217] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 221. (Sheila Kuehl, attorney; former managing director, California Women's Law Center; member, Board of Directors, Southern California Coalition on Battered Women; member, Judicial Council Advisory Committee on Gender Bias; currently serving in the California Assembly.

This same speaker commented that some judges consider Asian American women to be more submissive than White women, and therefore the domination of the woman by her male partner is expected and culturally accepted, even if it involves violence.[218] The perception shared by several speakers was that women of color who attempt to protect themselves from violence face credibility problems in the courts. This coupled with limited written or verbal skills, or perhaps an inability to speak English fluently, may mean that women who need help quickly may face enhanced dangers.

Some women will bring a male relative to speak for them, thinking that he will ensure her credibility in court. If that man is embarrassed or ashamed to relay the woman's tale of violence and abuse, she may well receive lesser protection. Likewise, a woman who finds the courage to summon the police for her protection in some circumstances may have to wait for several hours for them to arrive because it is "only" a family disturbance. When they do arrive, the existence of a restraining order does not necessarily result in action by the police.[219]

In applying for a restraining order, some women may face the requirement of having to give notice to the abusing spouse or partner. Although most judges in California are credited with understanding the exigency of domestic violence situations, apparently a few judges insist on notice, even in severely violent situations. One speaker commented:

> These are women who have recently been beaten, threatened with further harm and often death . . . and these are the men these judges expect the battered

[218] *Ibid.* (Sheila Kuehl.)
[219] *Id.*, at p. 222. (Deeana Jang, staff attorney, Domestic Relations Unit of the San Francisco Neighborhood Legal Assistance Foundation.)

> spouse to telephone six business hours before their ex parte hearings and give notice.[220]

Language barriers were cited as a major problem in urban family law courts. According to those testifying at the public hearings, the number of mediators who are fluent in certain languages is insufficient. Further, it is generally agreed that if mediation is to be successful in any situation, there must be a balance of power between the parties. If the batterer has greater command of the English language, the woman is likely to be greatly disadvantaged, making mediation even less appropriate in her circumstances. (Furthermore, there is considerable debate about whether mediation is indeed appropriate in situations where women are battered.) Finally, many women of color are also financially disadvantaged and therefore must represent themselves in the courts.

NATIVE AMERICAN WOMEN

Native American women are discussed separately here because of the unique relationship that exists between tribal governments and state and federal law. Statutes governing areas affecting Native Americans are like a patchwork quilt with criminal and civil jurisdiction divided among tribal, federal, and state courts. Under these circumstances, information pertaining to Native American women may be even more scarce than for other groups.

Further, federal criminal and civil jurisdiction is not evenly distributed throughout the Ninth Circuit. According to the report from the Gender Bias Task Force of the United States Court of Appeal, Ninth Circuit, five states (Arizona, Idaho,

[220]Transcript of the Los Angeles public hearings, day three, p. 16 (June 13, 1992). (Estelle Cynthia Chun, staff attorney and deputy director, Asian Pacific American Legal Center of Southern California.)

Montana, Nevada, and Washington) have assumed partial jurisdiction over criminal and civil matters on Indian lands while three states (Alaska, California, and Oregon, excluding the Warm Springs Reservation) have assumed total jurisdiction.[221]

An examination of the intricacies of the laws governing Indian lands is not within the purview of this report; however, we will note that because of the varying jurisdictional provisions, some federal courts within the Ninth Circuit have jurisdiction over violent crimes against women that are committed on Indian lands. The jurisdictional puzzle, however, leads to "a cumbersome procedure" whenever a crime is committed on Indian land. As the Ninth Circuit Gender Bias Task Force explains:

> The first law enforcement officials called to the scene may be tribal police or Bureau of Indian Affairs (BIA) officers (federal officers policing reservations that have not established their own tribal police forces), and these officers may initiate investigation and/or detain a suspect. If the crime is of the type warranting federal intervention, then federal law enforcement officials (usually the FBI) should, by law, be notified.[222]

If federal agents do become involved, they investigate and decide whether the case should be referred to the U.S. Attorney's Office for final disposition. The lack of tribal police forces in some areas, coupled with the cumbersome system described above as well as the distances some federal law-enforcement personnel are located from tribal lands may lead to underprosecution of violent crimes against Native American women. A lingering attitude in some quarters that law enforcement should not become involved in domestic violence cases may add to the dilemma.

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[221] *The Effects of Gender in the Federal Courts, supra,* at note 18.
[222] *Id.,* at p. 150.

These factors are probably further compounded by the issue of whether federal jurisdiction will be considered too intrusive and the priority crimes against women are given.[223]

In the civil area, jurisdictional battles (tribe versus state) may occur over the custody of children or in other areas affecting children if one parent is a tribal member and the other is not. Moreover, any case arising under federal statute threatens to test the authority of the federal courts over that of tribal rules and procedure.[224]

The first principle to understand is that Indian tribes "view the tribal-federal relationship as one between sovereigns, a government-to-government relationship." Accordingly, "[s]tate control of tribal matters contradicts and violates the basis of this tribal-federal relationship."[225] One such example is Public Law No. 280. Public Law No. 280, enacted in 1953, granted certain states the authority to exercise jurisdiction in criminal and civil matters on Indian reservations within those states' borders. According to a report entitled *Bias Against Native Americans*, prepared for this committee, "[t]o establish state law enforcement and court systems on the reservation would have been expensive . . . and . . . [t]he federal government was not willing to appropriate money for law enforcement under Public Law No. 280."[226]

Public Law No. 280 allowed the state to exercise concurrent jurisdiction on Indian reservations in California. According to the author, as a practical matter, when the states exercised jurisdiction they "tended to supplant tribal power. From the

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[223]*Id.*, at pp. 149–51.
[224]*Id.*, at pp. 150–53.
[225]J. Myers, *Bias Against Native Americans*, pp. 10–11, prepared for the Judicial Council Access and Fairness advisory committee's August 18, 1995, meeting.
[226]*Ibid.*

Native American point of view, Public Law No. 280 was one of the most destructive laws ever passed by Congress with respect to tribal sovereignty."[227]

Add to that the Indian Child Welfare Act of 1978 (ICWA)[228] (considered a positive development) and the conflicting interpretations possible under the law, and some judicial confusion is understandable. The ICWA places Native American children on reservations under the jurisdiction of the tribal courts. If custody proceedings concerning a Native American child begin in state court, then the child's tribe must be notified and permitted to intervene. The ICWA provides for transfer of cases from state to tribal court and specifies under what circumstances the state court may refuse to transfer a case. There are also protections in the standards that must be used before parental rights can be terminated. In the event of termination, placement preference must be given to the child's family, tribe, or other Native American families *before* non-Indians can adopt.

In this context, perhaps the major issue is lack of familiarity with the law, as suggested by Mary Risling, a staff attorney at the California Indian Legal Services Office in Eureka:

> Where attorneys are present and well versed in Indian law, the receptiveness of courts to Indian law issues appears to correspond to the presence or absence of established and visible tribal governments in the area. Where there are large tribes that have functioned as governments for an extended period, judges tend to be familiar with Indian issues and readily follow the law as presented. Where courts are unfamiliar with tribes and Indian law, there is often reticence, suspicion, and sometimes outright refusal to follow the law. In my experience, consistent with the above pattern, the exact

[227] *Ibid.*
[228] 25 U.S.C. §§ 1901–1963.

pleading can produce diametrically opposite results in different counties.[229]

WOMEN OF COLOR AS VICTIMS AND DEFENDANTS

Women of color who are arrested and processed through the criminal justice system may be victims of disparate treatment. For example, an estimated 40 percent of all prostitutes are women of color, but 55 percent of those arrested and 85 percent of those who serve time in jail are women of color.[230] These percentages do raise general questions about the perception of "deviancy" when women and not their clients are arrested; they also raise specific questions about the disproportionately large numbers of minority women jailed compared to White women.

Few individuals are aware of this situation; however, the disproportion of minority males under the control of the criminal justice system (for example, approximately 1 out of 3 African American males aged 20 to 29 in California compared to 1 out of 19 White males aged 20 to 29)[231] is widely known and often quoted, primarily to support diametrically opposed positions on crime prevention in urban communities.

A review of the Florida Supreme Court Racial and Ethnic Bias report corroborates the California findings that little statistical information on women of color exists. When it does exist, it generally reveals that in the criminal justice system, the

[229]1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra, at p. 111. (Mary Risling, staff attorney, California Indian Legal Services (CILS), Eureka Office.)
[230]"Discovering Psychology," KCSM Public Broadcasting Station (Channel 60), San Mateo, California (December 12, 1995).
[231]S. Fry and V. Schiraldi, *Young African American Men and the Criminal Justice System in California* (Center on Juvenile and Criminal Justice, Oct. 1990), p. 2.

disproportion between treatment of White and non-White women compared to that of White and non-White men is similar.

> Nationally, although the number of women in the criminal justice system is much lower than men, the racial disproportions are similar. For women in their twenties, 1 out of every 37 Black women, compared to 1 out of every 100 White women, [is] incarcerated or otherwise under criminal justice control. The corresponding rate for Hispanic women is 1 in 56.[232]

A Florida State University study conducted in 1990 also demonstrates that minority women face discrimination in the criminal justice system in certain other contexts. In an examination of bail practices in a northern Florida community, researchers found that minority females, compared to White females, "are less likely, other things being equal, to receive bail amounts below the minimum jailhouse schedule."[233]

The statistics that we do have on women of color as victims are unsettling. For example, a study of sentencing in Dallas, Texas, which employs jury sentencing in noncapital cases, revealed that the median sentence for a Black man who raped a White woman was 19 years, while the median sentence for a White man who raped a Black woman was 10 years. Further, the median sentence for White-on-White rape was 5 years, for Latino-on-Latino rape 2.5 years, and for Black-on-Black rape 1 year.[234] The statistics suggest that the harm that rape does to Black and Latino women is devalued in Dallas. Indeed, an earlier Indiana study of 331 jurors that revealed jurors do adhere to the stereotype that Black women are

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[232]Florida Supreme Court Racial and Ethnic Bias Study Commission, *Where the Injured Fly for Justice* (1991), p. 50.
[233]*Id.*, at pp. 50-51.
[234]R. F. Herndon, "Race Tilts the Scales of Justice," *Dallas Times Herald*, (Aug. 19, 1990), p. A1.

promiscuous and, therefore, less harmed by rape.[235] Accordingly, the claims of Black women are often dismissed.

It appears that women of color as victims seeking the court's assistance or women of color as defendants being processed by the system have one thing in common: They do not believe that they will receive the same treatment as their White counterparts, with whom they share the burden of gender bias. The statistics support this belief.

WOMEN OF COLOR IN THE LEGAL PROFESSION

Women attorneys of all racial and ethnic backgrounds share many similar experiences and perceptions based on their interaction's with the justice system. Many can recount instances of not being taken seriously because they were women and of being treated in a condescending or dismissive manner by male attorneys. Much as we would like to deny the existence of sexism among the judiciary, the California Gender Bias Report illustrates that it was alive and well in 1990. Non-White women attorneys face sexism and something more.

An Asian American woman attorney appearing before the judge hearing her case was asked not only whether she was an attorney, but also whether she was licensed to practice in California. Then, in front of the attorney's client and opposing counsel, and in open court, she was asked to provide the judge with her bar number after the trial.[236] The judge did not act improperly in asking these questions, but would the judge have asked the same questions of a White male or

[235]G. LaFree et al., "Jurors' Response to Victims' Behavior and Legal Issues in Sexual Assault Trials," *Social Problems* 32 (1985): 389.

[236]*Achieving Equal Justice for Women and Men in the Courts, supra*, at § 4, p. 24.

female whom he did not know, and if so, would the questioning have been conducted in open court?

An African American woman who majored in economics in undergraduate school and became an attorney with the antitrust division of the U.S. Department of Justice recalled a judge asking her if she really understood all the economics involved in the case she was handling. In expressing how this questioning made her feel, the attorney stated:

> I guess small black women can maybe comfortably go into family law, even more successfully into civil rights law; but economic analysis and antitrust were something that they felt was really left for the big boys, and was really too technical for someone like me to comprehend.[237]

White women who, logically, would be natural allies of women of color in attempts to dislodge racism and sexism are often unaware that their experiences with gender bias do not subsume the experiences of women of color. For example, increasing the number of White women appointed to the bench or increasing the number of White women in the general attorney pool does not add to the racial or ethnic diversity of the profession. As reported by an African American female attorney, describing her experience at a professional dinner at which a representative of *Ms*. magazine spoke:

> The White woman there representing *Ms.* magazine regaled the White women present with humorous vignettes about the experiences of White women encountering gender bias. She mentioned, for example, as she went on with her stories, a feeling of some relief when Sandra Day O'Connor was appointed to the Supreme Court; and she commented that, well, at least, you know, this made her feel somewhat better about the Reagan Administration, because after all, here was someone who looked like her.

[237] *Id.*, at § 4, p. 29.

> Well, Sandra Day O'Connor doesn't look like me. And during the course of all of these little vignettes, this woman who was speaking never acknowledged that she was describing the experiences of White women. Rather, she purported to discuss gender bias.[238]

Ms. Brenda Johns Penny, then President of the Black Women Lawyers Association, relayed her experiences as an African American woman attorney. Ms. Penny shared an experience common to other minority-women attorneys she was asked by court staff whether she was the court reporter or the defendant's sister or mother, but not whether she was the lawyer in the case. "I've also been asked was I the social worker, and although I was a social worker many years ago, I certainly was not in court in that capacity, and my colleagues [White], both female and male, were not asked those same questions."[239]

The total number of women of color in the legal profession — lawyers, law teachers, and judges — is 23,000, according to the 1990 decennial U.S. Census. This number is a marked increase over the 1980 figure of 7,300;[240] however, even today women of color are not represented broadly or deeply throughout the profession. In a study conducted by the ABA to solicit the opinions, observations, viewpoints, and experiences of representative groups of minority-women lawyers throughout the United States, a series of roundtable discussions were held in Atlanta, Georgia; Washington, D.C.; Dallas, Texas; San Antonio, Texas; Atlantic City, New Jersey; and Seattle, Washington. Subsequently, regional conferences were held in New York City and San Francisco to obtain a wider sampling of opinion from minority-women lawyers. The findings from that study are presented here, verbatim:

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[238] *Id.*, at § 10, p. 20.
[239] Transcript of the Los Angeles public hearings, day three, p. 76 (June 13, 1992). (Brenda Johns Penny, attorney; president, Black Women Lawyers Association.)
[240] *The Burdens of Both, the Privileges of Neither, supra,* at p. 5.

- The combination of being an attorney of color and a woman is a double negative in the legal marketplace, regardless of the type of practice or geographic region involved;

- Multicultural women attorneys must repeatedly establish their competence to professors, peers, and judges;

- Multicultural women attorneys perceive they are "ghettoized" into certain practice areas and other options are closed or implicitly unavailable;

- As evidenced by continuing attitudes and negative stereotypes, multicultural women attorneys are invisible to the profession and have more difficulty achieving prominence and rewards within the legal field;

- To succeed, multicultural women attorneys must choose between race and gender;[241] and

- Minority women lawyers face barriers of gender discrimination in minority bar associations and race discrimination in majority bar associations.[242]

The ABA study took a broad look at a number of areas before reaching the above conclusions. First, the law school experience is alienating and abusive for many women of color, according to the report. Minority women describe their law school experiences in terms of their battle against the credibility problem: lack of recognition and the presumption of incompetence. The relatively small number of minority-women law students makes it more likely that they will be "overlooked." Those women who escape being overlooked see genuine surprise on the faces of law school faculty when they do well. Students who attended predominantly black undergraduate institutions face an even greater credibility problem.

[241]The committee understands this to mean that women of color must choose to identify with women of all colors or men and women on one's own race.
[242]*The Burdens of Both, the Privileges of Neither*, *supra,* at p. 9.

Cultural differences can also work against minority women attorneys. As observed in the 1994 report of the ABA Multicultural Women Attorneys Network,

> Asian American women and Latinas acknowledged an additional handicap: their cultural upbringing stresses hard work, harmony and teamwork over the "blowing your own horn" method of gaining prominence. As one Asian American woman put it bluntly, "Our culture's emphasis on education and being a good student often means one doesn't learn social, communication and political skills ("street smarts") at home. To get ahead, one has to learn how to do what The Boys do: self-promote, socialize, build networks."[243]

A discouraging picture emerges from a 1993 study of Ohio's nine law schools, which indicates that women law students leave law school with less confidence in their abilities and lower self-esteem than when they entered law school. A startling 57 percent of women of color compared to 25 percent of White males felt intelligent prior to law school but not afterward.[244]

The effects of low self-esteem follow women of color as they enter the workplace, which, coupled with their "invisibility" and the stereotypes held by employers, may well limit their job opportunities and ability to advance as rapidly as others. Women of color also report that they are scrutinized more carefully than others, are forced to contend with isolation, and even face hostility and disrespect.[245] The ABA report concludes:

> The upshot is that society still assumes that multicultural status is inherently negative, that multicultural people are less able and deserving. Tough economic times and continuing opposition have converted affirmative action, formerly

[243] *Id.,* at p. 13.
[244] *Ibid.*
[245] *Id.,* at pp. 14–17.

> accorded at least lip service, into a dirty word describing how unqualified minorities are taking away good jobs from Whites who are being unfairly punished for long-past discriminatory acts. Those who voice claims of discrimination are derided as perpetual victims and whiners who can't cut it like everybody else. And in the midst of this hostile climate, multicultural women experience the worst of both worlds.[246]

EMPLOYMENT FOR WOMEN OF COLOR IN THE COURTS

JUDICIAL PERSONNEL

The demographic survey conducted by the advisory committee and discussed in detail in Chapter 7 disclosed that African Americans represent 4. percent of the 768 superior court judges and 6.5 percent of municipal court judges. Of this number, there are 4 female superior court judges (0.5 percent) and 16 female municipal court judges (2.7 percent).[247]

Asian Americans represent 2.3 percent of superior court judges and 2.9 percent of municipal court judges. Four superior court judges (0.5 percent) and 8 municipal court judges (1.4 percent) are Asian American women.[248]

At 26 percent of the population, there are only 2 Latina superior court judges (0.3 percent) and 5 Latina municipal court judges (0.9 percent). Latinos and Latinas constitute 4.3 percent of superior court judges and 6.5 percent of municipal court judges.[249]

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[246] *Id.*, at p. 18.
[247] *Racial and Ethnic Composition of the California Trial Courts, supra,* at p. 35. See also Chapter 7, "The Matter of Diversity."
[248] *Ibid.*
[249] *Ibid.*

At the time of this study, no male or female Native American superior or municipal court judges were identified.[250]

NONJUDICIAL PERSONNEL

The California court system is not an administratively unified system. Accordingly, every court has its own employment apparatus, making it difficult to obtain a clear picture of employment practices in our courts as they affect women and racial and ethnic minorities. As noted in Chapter 7, Judge Roger K. Warren, formerly Presiding Judge of the Sacramento County Superior Court, stated that during his tenure the superior court exceeded by 5 percent the county's goals of obtaining 23 percent of the workforce from minority communities. However, according to Judge Warren:

> [T]he picture isn't as bright when you start talking about the number of employees in supervisorial, managerial, and executive positions, and we're concerned about that. About 10 percent of our employees in those positions are drawn from the minority community, vis-à-vis the county goal of 23 percent. And so we have initiated activities to try to address that disparity and would be interested in any further suggestions you may have.[251]

Judge Warren's description of the Sacramento County Superior Court is echoed statewide at the superior court level, as evidenced by the advisory committee's 1995 report on *Racial and Ethnic Composition of the California Trial Courts.*

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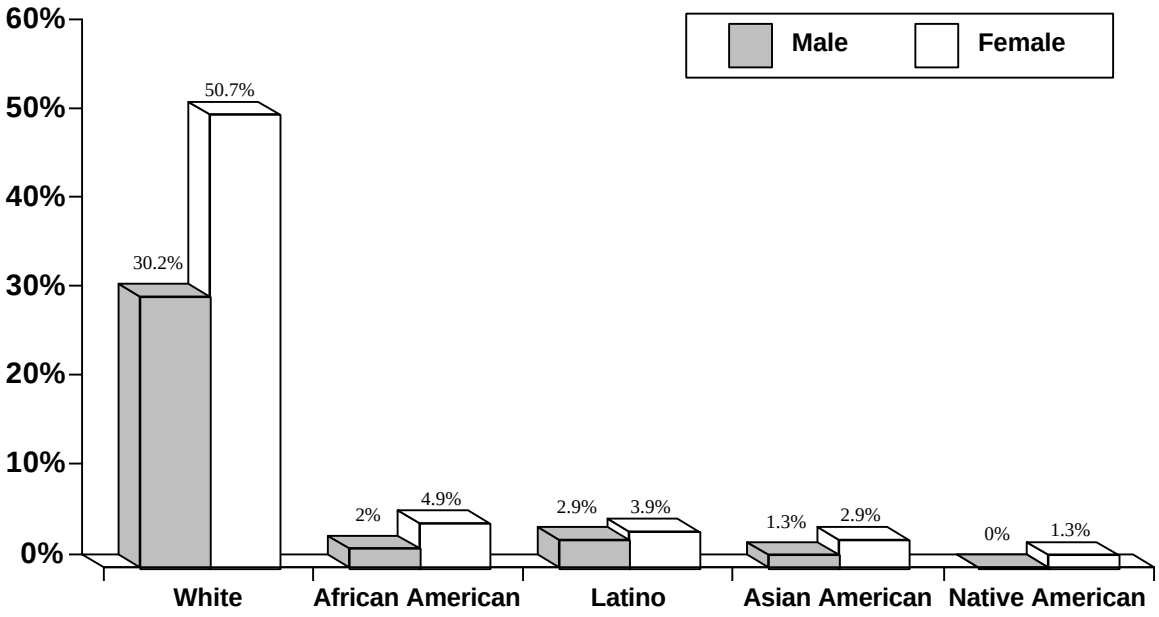
[250] *Id.*, at Appendix C.

[251] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra,* at p. 138. (Hon. Roger K. Warren is currently the President of the National Center of State Courts.)

Although gender distinctions were not the focus of the advisory committee, from the demographic survey we are able to deduce that among nonjudicial court personnel, White females make up the majority of attorneys hired by the superior courts, or 60.7 percent of the total, while White men constitute 32.2 percent of the total. Among officials and managers, 30.2 percent are White males and 50.7 percent are White females. African American males and females represent are 2 percent and 4.9 percent of the superior court officials and managers, respectively. Latinos are 2.9 percent, Latinas are 3.9 percent, and Asian American males and females total 1.3 and 2.9 percent of superior court officials and managers, respectively. There are no Native American males in this category, but there are 4 Native American women, or 1.3 percent.[252]

Percentage of Superior Court Officials/Managers by Race/Ethnicity and Gender



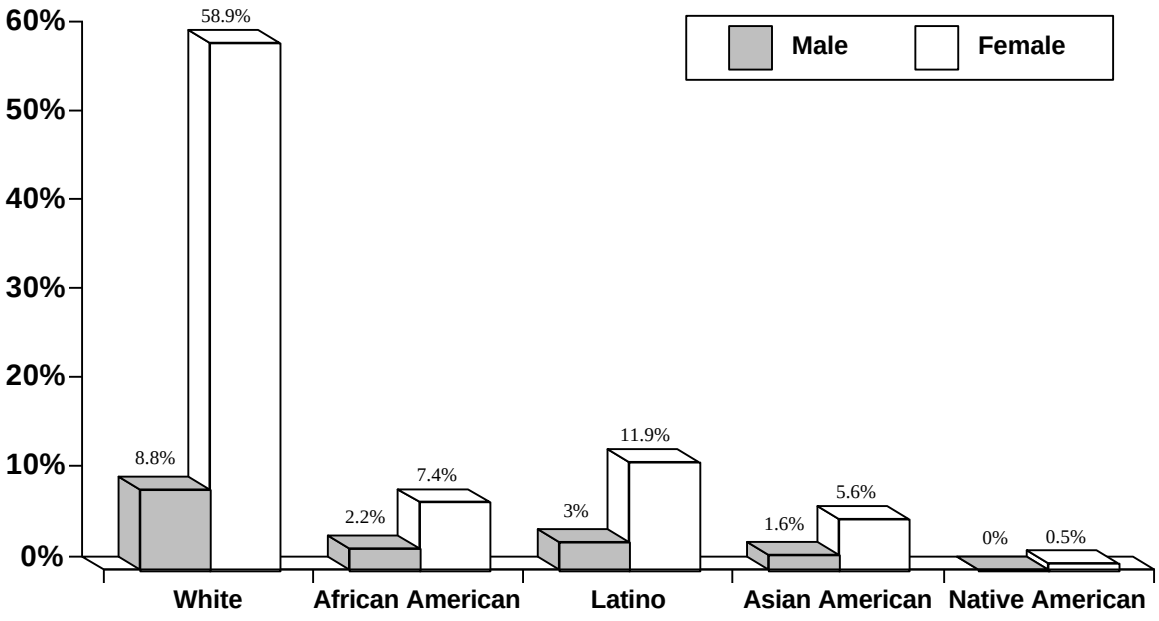
[252] *Racial and Ethnic Composition of the California Trial Courts, supra,* at Appendix C.

Further, 52.5 percent of superior court reporters are White females and 25.6 percent are White males. Asian Americans, African Americans, Latinos, and Native American females made up less than 22 percent of the court reporters employed at the time of this study. In the lower-level office and clerical category of the superior court, women dominate across the board. White women are 41.2 percent of the total, African American females and Latinos are 15.4 percent and 18.1 percent, respectively; while Asian American and Native American women are respectively 8.6 and 0.6 of the total.[253]

When we examined the most visible position in the trial courts, that of courtroom clerk, we discovered that 67.7 percent of superior court courtroom clerks are Whites, nearly 15 percent are Latinos, 9.6 percent by African Americans, and 7.2 percent are Asian Americans. Once again, among courtroom clerks women far outnumber the men occupying this position. White females are 58.9 percent of the total, and minority women weigh in at 25.4 percent.[254]

[253] *Ibid.*
[254] *Ibid.*

Percentage of Superior Court Courtroom Clerks
by Race/Ethnicity and Gender



In this aspect of the study as elsewhere, the public generally believed that the California courts did not reflect the diversity found in the general population. The demographic survey data shows that White males are most visible in the courts as judges, the ultimate authority figures. Minorities and women make up 22.7 percent of superior court judges and 31 percent of the total municipal court judges. The vast majority of superior court research attorneys, officials, and managers, and court reporters are also White; and White women are in the majority at 60.7 percent, 50.7 percent, and 52.5 percent, respectively. It is in the lower-level office and clerical categories in the courts where women generally, and women of color in particular, are found in large numbers.

The issue of women of color and the justice system was discussed during the first National Conference on Eliminating Racial and Ethnic Bias in the Courts that took place in March 1995 in Albuquerque, New Mexico. With a substantial grant from

SJI, the National Center for State Courts and the consortium planned a conference that would address a multitude of concerns. Although more than 400 participants attended this conference and women of color were well represented, there was, nevertheless, no workshop or panel on women's issues.

In recognition of this oversight, and in response to an impromptu meeting of approximately 50 male and female conference delegates at La Placita Restaurant to discuss issues affecting women of color, conference delegates unanimously adopted the resolution now commonly known as "La Placita Manifesto," which was drafted during the impromptu meeting.

In lieu of conclusions and recommendations drafted by the committee, the Racial and Ethnic Bias Advisory Committee adopts the following provisions of the manifesto as its conclusions and recommendations:

CONCLUSIONS

The advisory committee concludes:

1. **that women of color encounter dual barriers of racism and sexism in the justice system and legal profession;**

2. **that too often the unique situation and negative experiences of women of color are neglected or inadequately addressed in studies of bias and discrimination in the courts; and**

3. **that steps to rectify this oversight must and should be undertaken forthwith, to wit:**

RECOMMENDATIONS

The advisory committee recommends:

1. **recognition of the double disadvantage of being a woman of color involved in the justice system — whether as litigant, lawyer, judge, witness, court personnel, or law student;**

2. **inclusion in existing bias and fairness commissions of a subcommittee dealing with women of color, or inclusion in any implementation task force created to put proposals of bias commissions into action;**

3. **collective support for data collection and research on the status of women of color in the justice system;**

4. **outreach efforts to organizations and individuals with similar interests;**

5. **inclusion of more women of color in all aspects of the planning of future conferences on bias in the courts;**

6. **exploration of ways to convene a national conference on women of color in the courts — in conjunction with other entities such as the National Association of Women Judges, National Consortium of Commissions and Task Forces on Racial and Ethnic Bias in the Courts, National Association of Women's Bar Associations, minority bar associations, the ABA Commission on Women, the ABA Commission on Opportunities for Minorities in the Profession, the Multicultural Women Attorneys Network, and state racial and ethnic bias and gender bias commissions; and**

7. **programs specifically aimed at relieving and eliminating the burdens imposed on women of color in all aspects of the legal and justice system.**

* * *

C H A P T E R 9

FAMILY AND JUVENILE LAW ISSUES

PROBLEM AREAS

The advisory committee identified a public perception that there is bias in the administration of justice in family and juvenile courts, and concluded that more research is needed to determine the extent of actual bias, if any. Based on its research and review of the public-hearing testimony, the committee identified three specific problem areas to be addressed: (1) cultural stereotyping, (2) disparate treatment of people of color, and (3) lack of representation for people of color. Although these problems are far-reaching and in some ways beyond the purview of this committee, a number of preliminary steps can be taken now to alleviate any inequities.

CULTURAL STEREOTYPING

According to testimony at the public hearings on racial and ethnic bias, many people of color believe that they are not treated fairly by the courts and that the system is biased against them. Concern was raised that people of color are being judged through the filter of White, middle-class values:

> Judicial personnel in a family law area are called upon to make vital and lasting decisions on the status of children and their parents. More often than any other area in civil litigation there is required interaction between court

> personnel and minority litigants. And nowhere else in the judicial process does bias impact — bias so heavily impact on the minority family.
>
> It is amazing to me that in 1992 in the Bay Area counties, I do not know of one Asian American or Pacific Islander counselor in the family court process. Certainly court personnel, both judges and counselors, are highly educated and qualified to make determinations regarding parents and children. But subjective and personal values based upon one's own family experiences or upbringing, or the type of schooling that one has had as a counselor, play a large role in the perceptions and ultimate decisions of the court. All too often this has led to one set of cultural values and standards being unfairly applied to a family with a differing culture. The results are obviously unfair.[255]

The testimony of a number of speakers identified institutionalized racism, perceived double standards in the application of the law and in judicial appraisals of credibility, bias against litigants of color, and tolerance of violence against people of color as major problems in the judiciary. As Judge Michael Goldman of the Hoopa Valley Tribal Court stated:

> There is a kind of attitude that — and I have personally heard this expressed by attorneys and members of the law enforcement community, "Well, that's the way things are in Hoopa," whenever the subject of violence or unsolved crimes comes up, as if in some way, violence were more acceptable or tolerable on the reservation or among Indian people.[256]

Dean Ito Taylor, then Executive Director of Nihonmachi Legal Outreach, a recipient of State Bar Trust Fund grants, noted:

> Unfortunately, we sometimes catch ourselves, all of us, basing our evaluations of parties or witnesses upon these old

[255] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at pp. 87–88. (Dean Ito Taylor, attorney; executive director, Nihonmachi Legal Outreach, a State Bar Trust Fund organization; instructor, New College of California Law School.)
[256] *Id*., at p. 86. (Hon. Michael Goldman, Judge of the Hoopa Valley Tribal Court.)

> racial stereotypes. . . . [¶]This arbitration hearing involved my client, a Chinese-American, who had witnesses who happened to be all Chinese-Americans; the other party, not Asian, had no witnesses, but did have a similar background, upbringing, schooling, and even a similar regional upbringing as the arbitrator.
>
> While informally discussing the arbitration decision with the arbitrator, it became obvious that he had discounted the witnesses' testimony, although they were independent witnesses, because he suggested that each was lying to support the story of the other. . . . [¶] The clear underlying basis for this opinion was that they were all Chinese, and of course, the racism that each of us felt was clear and unmistakable.[257]

Cultural stereotyping is perceived as affecting access to the courts and the administration of justice. Deeana Jang, staff attorney of the Domestic Relations Unit of the San Francisco Neighborhood Legal Assistance Foundation and a member of the Family Subcommittee of the Family and Juvenile Law Advisory Committee, testified:

> Just to give some examples around cultural differences, in many of the Asian cultures, as well as, I believe, the Latino and some of the Middle Eastern cultures, it's not our habit to look people directly in the eye when they're talking to you. It's considered to be something rude. Well, a family court mediator who doesn't understand that this is an impolite thing for someone of this culture to do has interpreted that as someone being evasive or being — having something to hide.[258]

Rina Hirai, a member of the board of directors of the Asian American Bar Association of the Greater Bay Area, , indicated:

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[257] *Id.*, at p. 135. (Dean Ito Taylor, attorney; executive director, Nihonmachi Legal Outreach, a State Bar Trust Fund organization; instructor, New College of California Law School.)

[258] *Id.*, at p. 164. (Deeana Jang, staff attorney, Domestic Relations Unit of the San Francisco Neighborhood Legal Assistance Foundation.)

> Additional barriers arise in the court system from the lack of culturally sensitive staff and judges. These barriers are commonly felt by Asian women in the family law system. For example, the family court services staff rarely are bilingual, usually are not sensitive to cultural concerns. Counselors have large caseloads and are required to apply some pressure on the parties to compromise. Such goals and methods fail to accommodate the quiet, nonconfrontational style of dispute resolution and concerns about negative impacts on extended families. Asian women will often agree to compromises that are really unacceptable, in order to avoid confrontation and discussion of unpleasant personal matters in front of strangers. . . . If staff and judges were trained to handle matters with the culture of the litigants in mind, some of the barriers could be reduced. [259]

As disclosed by the public testimony there is a perception that cultural stereotyping is a common occurrence in family and juvenile courts and negatively affects the courts' decisions.

DISPARATE TREATMENT

The public hearings are replete with testimony on the disparate treatment of parties based on economic status. Speakers addressed the complex issues raised by the interplay of class, gender, and race as they affect court proceedings and the treatment of poor people of color. Reflecting the view of several witnesses, one speaker explained, "if one is denied fairness because he is poor, the groups that will be hurt the most by such a policy are minorities."[260]

[259] *Id.*, at pp. 164–65. (Rina Hirai, attorney; member, Board of Directors, Asian American Bar Association of the Greater Bay Area.)
[260] *Id.*, at p. 29. (Glenn Shellcross, private investigator; former member of the Kern County Grand Jury.)

One witness summed up the situation this way: "Some people say equity costs. I believe that. Equity costs, but today in America, the cost comes from the poor and the minorities who have more access to the mythology of equal justice under the law, "rather than the reality of equal justice under the law."[261] And when one factors gender into the equation, as another witness commented, "you cannot separate the bias that is experienced by women of color by whether it is by gender or race. They suffer a composite prejudice or bias based on the fact that they are women of color."[262]

DISPARATE TREATMENT IN FAMILY COURTS

Reports show that in family courts throughout California, an overwhelming majority of the litigants appear in propria persona (pro per), or without the assistance of counsel.[263] California Assemblywoman Sheila Kuehl noted that 85 percent of the pro pers in Los Angeles are women. While gender and poverty should not affect the family court's processing of divorces, one witness testified that a "divorce just languishes" [264] when pro pers cannot afford mandatory mediation fees.

In comments addressed to the advisory committee during her tenure as managing director of the California Women's Law Center in Los Angeles, Assemblywoman. Kuehl described the parties in pro per as "primarily women of color" who "were

[261]*Id.,* at p. 30. (Eric Vega, executive director, Sacramento Human Rights and Fair Housing Commission.)
[262]*Id.,* at p. 221. (Deeana Jang, staff attorney, Domestic Relations Unit of the San Francisco Neighborhood Legal Assistance Foundation.)
[263]See Judge James D. Garbolino's statistical surveys available through the Family Subcommittee.
[264]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra*, at p. 164. (Michael Bush, attorney.)

consistently treated with less respect and given insufficient information to carry out the roles that were assigned to them in representing themselves."[265]

In the California Gender Bias Report, the Subcommittee on Domestic Violence described many ways in which procedures and attitudes in the courts affected the lives of women, particularly women of color. The report found that both covert and overt racism contributed to the court system's lack of responsiveness, because judicial officers and other court personnel were unable to understand the unique circumstances of battered women in African American, Asian American, and Latino communities.[266] The report cited a number of witnesses describing biased judicial officers and mediators who negatively affected the family law cases of women of color. One speaker stated the problem this way: "Cultural barriers are apparent throughout the judicial system, but are particularly devastating in family law matters."[267] In addition, there was extensive testimony from women criticizing judges for accepting a "cultural defense" as a justification for violence against them. As Assemblywoman Kuehl testified:

> Asian American women could tell you exactly what it feels like to try to testify about violence and to be treated as though it's somehow either more acceptable or culturally acceptable for there to be much more domination of husbands over wives, et cetera. It's an attitude. . . .[268]

Poverty and racism were also cited as determining factors in deciding custody disputes:

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[265]*Id.*, at p. 224. (Sheila Kuehl, attorney; former managing director, California Women's Law Center; member, Board of Directors, Southern California Coalition on Battered Women; member, Judicial Council Advisory Committee on Gender Bias; currently serving in the California State Assembly.)
[266]*Id.*, at p. 225.
[267]*Id.*, at p. 163. (Rina Hirai, attorney; member, Board of Directors, Asian American Bar Association of the Greater Bay Area.)
[268]*Id.*, at pp. 222-23. (Sheila Kuehl, attorney; former managing director, California Women's Law Center; member, Board of Directors, Southern California Coalition on Battered Women; member, Judicial Council Advisory Committee on Gender Bias; currently serving in the California State Assembly.)

> Although mediators and evaluators are not supposed to consider the economic status of the parties in considering what's in the best interest of the children, some of the judgments they make about a party is directly related to their economic status. It's pretty well known and well documented that a woman's economic status will worsen after a divorce or separation. . . . Sometimes this might result in a mediator's judgment that this is not a good living situation for the child, where the father can offer the child, you know, its own room in this home which is the father's.[269]

One speaker noted, "I have seen a lot of insensitivity in their judgments of our clients who are women of color. And this insensitivity is, I think, a reflection of racial, gender, cultural, and class bias,". The same speaker reported that a mediator told her, "You better warn your client because Mexican men don't obey laws, so he's not going to obey the restraining order."[270] The speaker recommended that "We need to have more custody evaluators and mediators who are both bilingual and bicultural who can understand some of the family issues involving our clients."[271]

[269]*Id.*, at pp. 163–64. (Deeana Jang, staff attorney, Domestic Relations Unit of the San Francisco Neighborhood Legal Assistance Foundation.)
[270]*Id.*, at p. 227. (Deeana Jang.)
[271]*Id.*, at p. 163. (Deeana Jang.)

DISPARATE TREATMENT IN JUVENILE COURTS

Both statistical and anecdotal evidence shows that the California juvenile courts are more likely to detain poor children of color than their White counterparts in juvenile hall or place them out of the home.

During the public hearings, speakers gave 36 examples of bias in the juvenile justice system. They included observations of the disproportionate incarceration of children of color and complaints about policies and treatment of youth in custody at detention camps. Judge John Cruikshank from San Joaquin County observed:

> The problem I have is basically if we have . . . poor kids coming through there; we have drug problems, we're going to lock them up or put them in some program. Other kids that come through the program — don't come through the system — they had the advantage of some kind of hospital plan; and their parents put them in one of those hospitals . . . then turn the kid loose. As far as the public as a whole is concerned . . . it's publicized that the drug use and the drug dealers and child abusers and crack babies and drug babies are all minorities, because that would be public perception.[272]

A former probation counselor from the Alameda County Juvenile Corrections was struck by the following:

> [U]pon my arrival at the Probation Department and my first actual experience on entering Juvenile Hall — to see that 80 percent of the detainees were African American youth was truly a moving experience for me — that really brought me to tears.[273]

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[272] *Id.*, at p. 199. (Hon. John Cruikshank, Judge of the Superior Court, San Joaquin County Juvenile Division.)
[273] *Id.*, at p. 196. (Larry Taylor, former probation counselor, Alameda County Juvenile Institutions.)

Rose Ochi, then director of the Office of Criminal Justice Planning in Los Angeles, believes:

> [W]hile I'm not necessarily suggesting that purposeful, intentional bias is occurring, de facto, in terms of results, what we see is a growing disproportionate incarceration of minority youth . . . and this of course leads, in turn, to a life of crime and the bulging populations in our prison, far exceeding the populations [of minorities] in our state.[274]

Ms. Ochi further stated:

> We have, for example, a very neutral policy in juvenile courts where if an individual is a substance abuser and if they can have treatment, then they will not be detained. However, many minorities, poor people, do not have insurance policies. Community-based agencies, drug treatment services are not available. So you have this big bubble of minority youths who are detained whereas White youths are not detained.[275]

The director of the Fresno County Public Defender's Office noted starkly contrasting dispositions in juvenile court:

> [T]wo minors, one a minority and one White, appeared before the juvenile court referee for what was viewed as similar defiant conduct. The defiant conduct of the minority minor was characterized as belligerence, and the minor was sentenced to serve 30 days in custody in Juvenile Hall.
>
> On the other hand, the defiant conduct of the White minor was characterized as manifesting leadership qualities, and the minor was released to his parents.[276]

Juvenile court statistics support the testimony presented at the public hearings. In the juvenile justice system, children of color account for most incarcerated

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[274] *Ibid*. (Rose Ochi, director, Office of Criminal Justice Planning, Los Angeles.)
[275] *Id.*, at p. 199. (Rose Ochi.)
[276] *Id.*, at p. 200. (Jose Villarreal, director, Fresno County Public Defender's Office.)

offenders, even though White children account for roughly 75 percent of all children arrested. Some juvenile justice officials believe that White defendants, who tend to be wealthier and better educated, are often able to afford private treatment and avoid incarceration.[277]

The disparate treatment of children of color in the California juvenile justice system is representative of the situation nationally. According to the U.S. Office of Juvenile Justice and Delinquency Prevention, African American and Latino youth are overrepresented at every level of the juvenile justice system. Compared to their White peers who commit the same types of offenses, African American and Latino youth are more likely to be arrested, less likely to make bail, less likely to be released while awaiting trial, less likely to be represented, more likely to be convicted, and more likely to be sentenced to secure detention.[278]

While African American youth make up 7.9 percent of California's child population, they represented 31 percent of the delinquency cases processed in 1992. A comparison of detention rates for African American and White children reveals that of those children detained by the juvenile courts in 1992, 18 percent were White and 25 percent were African American.[279] A snapshot study of children detained in 1991 shows that children of color made up nearly two-thirds of those in public detention centers.[280] These statistics support the public perception that children of color are disproportionately incarcerated.

Although the public hearings did not include testimony on children and families who appear before the juvenile court as a result of abuse and neglect allegations,

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[277]J. Evans, "Institutional Racism Seen at Heart of Problem," *Daily Journal*, (Mar. 5, 1993).
[278]Office of Juvenile Justice and Delinquency Prevention, *Conditions of Confinement: A Study to Evaluate the Conditions in Juvenile Detention and Correctional Facilities, Executive Summary* (Apr. 1993).
[279]J. Butts. et al., *Juvenile Court Statistics 1992* (1995).
[280]U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Children in Custody Census 1982/83* and *1990/91* (1985, 1993).

juvenile court statistics support the perception that families of color receive disparate treatment.

An examination of California census data and information from the California Department of Social Services indicates a disproportionate number of African American children are in the foster-care system. This is exemplified by the two charts below. The first chart shows that although African American children are only 8 percent of all children in California, 5.4 percent are African American in the foster-care system. In contrast, White children comprise 46 percent of all the children in California, but only 0.9 percent are in the foster care system.

Race	Percentage of Children in California[281]	Percentage of Children in Foster Care[282]
African American	8	5.4
Latino	35	0.8
White	46	0.9

The chart below depicts the race/ethnicity of the total California foster-care population:

Race	Percentage of Total Foster-Care Population[283]
African American	37.5
Latino	24.3
White	35.7

In conclusion, the research and public testimony indicates that both the family and juvenile courts treat children and families of color differently from their White counterparts. Disparate treatment in family court may lead to custody decisions that are sometimes informed by bias and not in the best interests of the child. In

[281] *Id.*, 1990 Census projections.
[282] *Ibid.*
[283] State of California Department of Social Services, Statistical Services Bureau, foster-care information 1995. *Characteristics of Children in Foster Care Status as of End of Three Consecutive Years Including Termination and Entry Activity During Year.* (April 1996.)

juvenile court, similar biases may result in higher detention rates and out-of-home placement rates for children of color.

LACK OF REPRESENTATION

Poor people of color who are served by the courts suffer discrimination twice, according to numerous speakers at the public hearings. A member of the Kern County Human Relations Commission summarized this concern:

> Our community [Latino] still, oftentimes, feels overwhelmed and disenfranchised by the system that is structured in such a way that they don't feel that they can attempt to get their day in court. Somehow we need to restructure the system so at the local level, at the entry level, it is not so overwhelming and overpowering for those with limited income.[284]

One speaker, then chair of the Mexican-American Political Association in Kern County, described that children are given just five minutes before the juvenile court: " [A]nd so it's really a sad situation . . . and it's stocked by people who are White, they're not Hispanic, they're not Blacks, and they're just shoving our kids right through the system."[285]

Another speaker expressed her belief that most of the people who work in the Kern County juvenile justice system are White. When asked by a panel member of the whether or not she was aware of any people of color who have sought employment in the juvenile justice system, she answered, "[T]here are at least two that I know,

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[284] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 27. (Mary Helen Barro, president, American Hispanic-Owned Radio Association; co-owner, KAFY Spanish radio; member, Kern County Human Relations Commission.)

[285] Transcript of the Bakersfield, public hearing, p. 127 (March 6, 1992). (Raymond Solis, chair, local chapter of the Mexican American Political Association.)

but they were told that someone else out qualified them. The only Black that I know of offhand that works in the juvenile system are the guards."[286]

One former member of the Kern County Grand Jury lamented the lack of judges and attorneys of color. He and other African American leaders "went around to high schools and found out that the children in the high school level do not want to be lawyers and judges, the minority children, because they see no role models in the system."[287]

> The current system — characterized by an abundance of minorities in positions of vulnerability and a dearth of minorities in positions of responsibility — disadvantages the individual and society as a whole. Both fairness to the individual and economic self-interest of the state mandate the need for fundamental reforms to eradicate the stain of racism from the garments of justice.[288]

A member of the Asian American Bar Association of the Greater Bay Area board of directors discussed ways in which lack of diversity in the family court workforce affects access to the court by people of color:

> Two principal barriers exist. There is a major shortage of attorneys, Asian and non-Asian, bilingual and monolingual, who handle the types of problems many Asians have, such as . . . family law. . . . The second major problem is the lack of bilingual and culturally sensitive staff at all levels of the legal system.[289]

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[286]*Id.*, at p. 140. (Gwen Tate, resident of Kern County)
[287]*Id.*, at pp. 208–9. (Leon Francis, former member of Grand Jury)
[288]*Where the Injured Fly for Justice*, *supra*, at p. viii.
[289]*1991–92 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 25. (Rina Harai, attorney; member, Board of Directors, Asian American Bar Association of the Greater Bay Area.)

A representative of an organization called FACTS, a support group for women and children of divorce, addressed the advisory committee on issues related to gender bias in family court.

> The "good old boy" system amongst the lawyers and judges of Bakersfield, who are predominantly all men, tends to favor a man's position and requests before the interests of the child. The judges and lawyers are not trained to understand many of the major problems of divorce, such as battery, emotional, psychological, verbal and physical abuse, control issues, sexual abuse, financial abuse. These are crimes committed mainly by men against women and children, and it is difficult to find understanding and acknowledgment within the system that these issues need to be addressed and dealt with appropriately.[290]

The committee's 1993 public-opinion survey indicated that the public perceives "a lack of ethnic and racial diversity as well as unfair hiring and promotional practices within the state's court system."[291] Judicial and nonjudicial personnel tend to disagree with the proposition that there are too few minority court personnel, while attorneys tend to believe that minorities are, indeed, underrepresented.[292]

The study reported only a slight variation in perceived fairness toward minority groups across divisions of the court system. The fairness "ratings" for family court and juvenile court were slightly below probate, appeals, and the criminal courts, but higher than traffic and small claims.[293]

Many of the issues raised in the public hearings and the advisory committee's research concern problems that go beyond the advisory committee's scope. An in-

[290]*Id.*, at p. 168. (Sharon Fried-Smith, FACTS a support group for children and divorced women.)
[291]*Fairness in the California State Courts, supra,* at p. 4-78.
[292]*Id.*, at p. 5-9.
[293]*Id.*, at p. 5-6.

depth study of these family and juvenile court issues is in order. Based on the testimony and research conducted by the committee, the following conclusions and recommendations are submitted:

CONCLUSIONS

1. **There is no uniform method of tracking race-specific data on out-of-home placements and dispositions of juvenile court cases.**
2. **Socioeconomic status appears to heavily influence decisions regarding which children are placed out of home.**
3. **Socioeconomic status appears to heavily influence decisions regarding which children are detained and incarcerated.**
4. **The perception that family and juvenile personnel harbor stereotypical views about people of other cultures creates an atmosphere of fear and mistrust of the legal system.**
5. **The perception that there is a lack of diversity in the family court judiciary and a lack of attorneys of color in both juvenile and family courts, serves to alienate the minority client families from feeling invested in the court system.**

RECOMMENDATIONS

The advisory committee recommends that the Judicial Council transmit the following recommendations to the Family and Juvenile Law Advisory Committee and urge their consideration:

1. **Collect race-specific data related to the concerns raised in the public hearings, such as:**

    a. **the total number of children in out-of-home placement, identified by gender, race, and ethnicity.**

    b. **the total number of children who are detained (in custody), identified by gender, race, and ethnicity.**

    c. **the total number of children who are incarcerated, identified by gender, race, and ethnicity.**

    d. **the total number of litigants unrepresented by counsel, identified by gender, race, and ethnicity; and**

    e. **case outcomes comparing the results for those with counsel and pro pers.**

2. **Study placement and confinement options on a statewide basis, as part of the advisory committee's Judicial Review and Technical Assistance (JRTA) Project, and determine what options are in existence and what alternatives should be developed. (In addition, JRTA should survey the level and quality of services currently available.)**

3. **Study and develop programs similar to the one in Santa Clara County, in which the court assists pro pers in family law matters. (Such programs should be designed to enhance access to and fairness in the courts.)**

4. **Direct staff to draft a rule requiring mandatory, periodic training in cultural competency for judges, court staff, attorneys, and other key participants. (including training regarding the language and culture of different communities prevalent in the geographical area of each court.)**

* * *

C H A P T E R 1 0

SENTENCING

THE NATURE OF THE PROBLEM

A municipal court judge at the Los Angeles public hearing reported overhearing a conversation between two other judges at a judges' seminar:

> They said, well, they had decided that for Blacks, the sentencing option of jail and longer jail sentences was a more appropriate sentence than for Whites or for Asians, because everybody knew there wasn't any social stigma attached to Blacks going to jail. . . .[¶]Whites, of course, there would be — they would be embarrassed; there would be social stigma in their community if they had to go to jail. And also Asians.[294]

According to another speaker at that public hearing, "a number of" judges use the defendant's residency status in making sentencing decisions [that is, impose a heavier sentence on an undocumented alien].[295]

Few judges would admit that they apply race-based criteria in sentencing, but there is a persistent public concern that subtle racial and ethnic biases play a part in sentencing decisions. The reasons for these concerns are easy to identify. First and foremost, racial and ethnic minority groups — especially African Americans — are greatly overrepresented in prisons, jails, and probation and parole caseloads. Nationally, almost one in three (30.2 percent) African American men aged 20 to 29 is under criminal justice supervision on any given day. The

[294] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra,* at p. 87. (Hon. Veronica McBeth, municipal court judge, Los Angeles.)
[295] *Id.*, at p. 96. (Tina L. Rasnow, attorney; district governor, District Six, California Women Lawyers.)

comparable rate for Latinos is 12.3 percent, Whites 6.7 percent.[296] Almost 60 percent of prison populations are drawn from minority groups (mainly African Americans) though they constitute only about 20 percent of the U.S. population.[297] Although those are national statistics, the data for California are similar:

- In 1990, 33.2 percent of African American male Californians aged 20 to 29 were under the control of the criminal justice system.

- One of every 11 Latino males (9.4 percent) aged 20 to 29 was under the jurisdiction of the criminal justice system.

- Only one of every 19 White California males in that age group (5.4 percent) was in the criminal justice system.[298]

Whites constitute less than half of the prison population, but victimization surveys indicate that Whites commit 60 percent of California rapes, robberies, and assaults.[299]

One current explanation for much of this disparity is the uneven application of the nation's and the state's drug laws. For example, at the national level, arrest policies beginning in the 1980s have disproportionately affected African Americans and other minorities.[300]

> Racial disproportion has worsened markedly in recent years . . . . [¶] The recent worsening is the result of deliberate policy

[296]*Young Black Americans and the Criminal Justice System, supra,* Table 1 at p. 3.
[297] M. Lopez, *Disparate Sentencing in California* (review of the literature), a report prepared for this committee, p. 4. (1995)
[298]*Young African American Men and the Criminal Justice System in California, supra,* at p. 2.
[299]*Disparate Sentencing in California, supra,* note 2 at p. 5. "Victimization surveys" are conducted by the federal government as a way to cross-check the FBI-compiled crime statistics. The FBI statistics are compilations of local police department summaries of reported crimes. Victimization surveys seek, by sampling the entire population, to estimate the totality of crime, whether or not reported.
[300]*Young Black Americans and the Criminal Justice System, supra,* at p. 9. note 1.

> choices of federal and state officials to "toughen" sentencing, in an era of falling and stable crime rates, and to launch a "War on Drugs" during a period when all general population surveys showed declining levels of drug use, beginning in the early 1980s. . . . [¶]At every level of the criminal justice system, empirical analyses demonstrate that increasing black disproportion has resulted from the War on Drugs — in juvenile institutions . . . in jails . . . and in state . . . and federal . . . prisons.[301]

Much the same explanation is given for increasing racial disparity in sentencing by federal courts.[302]

But speakers at the committee's public hearings believe that sentencing disparity goes far beyond the possible impact of the drug laws. First, there is the impact of poverty, which is so frequently a companion of minority status. A deputy public defender noted that in misdemeanor cases, where fines are used and where there is a fee for going into a work-service program, the fees and fines are prohibitive for a low-income defendant, who usually goes to jail as a result.[303]

Although California's public defenders are widely regarded in the legal profession as affording skilled and vigorous representation, minority communities that must depend on them suspect that because of high volume, they are simply interested in disposing of cases with minimal effort. The suspicion against public defenders may be aggravated by the prevalence of plea bargaining and the resulting pressure to plead guilty. Several comments to that effect were made at the public hearings. For example, "[Plea bargaining] is used to process Black people through the court

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[301]M. Tonry, "Racial Disproportion in U.S. Prisons," *British Journal of Criminology* 34 (1994 Special Issue): 97, 110.
[302]D. McDonald and K. Carlson, *Sentencing in the Federal Courts: Does Race Matter?* U.S. Deptartment of Justice Bureau of Justice Statistics, December 1993, NCJ-145332.
[303]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts*, *supra*, at p. 27. (Cynthia Bolden, San Diego deputy public defender.)

like cattle."[304] Further, the public defender will "do the least he possibly can" and urge the defendant to plead guilty. One speaker indicated that this is the path most African Americans are forced to take.[305]

POLICE PRACTICES AND PROSECUTORIAL DISCRETION

The hearings disclosed a widespread belief that police conduct and prosecutorial discretion are perceived as prejudiced against minorities, and forcing them into the criminal justice system with the most serious charges. For example:

> Last month, in my office there was an embezzler who was Caucasian, who was released from jail without bail. . . . The judge granted probation and community service. [¶] When I testified against two Latino looters, it wasn't the same. Both were still in jail, unable to raise bail. . . . ¶ The looters who took three six-packs of beer are jailed and branded felons.[306]

A deputy public defender, a legal services attorney, and a Native American legal services attorney complained that there is disparity in charging Whites compared to African Americans and Latinos. For example, in DUI (driving under the influence) cases, Whites often are not charged or are permitted to settle outside of court.[307] Some members of the Shasta County bar held the view that the number of African Americans charged and prosecuted criminally appears to be disproportionate to their percentage in the general population.[308] An attorney for California Indian Legal Services observed

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[304]*Id*., at p. 128. (Ted Patrick, resident, San Diego.)
[305]*Id*., at p. 31. (Sherman Tyler, member, California State Commission on Aging.)
[306]*Id*., at p. 84. (Raul Granados, attorney; president, Mexican-American Bar Association.)
[307]*Id*., at p. 120. (Cynthia Bolden, San Diego deputy public defender.)
[308]*Ibid*. (Cindy Babby-Smith, attorney, Legal Services of Northern California.)

> Cases involving Indian victims are poorly handled [by the prosecution]. . . . In contrast, cases involving Indians as defendants can be expected to result in vigorous investigation, prosecution, and sentencing.[309]

A probation officer claimed that diversion programs are handled in a way that is preferential to Whites. "[M]ore often than not, I see European Americans getting that option [diversion]. And Blacks get charged, period. And they face jail, or what have you."[310] Although not technically sentencing, diversion or a denial of diversion is even more significant because successful diversion can avoid a record of a conviction.

The advisory committee did not undertake a study on prosecutorial discretion; however, a study conducted by University of Washington sociology professors Robert D. Crutchfield, Ph.D., and Joseph G. Weis, Ph.D., for the Washington State Minority and Justice Commission[311]concluded that the race and ethnicity of the offender appears to affect charging decisions. Although the study revealed that the most important factors considered in the prosecution of felony cases in King County are legally relevant, there are instances in which race and ethnicity appear to play a role.

In King County, among all the charges filed in drug-related referrals, crimes against persons, and property-related referrals, after adjustments for characteristics other than race, White offenders were the least likely to be charged (60 percent compared to 65 percent for African Americans.)

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[309]*Ibid*. (Mary Risling, staff attorney, California Indian Legal Services [CILS], Eureka Office.)
[310]*Id*., at p. 119. (Stan White, San Joaquin County Probation Department.)
[311]Washington State Minority and Justice Commission, *Racial and Ethnic Disparities in the Prosecution of Felony Cases in King County*, p. 4. (1995)

The study also suggests that race has some effect on bail decisions, particularly where African Americans are concerned. Further, "there were significant differences in the amount of confinement recommended for Black offenders and White offenders, and deputy prosecutors were less likely to recommend an alternative sentence conversion for Black offenders."[312]

It is noteworthy that these differences occurred despite the adoption of standards and procedures by the district attorney's office designed to guarantee that cases "are handled in a systematic way based on legally relevant factors."[313] The study is careful to point out that the differences are not necessarily due to individuals making biased decisions, but rather may be the result of laws and policies that affect some segments of the population differently.[314]

Some substantial anecdotal evidence, previously cited, indicates that police in many areas harass minorities — for example, by stopping and searching them if they are in a generally White area or if a crime has been committed by a person of the same ethnic group. The city of Torrance, California, provides an example. In two federal civil rights lawsuits, one filed by Latinos and another filed by one White and two African American teenagers, plaintiffs alleged that they were pulled over while driving in Torrance and subjected to abusive treatment because of their races. The Hispanic plaintiffs alleged that they were told to leave town and were then escorted to the San Diego freeway. They were not cited. The two African American and the White were pulled over, admittedly because the police were curious that the boys, all students at the same school, were together. The three received citations that were later dismissed.[315]

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[312]*Id*., at pp. 4–5.
[313]*Ibid*.
[314]*Ibid*.
[315]G. Krikorian, and A. Slater, *Some Echo Fuhrman's View of Torrance, Los Angeles Times*, part B, pp. 3-5. (Aug. 31, 1995).

The Torrance police chief was quoted in the *Los Angeles Times* as saying that "[W]e [the police] provide this city with assertive law enforcement . . . [W]e do concentrate on looking for elements that have potential for being a problem."[316] According to the *Times*, the Justice Department was thought to be investigating Torrance police practices, such as stopping minorities with little cause. Among other stories cited, the committee received additional confidential testimony that an African American police officer in plain clothes was subjected to such an unprovoked stop by White police officers who did not know him. The White officers did not want to believe he was a fellow officer.

Speakers at the hearings made at least 46 comments about minority interaction with law-enforcement officers. Thirty-four of the objections to police policies and methods included the assertion that police observe a double standard in response to minority calls for assistance and arrest of minorities as compared to Whites. Three speakers noted their view that, as a consequence, a disproportionately high percentage of the non-White population is in prison.[317] Suspected overcharging of minorities (or undercharging of Whites) by prosecutors was often cited as contributing to the disproportionate impact of the criminal law on minorities.

[316] *Id.*, at p. 5.
[317] *Id.*, at p. 7.

OPINION SURVEYS

The opinion that minorities are discriminated against at various stages in the criminal law process, including sentencing, was frequently expressed at the hearings and is widely held. In the survey commissioned by this committee, respondents said that in a case involving a minority defendant and a White victim, the sentence will be more harsh than if there were a White defendant; and if the case involves a White defendant and a minority victim, the sentence will be lighter than if there were a White victim. Moreover, all racial and ethnic groups studied reached consensus on this issue, with minority-group members reflecting these opinions slightly more strongly than Whites and with African Americans holding this view most strongly.[318]

Even many professionals in California criminal justice system believe there is racial and ethnic bias: Of the 160 California judges, 156 district attorneys, and 172 public defenders who responded to a survey by the *San Jose Mercury News*:

- 20 percent of judges, 21 percent of district attorneys, and 84 percent of public defenders disagree with the proposition that race/ethnicity has no effect on conviction.

- 14 percent of judges, 11 percent of district attorneys, and 76 percent of public defenders disagree with the proposition that race/ethnicity has no effect on sentence length.

- 16 percent of judges, 14 percent of district attorneys, and 77 percent of public defenders disagree with the proposition that race/ethnicity has no effect on the type of sentence imposed.

[318] *Fairness in the California State Courts, supra,* at pp. 4-46 through 4-49.

- 16 percent of judges, 9 percent of district attorneys, and 68 percent of public defenders disagree with the proposition that race/ethnicity has no effect on a defendant's getting a more favorable outcome through plea bargaining.

- 34 percent of judges, 32 percent of district attorneys, and 89 percent of public defenders disagree with the notion that racial bias is not at all evident in the plea-bargaining process.[319]

IS SENTENCING EVENHANDED?

Professor Michael Tonry, Sonosky Professor of Law and Public Policy at the University of Minnesota, cites authorities that lead him to conclude that apart from the disparate impact of the drug laws,

> [m]uch, not all, black over-representation in American prisons over the past 20 years appears to be associated with disproportionate participation by blacks in the kinds of crimes — "imprisonable crimes" like homicide, robbery, aggravated assault, rape — that commonly result in prison sentences.[320]

But there is considerable evidence that the criminal justice system does not treat Whites and minority group members evenhandedly. In addition to the disproportion revealed by victimization surveys (footnote 299), a study by the *San Jose Mercury News* concluded:

> At virtually every stage of pretrial negotiations, Whites are more successful than non-Whites. They do better at getting charges dropped. They're better able to get charges reduced to lesser offenses. They draw more lenient sentences and go

[319]"California Criminal Justice Survey," *supra*. Survey results also published in the *San Jose Mercury News*, Dec. 8, 1991.
[320]"Racial Disproportion in U.S. Prisons," *supra*, at p. 108.

> to prison less often. They get more chances to wipe their records clean.[321]

For example, in San Francisco, 90 percent of those arrested in the disturbances following the first Rodney King case verdict were White, but 90 percent of those charged with felonies were African American.[322]

A former associate director of the Corporation for American Indian Development said, "[W]e found that sentencing [of Indians] at the criminal level resulted in sentences that were, on the average, about 40 percent longer than for the entire non-Indian population. . . ."[323] Finally, there is the belief — statistically supported, with respect to the death penalty — that "the system" has much more regard for a White victim than for an African American victim, and that the person who commits a crime against an African American will be lightly punished, if at all.

A 1990 report to the U.S. Senate and House Committees on the Judiciary from the Government Accounting Office (GAO) identified a strong pattern of discrimination based on the race of the victim in murder cases. Based on a review of the relevant literature that yielded 28 studies containing data from homicide cases occurring between 1972 and 1988, the GAO found that in 82 percent of the studies the victim's race was found to influence the defendant's chances of (1) being charged with a capital offense or (2) receiving the death penalty.[324]

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[321]"California Criminal Justice Survey," *supra*.
[322]H. Hewitt, K. Kubota, and V. Schiraldi, *Race and Incarceration in San Francisco: Localizing Apartheid* (Center on Juvenile and Criminal Justice, Oct. 1992).
[323]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra,* at p. 124. (Robert Baker, former associate director, Corporation for American Indian Development)
[324]*Disparate Sentencing in California, supra,* at pp. 11–12.

An earlier landmark study, published in 1983 by Professors David Baldus, Pulaski and Woodworth using Georgia data from 1973 to 1979, found that defendants convicted of murder were 4.3 times more likely to receive a death sentence if the victim was White rather than African American.[325] Other studies covering that period produced findings consistent with the Baldus study. For example, Georgia defendants who killed White victims were almost ten times more likely to receive a death sentence, in Florida eight times more likely, and in Illinois six times more likely, according to a study conducted by Samuel Gross and Robert Mauro in 1989.[326]

Speakers at the Los Angeles public hearings, citing a case arising from the killing of an African American teenager, said that one of the most aggravating aspects about its handling was that the judge examined correction facilities and found none suitable for the defendant. "The issue was always double standards. Blacks who shoot and kill other people are sent to jail, without exception. They are not given probation. . . . [¶] No one in the Black community has ever heard of such a thing [giving a defendant probation because of failure to find a suitable correction facility]. There are always jails suitable for them."[327]

A great deal of testimony indicated a belief that defendants are treated very differently depending on the race of the victim. Specifically, witnesses said that the most serious punishment (for example, the death penalty in a murder case) is

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[325]*Id*., at p. 12; D. C. Baldus, C. Pulaski, and G. Woodworth, "Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience, *Journal of Criminal Law and Criminology* 74 (1983): 661, quoted in D. C. Baldus, G. Woodworth and C. Pulaski, *Equal Justice and the Death Penalty: A Legal and Empirical Analysis* (Northeastern University Press, 1989).

[326]S. R. Gross and R. Mauro, "Patterns of Death: An Analysis of Racial Disparities in Homicide Victimization," *Stanford Law Review* 37 (1984): 27, quoted in *Equal Justice and the Death Penalty, supra*.

[327]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra*, at p. 99. (Dennis Schatzman, reporter and editorial writer, *LA Sentinel*; former district court justice, Commonwealth of Pennsylvania.)

sought and imposed only when the victim is White; and that when the victim is African American or a member of another minority group, the prosecutors undercharge the crime and judges sentence with excessive leniency. Speakers believe that these practices prevent African American victims and their families from getting redress or, in some situations, protection. For example:

> None of the victims of capital defendants prosecuted in San Diego County and now on death row was African American.[328]

> If you commit a "Black-on-White" crime, you know they are going to see you punished.[329]

> [T]here is a perception[that] . . . crimes that involve Blacks against Blacks are not looked on as seriously as crimes where there is a mixture of ethnic groups involved.[330]

OTHER RESEARCH

In response to the opinion, both lay and professional, that race/ethnicity is not a neutral factor in sentencing and the disproportionately large segment of the prison population composed of minority group-members — a disproportion preceding the current war on drugs which has exacerbated the situation — numerous scholarly studies have sought to determine, statistically, whether sentencing is biased. The results of these studies have been summarized for the committee in a survey of the literature.[331]

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[328] *Id*., at p. 83. (Elizabeth Missakiam, attorney; Ph.D., experimental psychology.)
[329] *Id*., at p. 84. (Isaac Lowe, president, NAACP, Redding Branch.)
[330] *Ibid*. (Ralph Johnson, investment broker/banker.)
[331] *Disparate Sentencing in California, supra*, at note 2. In addition to the author's summaries of the studies, the paper contains a useful bibliography.

Whether national in scope or limited to California, these studies in their totality present a contradictory picture, with some authors finding evidence of bias and others finding none. Some reviewers, who collected and analyzed prior studies have criticized some of those researchers who found bias for failing to statistically account for prior record. Other studies in which bias was found apparently are immune to that criticism.[332] Even the same research scholar, using the most sophisticated statistical methods, has reached contradictory results in different studies. Using data primarily from the California Department of Justice's offender-based transaction statistics for 1980 arrests, the RAND Corporation concluded:

> Controlling for the other major factors that might influence sentencing and time served, we found that minorities receive harsher sentences and serve longer in prison . . . other things being equal. . . . Plea bargaining resolves a higher percentage of felony cases involving White defendants, whereas jury trials resolve a higher percentage of cases involving minorities. Although plea bargaining ensures conviction, it also virtually guarantees a reduced charge or a lighter sentence, or both; conviction by a jury usually results in more severe sentencing.[333]
>
> When all other factors (available to us) were controlled, black defendants had a statistically significant higher chance of going to prison than Whites or Hispanics.[334]

In trying to explain the greater likelihood that African American defendants will get prison sentences instead of probation, the report notes the influence of presentence reports:

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[332] *Id.*, at pp. 14–15.
[333] J. Petersilia, *Racial Disparities in the Criminal Justice System* (RAND, June 1983, R-2974-NIC), p. ix.
[334] *Id.*, at p. 30.

> The influence of the PSR [presentence report] may help explain the racial differences in sentencing and time served: Minorities often do not show up well in PSR indicators of recidivism, such as family instability and unemployment. As a result, probation officers, judges and parole boards are often impelled to identify minorities as higher risks.[335]

Using a different set of 1980 California sentencing data, however, RAND subsequently concluded that race was not a significant factor in the "in-out (prison versus probation) decision although 44 percent of the Blacks, 37 percent of the Latinos, but only 33 percent of the Whites were sent to prison [after conviction]";[336] and race did not appear to be a factor in length-of-sentence decisions. This study concluded that implementation of California's determinate sentencing act probably contributed to racial equality in sentence length.[337] No explanation was offered for the changed conclusion concerning racial disparity in the rate of probation grants.

The determinate sentencing law certainly would have minimized disparity in length-of-sentence decisions, since, as the law was originally enacted, the range between the longest and shortest of the three possible terms for most crimes did not exceed two years.[338] But the determinate sentencing law did not address the decision of whether to grant probation, and should not, theoretically, have affected it. The law did mandate Judicial Council rules providing criteria for the decision to grant or deny probation;[339] but the rules adopted did no more than restate the traditional criteria for probation and did not impose any method for determining

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[335]*Id.*, at p. xxvi.
[336]S. Klein, J. Petersilia, and S. Turner, "Race and Imprisonment Decisions in California," *Science* 247 (Feb. 16, 1990): 812, 814.
[337]*Id.*, at p. 816.
[338]Pen. Code, § 1170 as enacted in 1976, operative July 1, 1979.
[339]Pen. Code, § 1170.3.

conditions under which it should be granted or denied.[340] The RAND study does acknowledge that race may influence earlier steps in the criminal justice process.

CONCLUSIONS

1. **Minority groups, African Americans in particular, make up the majority of those under the control of the criminal justice system (that is, in prison, in jail, on probation, or on parole).**

2. **There is evidence that some police departments routinely stop and search members of a minority group if a member of that group has been reported as having committed a crime; and that some police departments or individual officers have a practice of stopping and searching minority-group members seen in predominantly White neighborhoods.**

3. **To the extent that minority-group status is accompanied by poverty, members of these groups are at a disadvantage in terms of release on bail and ability to employ private counsel, both of which appear to correlate with case outcome and severity of sentence.**

4. **Many public defenders believe that race and ethnicity affect the outcome of plea bargaining, the probability of conviction, and the length and type of sentence.**

5. **The percentage of Whites in prison is significantly smaller than the percentage of violent crimes committed by Whites.**

6. **The percentage of the prison population composed of minority-group members is significantly greater than the numbers of assailants described as minority-group members reported by the victims of violent crime.**

7. **It is likely that the enforcement of the drug laws has unequally affected minority-group members, particularly African Americans.**

[340]See Cal. Rules of Court, rule 401 et seq. for the sentencing rules generally. The rules concerning probation are currently numbered 411–414.

8. **Some research reveals that Whites are more successful at having charges dropped or reduced or receiving more lenient sentences.**

9. **The race of the victim appears to affect sentencing, with crimes committed against Whites resulting in longer sentences than similar crimes committed against minority-group members.**

10. **Generally, the sentencing studies lead to contradictory conclusions. For this reason, further research is required to fully understand the impact (if any) of minority-group status at each step in the criminal justice process, including arrest, charging, bail, appointment of counsel, plea bargaining, and sentencing.**

RECOMMENDATIONS

The advisory committee recommends that:

1. **The Judicial Council commission a detailed study of the impact (if any) of minority-group status at each step in the criminal justice process including (1) the decision to arrest, (2) charges levied by the prosecutor, (3) the decision to release on bail or on one's own recognizance, (4) appointment or retention of counsel, (5) plea bargaining, and (6) sentencing.**

    a. **The study should be conducted in a variety of California jurisdictions to reconcile the conflicting evidence and resolve the question of whether there is systemic bias.**

* * *

CHAPTER 11

THE JURY SYSTEM

TRIAL JURY

The function of a trial jury in a criminal case is widely understood: to determine whether the defendant is guilty, based on the evidence presented and application of law as instructed by the trial judge. In capital cases, the jury also recommends the punishment (death or life in prison) upon finding the defendant guilty. The jury's verdict has greater finality in criminal than in civil cases: the trial judge or an appellate court cannot overrule a jury acquittal, although a conviction is reviewable. In a civil case, all decisions are subject to judicial review. Even when it is not decisive, however, a jury verdict is given great weight and is difficult to overturn on appeal. For these reasons, the integrity of the jury system a matter of great importance.

Even though the overwhelming majority of both civil and criminal cases are resolved without a trial,[341] the jury trial retains a twofold symbolic importance in addition to its functional importance, even for those not directly involved in litigation. First, both the state and federal constitutions guarantee the right to a jury trial;[342] and any failure to take this right seriously can be perceived as a failure to respect the fundamental principles of the country. Second, jury trial is the one

[341]By guilty plea in criminal cases and by negotiated settlement in civil cases. California data appear annually in the *Judicial Council Annual Report to the Governor and the Legislature*.
[342]Cal. Const., art. I, § 16; U.S. Const., Amend. VI (criminal) and Amend. VII (civil).

function of the legal system that embodies democratic principles of citizen participation. Again, if the jury trial — and especially the need for a representative jury — is not taken seriously, for citizens may reasonably believe that the justice system merely gives lip service to these democratic principles.

The rules governing jury composition are structured to make them representative and unbiased; yet substantial numbers of minorities are convinced that their groups are not represented fairly on trial juries. Many are further convinced that a jury on which their group is unrepresented is incapable of judging their cases fairly. Some believe that White juries are likely to be biased against minority litigants. For example, an African American speaker felt that he had to meet an abnormally high burden of proof to demonstrate his credibility in a civil case he had brought against a White defendant and in which the jury consisted of 10 Whites, 2 Latinos, and no Blacks. He did not feel that he could be treated fairly in a case against a White defendant by a jury with no African Americans on it.[343]

In the same vein, a Massachusetts commission recently said:

> A jury of diverse minority and ethnic composition is more likely to make decisions that are free of bias and prejudice because the biases and prejudices of individual jurors will be challenged and moderated by their peers.
>
> There is also a perception that racial and ethnic biases among jurors often have an adverse effect on deliberations of guilt or innocence in criminal cases and on the calculation of damages in civil cases. A significant percentage of minority judges believe that jurors respond more favorably to White judges than to minority judges.[344]

[343] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra*, at p. 82. (Ralph Johnson, investment broker/banker.)
[344] *Equal Justice: Eliminating the Barriers, supra*, at pp. 20–21.

The problem of nonrepresentative juries was a repeated theme at the committee's public hearings. For example, one speaker recounted a case involving a seriously injured plaintiff that was transferred for trial from downtown Los Angeles to Glendale. When the case was coming up for trial in Glendale, the judge urged settlement because "the juries here are not going to be sympathetic to your [African American] client," acknowledging that the situation would be different in central Los Angeles, where there are more African American jurors.[345]

In another example, an alternate juror who talked to members of the jury (a hung jury), learned that at least one "just could not see a White [defendant] going to jail because he had done anything to an African American [victim]."[346] Jurors in a civil case reportedly gave less credibility to the psychologist-expert witness because she was Asian American and female, rather than White and male.[347]

Finally, as one Oakland resident stated:

> There should be some way to guarantee that a Black is on a jury when another — when Black people are involved . . . . I'd rather have that one Black person on a jury trying to make a decision about my life, than I would trusting my life to the decision of people that don't have no — that are not Black, plain and simple as that.[348]

Numerous comments indicated that trial juries are consistently unrepresentative. Examples:

> As far as I know, I have never seen an Indian sit on a jury. I have seen Mexicans on juries, but never an Indian. [¶]But every time like a lower-class person or dark race came into

[345]*Id.*, at p. 95. (Belinda D. Smith, attorney; president, California Association of Black Lawyers.)
[346]*Id.*, at p. 183. (Hilda Contu Montoy, attorney, Fresno City Attorney's Office.)
[347]*Ibid.* (Gen Fujioka, attorney, Asian Law Caucus.)
[348]*Id.*, at p. 177. (Fred Smith, resident, Oakland.)

> the courtroom, they turned them down and got rid of them on the jury.[349]
>
> McCoy was sentenced to three to seven years in prison. There were no Blacks on his jury. . . . It seems like that at least one of his peers would have been a minority.[350]
>
> The jury was all White, and one Hispanic — and the two or three Blacks that were eligible for the jury were routinely excluded. . . . It happens routinely here in Stockton. We [Blacks] cannot be trusted, I guess, to dispense justice to our own, is what it says to me.[351]
>
> [I]n Fresno County . . . [the jury pool] is clearly unrepresentative.[352]

According to the last speaker, the jury pool is unrepresentative in part because jury summonses are not enforced, and in part because the Department of Motor Vehicles list excludes those with suspended driver's licenses as well as those without licenses, so that in some rural courts, where the population consists of more than 70 percent minorities, a jury with even one or two minorities is unusual.[353]

Several speakers at the public hearings claimed that changes of venue, or intracounty transfers between court districts, frequently result in a different jury composition than would be drawn at the original venue. The implication is that case transfers may be intended to affect case outcomes. For example:

> Many of the cases with African American and Latino defendants that originate in Compton, which is 50 percent African American and 44 percent Latino, are moved to predominantly White districts such as Pomona,

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[349]*Id*., at p. 175. (Melissa Winn, resident, Redding.)
[350]*Ibid.* (Nancy Carol Oldham, resident, Bakersfield.)
[351]*Id*., at p. 177. (Todd Summers, tax accountant; president, NAACP, Stockton.)
[352]*Ibid*. (Jack Daniels, deputy public defender, Fresno.)
[353]*Id*., at p. 179. (Jack Daniels.)

> Ventura, resulting in a different jury composition, and further resulting in unusually high sentences.[354]

The transfer of the Rodney King beating case to a Ventura County court district with few African American residents was repeatedly cited in the hearings as a way in which the court system is used to avoid punishing defendants when the victim is African American.

Speakers at the hearings assigned various other reasons for unrepresentative juries, such as economics. People with lower incomes cannot afford to serve on juries and lose income from work.[355] Additionally, some judges apply the requirement of proficiency in English so rigorously that they exclude qualified people with accents who are reasonably proficient in English.[356]

Whites and minorities tend to have different perceptions of how the jury system operates. For example, Whites tend to disagree with the statement "Minorities seldom face a jury containing members of their own racial or ethnic group." Minorities tended to agree with the same statement.[357] The testimony at the hearings point to the accuracy of the statements. It would almost certainly be true if the statement were modified to read, "Minorities seldom face a jury containing a proportionate number of members of their own racial or ethnic group." Both African Americans and Native Americans tended to disagree with the statement "Juries usually reflect the racial and ethnic mix of the community." In contrast, majorities of Whites, Asians, and Latinos agreed with that statement.[358]

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[354]*Id*., at p. 104. (Patricia Moore, councilwoman, Los Angeles.)
[355]*Id*., at p. 178. (Michael Yamaki, attorney; past president, Japanese American Bar Association). To the same effect, *id*. at p. 183 (Hon. Michael Goldman, Judge of the Hoopa Valley Trial Court).
[356]*Id*., at p. 182. (Larry Lowe, attorney, San Francisco.)
[357]*Fairness in the California State Courts*, *supra*, at pp. 4-50 and 4-51, figures 4-57, 4-58, 4-59 (results of telephone survey).
[358]*Id*., at p. 4-53.

Trial juries are required, largely by case law, to be drawn from a pool from which no significant population group has been systematically excluded. One of the committee's background papers discussed the precise conditions in detail.[359] While there is no requirement that a given trial jury mirror the ethnic composition of the population, state and federal decisions prohibit systematic exclusion of an ethnic group from the jury, for instance, by the exercise of peremptory challenges.[360]

Nevertheless, speakers at the committee's public hearings — lawyers as well as laypeople — said they believed juries are frequently not representative, and in some instances implied that this was deliberate. A speaker in Redding stated: "I have never seen an Indian sit on a jury." Other witnesses in Redding commented that Blacks, Native Americans, and Asians are almost never part of the jury pool.[361]

A review of the research literature supports the concerns expressed at the public hearings. For example, The presence of minority-group members on juries compared to all-White juries makes a difference. When jury selection procedures in Baltimore resulted in more Blacks on juries, the conviction rate for Black defendants changed; similar changes were found when more Blacks and Latinos were selected for juries in Los Angeles.[362] The advisory committee's case study of the outcomes of jury trials and its juror survey have not been completed as of this writing. The results of that study will be submitted to the Judicial Council's Access and Fairness Advisory Committee in the near future.

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[359]I. Maya, *Impact Study of Petit Jury Composition Upon Ethnic Minorities: A Review of the Literature* (1995).
[360]*People v. Wheeler* (1978) 22 Cal. 3d 258 and *Batson v. Kentucky* (1986) 476 U.S. 79 are the primary cases.
[361]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra,* at pp. 174–77. (Melissa Winn, resident, Redding.)
[362] *Impact Study of Petit Jury Composition Upon Ethnic Minorities, supra,* note 18 at p. 6.

OTHER JURY EXCLUSIONS

Additional review of the literature indicates that even in the absence of deliberate discrimination, juries are frequently nonrepresentative for systemic reasons. As noted earlier, economic circumstances can play a part in this exclusion, to the extent that minority-group members have below-average incomes and therefore are less likely to serve on juries than middle-class Whites. Instead they are likely to be excused for hardship (financial, need for child care, and so forth) upon request.

Among the few grounds for ineligibility for jury service are lack of U.S. citizenship and insufficient knowledge of English.[363] These two factors exclude an estimated 37.5 percent of the Latino population. Although voter lists and Department of Motor Vehicles lists, combined, are deemed adequate for juror selection, some ethnic minorities may not appear on either list. Additional lists, such as utility lists, may be employed but are much less commonly used because they may include people who neither vote nor drive.[364]

Because different ethnic groups tend to be concentrated in different areas of a county, simple random selection from an alphabetical list may not be as effective in promoting representation as more sophisticated cluster sampling. Cluster sampling selects geographic areas (such as census tracts) randomly, and then randomly selects residents within each of the selected geographic areas.[365]

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[363]Code Civ. Proc., § 203(a)(1) and (a)(6).
[364]Code Civ. Proc., § 197.
[365]This jury selection method is described in greater detail in *Impact Study of Petit Jury Composition Upon Ethnic Minorities*, *supra*, note 18 at pp. 28–29, based on Fukurai, Butler, and Krooth, "Cross-Sectional Jury Representation or Systematic Jury Representation? Simple Random and Cluster Sampling Strategies in Jury Selection," *Journal of Criminal Justice* 19 (1991): 31.

Further, to the extent that most minority-group members rent, rather than own, they may move more often than middle-class residents, so more addresses become obsolete.

In part to prevent hardship, some courts do not call jurors living more than a specified distance from the court. For example, Los Angeles calls jurors only from within a 20-mile radius. If minority populations are concentrated at a greater distance, they are omitted from jury service. In Los Angeles and perhaps some other counties, concentrations of minority populations may fall within the stated radii of several court districts and be neglected by all.[366] Inyo County, which is a much smaller and more rural county, takes the opposite approach and pays the lodging expenses of jurors summoned from remote areas.[367]

GRAND JURY

Grand juries have two different roles: (1) a criminal law function, in which they investigate crimes (especially felonies) and formally charge alleged criminals, and (2) a civil law function, in which they investigate the operations of local government and public officials. The civil investigative power of California grand juries is extremely broad. For example, the Attorney General recently held that they have the power to investigate the operations of local school districts,[368] and a Contra Costa grand jury recently returned an "accusation" against an elected official that may result in her ouster from office.[369]

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[366]*Id.*, at p. 20.
[367]*Id.*, at p. 14.
[368]78 Ops.Cal.Atty.Gen. 290, No. 95-113 (Sept. 13, 1995).
[369]See Gov. Code, §§ 3060–3074.

Both in its civil and criminal law functions, a grand jury has great impact on people's lives. The impact on an individual of a formal charge of a felony is obvious; however, the potential impact of a civil investigation (or the lack of one) should not be underestimated. On the one hand, the power to accuse government officials of mismanagement or worse can have serious personal consequences, including the destruction of reputation and loss of public office. On the other hand, a grand jury's failure to investigate allegations that a government agency is unresponsive or biased can perpetuate, for example, official insensitivity to the needs of minority residents.

Furthermore, lack of representation of minorities on grand juries may adversely affect the fairness of either the civil or criminal process. In the civil process, for example, a grand jury's lack of sensitivity to minority issues may lead it to ignore bias on the part of local government agencies. In performing its criminal function, a grand jury that lacks minority representation is unfamiliar with the issues related to police-minority relations and may give disproportionate weight to "official" witnesses.

Grand jurors are selected from lists of citizens personally designated by superior court judges. There is no requirement that they be representative of the population and no requirement of racial or ethnic balance. There is a requirement that the grand jury list must be kept separate from the trial jury list. (Pen. Code, § 889.)

Although relatively few speakers talked about grand juries during the public hearings, those who did describe their counties' grand juries as unrepresentative. For example,

> The grand jury is perceived to be a joke in Kern County.
> They have a dismal record of reaching out to the minority

> community. [¶]I would like to see . . . an aggressive effort made to recruit women and minorities.[370]

A former member of the Kern County grand jury stated:

> The present grand jury is 95 percent White, 68 percent male, 74 percent Republican. The average age is 65.[371]

A superior court judge described the selection process for grand jurors, concluding: "So, by and large what you end up with is a fairly wealthy group."[372] An effect of this disproportional slant toward upper-income residents is reflected in the statement of a hearing witness who had served as a grand juror and was unable to persuade his colleagues to investigate the alleged abuse of Latinos in local detention facilities or budgetary disparities between local school districts:[373]

> I suggested that the district attorney's investigation into alleged abuse of Hispanics in one of our local detention facilities be reviewed. That was not followed up.
>
> I could convince no one that a $12 million annual disparity between local school districts was unacceptable, and that the Bakersfield City School District was justified in its suit to rectify a problem that will undoubtedly promote "White flight" to the more advantaged district.[374]

Based on its preliminary research, the advisory committee concludes and recommends as follows:

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[370]*1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra*, at p. 171. (Mary Helen Barro, president, American Hispanic-Owned Radio Association; co-owner, KAFY Spanish radio; member, Kern County Human Relations Commission.)
[371]*Ibid*. (Glenn Shellcross, private investigator; former member of the Kern County Grand Jury.)
[372]*Id.*, at p. 172. (Hon. John Cruikshank, superior court judge, San Joaquin County Juvenile Division.)
[373]*Id.*, at pp. 172–73. (Glenn Shellcross, private investigator; former member of the Kern County Grand Jury.)
[374]*Ibid*. (Glenn Shellcross.)

CONCLUSIONS (TRIAL JURORS)

1. **Many members of minority groups believe that minorities seldom face a jury containing members of their groups.**

2. **Many minority-group members believe that White jurors are prejudiced against minority litigants and that the jury must include a member of the litigant's group if it is to judge fairly.**

3. **There are significant barriers to low-income people serving on juries. These obstacles may tend to affect minority-group members disproportionately and include the following:**

    a. **The low pay for service as a juror is unlikely to cover the cost of child care, parking, or public transportation;**

    b. **Low-income citizens are unlikely to have employers who will pay their salaries during jury service and are the least able to do without one or several days' pay; and**

    c. **Many lower-income Californians tend to be tenants rather than homeowners and may tend to move more frequently, thus failing to receive jury summonses.**

4. **The perception exists that prospective jurors may be excluded from jury service because they lack the requisite proficiency in English.**

5. **Juror lists compiled from voter and Department of Motor Vehicles lists only may not be representative. Other sources should be considered to augment the jury pool.**

RECOMMENDATIONS

The advisory committee recommends that the Judicial Council transmit the following recommendations to the Implementation Task Force on Jury System Improvement and urge their consideration:

1. **Jury commissioners compile juror lists from utility subscriber lists and other sources, in addition to voters' and driver's license lists, to ensure that diverse population groups are included in jury panels.**

2. **The Judicial Council fund pilot programs utilizing innovative methods of jury selection, including the selection of jurors living outside of the traditional geographic radius used by the courts, to determine the best means of producing representative jury panels.**

3. **The Judicial Council seek adequate funding to test, in pilot programs, methods of jury selection that may yield more representative jury panels.**

4. **The Judicial Council support legislation requiring jurors to be compensated at a reasonable level. Further, consideration should be given to payment of room and board for jurors in cases of hardship.**

CONCLUSIONS (GRAND JURORS)

1. **Racial and ethnic minorities are usually unrepresented or underrepresented on grand juries because of the way these juries are selected. This lack of representation is likely to persist unless conscious, vigorous efforts are made to make grand juries more representative.**

2. **Witnesses at the committee's public hearings believed that grand juries neglected matters of concern to minority groups.**

RECOMMENDATIONS

The advisory committee recommends that:

1. **The Judicial Council direct staff to amend Standards of Judicial Administration, section 17 to state that grand jury selection lists should also include reasonable representation of the county's racial and ethnic minorities.**

2. **If more representative grand juries cannot be achieved under existing statutes, the Judicial Council should support legislation that would produce representative grand juries.**

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CHAPTER 12

THE MASS MEDIA AND BIAS

THE ROLE OF THE MEDIA IN SOCIETY

Generally, comments at the public hearings about the media centered on the often-negative depiction of minorities in the press and on TV and ways in which it fosters bias. Dale Minami, a Bay Area attorney and the chair of the 1987 Attorney General's Asian/Pacific Islander Task Force, commented that "the media must accept a share of the responsibility, with its revisionist fantasies of Chuck Norris and Rambo exacting revenge on Asians for the war that we lost." Mr. Minami continued to express his concerns by explaining:

> The all-too-often portrayal of Asians as subservient, subhuman, or subversive is an unsubtle message which is not lost on the American public. The message that is sent is that it is acceptable to treat Asian/Pacific-Americans as something less than human.[375]

Another attorney described the impact of the media on bias in the following manner:

> A Black person or an Hispanic person in Yuba County will come before a court, and without reflection on that judge's part, he will feel a hostility and an anger prompted by what he [the judge] saw Black and Hispanic people doing on

[375] *1991–1992 Public Hearings on Racial and Ethnic Bias in the State Courts, supra*, at p. 227 (Dale Minami, attorney; chair, Attorney General's Asian/Pacific Islander Task Force, 1987.)

> television in Los Angeles, and he will say, "This has to stop" — and someone, as a result of their race, will get a heavier sentence or a higher bail — when they haven't been in Los Angeles in their life.[376]

Most speakers commented on the proliferation of stereotypes in the mass media. Negative stereotypes tend to damage everyone; however, even more benign stereotypes can distort images associated with a particular group of people. One speaker observed:

> [W]hen you approach the media, they will ask you to come in traditional dress. . . . People almost look at American Indians in a sense as some sort of — I liken it and I hate to say this to you, to going to look at an exotic animal in a zoo. . . . [T]hey probably know that a lot of people who are American Indians are functioning off the reservation in mainstream society. But if they don't see them in the context of *Dances with Wolves,* they don't want to deal with them as American Indians and whatever issues that may present.[377]

Other speakers accused the media of leaning toward the sensational or pointed out that the media use language to alter or distort meanings. For example, African American people would not be depicted as coming together to "protest" but to "riot," because protest is a benign concept and a riot is sensational news that increases newspaper sales.[378] Speakers commented that this tendency works against minorities because the mainstream media grab more headlines if they report on brutal acts committed by minorities, than if they report on brutal acts committed against minorities. For example:

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[376]*Id.*, at p. 229. (Dennis Riordan, attorney; member, Board of Governors, California Attorneys for Criminal Justice.)
[377]*Ibid.* (Sherry Lear, attorney; cofounder and president, Minority Bar Association of Greater Long Beach.)
[378]*Id.*, at pp. 230-31 (Tut Hayes, member, Latasha Harlins Justice Committee)

> Well, you don't read about it because if you just read the mainstream press, you are not going to see the kind of incidents as we see. If you read *Asian Week* or *Pacific Citizen* or the Asian/Pacific-American papers — every week you will see an incident of anti-Asian violence in those papers, — sometimes two or three. And, for those of us who are either blessed or cursed with the information, it does create a sense that this trend is becoming more and more alarming, and threatens our well-being on almost a daily basis.[379]

Nevertheless, the media are a primary source of information about American society and institutions for many residents. For example, the above quote may hint at the way in which many Asian Americans receive information about societal problems or perhaps matters related to the court system. The telephone survey conducted by the CommSciences firm, *Fairness in the California State Courts: A Survey of the Public, Attorneys and Court Personnel,* shows that Asian Americans report significantly less experience with the courts than other groups.[380]

A majority of survey respondents (58 percent) report that they obtain most, if not all, of their information about the California courts from the mass media. Asian respondents are significantly more likely than any other group, except Latinos, to obtain their impressions of the courts from the mass media. Approximately 73 percent of Asians and 63 percent of Latinos report obtaining most of their information about the courts from the mass media.[381]

California's two largest minority groups appear to be more dependent on the media for information on the justice system than the others. They also give the California courts an overall fairness rating that exceeds that of other minority

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[379]*Id.*, at p. 228. (Dale Minami, attorney; chair, Attorney General's Asian/Pacific Islander Task Force, 1987.)
[380]*Fairness in the California State Courts, supra,* at p. 4-6.
[381]*Ibid.*

groups. This may demonstrate that minorities are no less immune to media images than anyone else. To the extent that images are positive, media-dependent groups may correlate them to fairness rather than to bias; analysis relating to this trend goes beyond the purview of this report. Conversely, the extent to which negative media images played a part in the death of Latasha Harlins, the beating of Rodney King by Los Angeles police officers or Reginald Denny by an angry mob, or the looting of Korean-owned stores by other non-White individuals during the Los Angeles unrest in 1991 is difficult to assess.

The media can and do play a positive role in society. The unrest that resulted from the Rodney King beating at the hands of Los Angeles police officers does not obscure the positive effect of all media attention given to this incident. The beating, caught on videotape, broadcast repeatedly, and viewed by millions of Americans, served as a wake-up call to Los Angeles police authorities and to the American public.

Many people who had heretofore dismissed allegations of police brutality as a defendant's desperate attempt to focus attention elsewhere were forced to consider the possibilities. Just two years earlier, in 1989, a wedding shower hosted by a Samoan family ended with Los Angeles sheriff's deputies storming the house, arresting 35 guests, and severely beating several family members and guests.[382] In contrast to the Rodney King incident, little media attention was given to the allegations of police brutality surrounding the events at the Samoan family's home.

In February 1995, the police brutality lawsuit brought by the Samoan family came to trial. Members of the jury, some from law-enforcement and government-service backgrounds, agreed that sheriff's deputies had been less than truthful in

[382]M. Berg, "What the Jury Saw," *California Lawyer* (Feb. 1996): p. 31.

recounting their version of events and, in fact, had engaged in a concerted cover-up. For example, while deputies could remember details about the actions of individual plaintiffs, people they had never met, they couldn't remember the specific actions of any of their colleagues.[383] In a largely overlooked decision, jurors awarded the Samoan plaintiffs $15.9 million in damages plus $2.3 million in attorney fees and costs.

One cannot discuss the media without mentioning what some have called the media event of the century, the O. J. Simpson murder trial. Mr. Simpson, accused of the murder of his wife and a friend of hers, was acquitted by a jury of predominantly African Americans. The case was a TV staple for more than a year. It made temporary celebrities of almost everyone closely associated with the case and provoked a discussion about the jury system that continues today.

The trial also spotlighted the pros and cons of TV cameras in the courtroom. In fact, the California Judicial Council established a 13-member task force to study this issue. The task force was directed, in part, to revisit of the California Rules of Court, rule 980, which governs film and electronic coverage of criminal and civil courtroom proceedings.[384]

Following a re-evaluation of the rule — which included a statewide survey of judges, public defenders, and prosecutors; a public opinion poll of many bar groups; a public hearing on the issue of cameras in the courtroom; and a review of letters, reports, studies, newspaper and journal articles, and other information — the task force submitted its report and a proposed amended rule 980 to the council

[383]*Ibid*.
[384]Administrative Office of the Courts, *Report of the Task Force on Photographing, Recording, and Broadcasting in the Courtroom* (Feb. 1996), at p. 4.

at its February 23, 1996, meeting.[385] The task force reported that its review was necessitated by "recent developments, including high-profile trials and the public's dependence on the electronic media for information," a point raised in the report *Fairness in the California State Courts*.[386]

Based on its review, the task force determined that it would not recommend banning electronic photographing, broadcasting, and recording from California courtrooms or banning live, contemporaneous electronic photographing, broadcasting, and recording from California courtrooms. In order to balance the competing interests surrounding this issue, the task force concluded:

> [S]ociety's interest in an informed public, recognized in the planning and mission of the Judicial Council, is an important objective of the judiciary, which would be severely restricted by a total ban. Today's citizen relies too heavily on the electronic media for information; yet actual physical attendance at court proceedings is too difficult for the courts to countenance a total removal of the public's principal news source.[387]

The "interest in an informed public," however, does not obviate the need for some necessary limitations on electronic media coverage. These are encompassed in proposed amended rule 980, which was widely distributed for comment with responses due by April 8, 1996. The task force reported back to the council on May 17 that a majority of judge-respondents favored a ban on cameras in the courtroom, although those who had actual experience with cameras in their courts however were less inclined to support a total ban. Overall a majority favored a

[385] *Ibid.*
[386] *Id.*, at p. 17.
[387] *Id.*, at p. 10.

strengthening of judges' discretionary power over the use of cameras in their courtrooms.[388]

Other segments of the legal community, the Legislature, court personnel, members of the general public, and other interested parties submitted thoughtful comments, with proponents of the rule favoring fewer restrictions on the media, opponents seeking a total ban, and others wanting to give judges more discretion in making the determination after considering a long list of factors.

In response to these concerns, the task force developed additional safeguards to guide judges in making their rulings. In describing the proposed rule, the task force stated:

> The draft rule contains a listing of factors for consideration by judicial officers and an expression that findings and statements of decision are not required in ruling on applications for coverage. All of that material is designed to guide the courts in their decision making, but in the last analysis, [the draft rule] leaves the decision to the sound discretion of the judicial officer making the ruling.[389]

In summary, the council voted to permit electronic media coverage in all proceedings but identified 18 factors that judges should consider before banning cameras during proceedings. Coverage of jurors and spectators without exception is prohibited. The rule, pending incorporation of suggested amendments, was approved for implementation effective January 1, 1997.

The print media have also played a part in educating the general public and those who play a critical role in the California system of justice. One example is the

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[388] Administrative Office of the Courts, *Report of the Task Force on Photographing, Recording, and Broadcasting in the Courtroom* (May 1996).
[389] *Id.*, at p. 19.

random-sample survey conducted by the *San Jose Mercury News*, a Northern California newspaper.

From September to November 1991, the newspaper surveyed a random sample of judges, district attorneys, and public defenders throughout California on issues concerning plea bargaining and racial and ethnic bias.[390] The racial breakdown of defendants that the respondents considered was evenly divided among Latinos, Whites, and African Americans. Respondents reported that there were significantly fewer Asian American defendants in their counties of jurisdiction.[391]

The survey revealed that only a third of all judges and district attorneys polled agreed that it is important for the race and ethnicity of judges, prosecutors, and public defenders to reflect the racial and ethnic composition of the community. In contrast, 64 percent of public defenders surveyed agreed with this concept.

The *San Jose Mercury News* also conducted a computer-assisted study of 683,513 criminal cases from 1981 to 1990 based on records obtained from the state Bureau of Criminal Statistics and the state Board of Prison Terms.[392] The study indicates that Whites as a group fare better in the criminal justice system than Latinos or African Americans with comparable backgrounds who are accused of similar crimes.

For example, among 71,668 adults arrested on felony charges in 1989 and 1990 who had no criminal record, a third of Whites were able to get the charges reduced

[390]"California Criminal Justice Survey," *supra*. (See Chapter 10, :Sentencing," for details.)
[391]*Id*., at p. 13.
[392]C. Schmitt, "Blacks, Hispanics Get Lesser Deals in Court," *San Jose Mercury News*, (Dec. 8, 1991), p. 22A.

to misdemeanors or infractions while only about a quarter of African Americans and Latinos received similar treatment.[393]

The media, by highlighting the kind of information contained in surveys like these, may be instrumental in beginning an important dialogue between those on opposite sides of the issues of race and ethnicity and their effect on the system of justice. Many will argue that these results neither prove or disprove that race and/or ethnicity play a part in sentencing, but they do raise serious questions. Further, this information and other events highlighted by the media can provide the basis for a study of the many complex issues affecting the California system of justice.

CONCLUSIONS

1. **The negative depiction of minorities in the media fosters bias and perpetuates or exacerbates the stereotypes and fears that many individuals have about minorities.**

2. **Stereotypes and fears about minorities perpetuated by the media may lead individuals to treat minorities unfairly in the justice system. Further, it is perceived that less credibility is afforded to minority litigants, witnesses, or attorneys by judicial officers, court personnel, counsel, and jurors.**

3. **Media sources that cater to a minority audience or readership, especially to Asians and Latinos, have a greater potential for affecting perception about the judicial system than general mass media sources.**

[393] *Ibid.*

RECOMMENDATIONS

The advisory committee recommends that:

1. **The Judicial Council, in conjunction with the California Judges Association, work with the local courts to establish standing bench/bar, and media advisory committees to make ongoing recommendations on how the courts and the media can work together to assist in eliminating bias in the courts. Among these:**

    a. **The courts and the local bar associations should explore opportunities to educate the public about the judicial system through local television and radio, public television and radio, the print media, local public-school-district television stations, and local public-access cable stations;**

    b. **The local courts should have a speakers bureau through which judicial officers and court personnel are made available to participate in public affairs programs in the media, particularly non-English-language media.**

    c. **The local courts should undertake specific efforts to establish relationships with media sources that cater to minority audiences or readership;**

    d. **The local courts and the organized bar should take greater advantage of events such as National Law Week to enhance the public's knowledge of the judicial system through use of the media.**

2. **The Judicial Council should direct AOC staff to take the leadership in providing the courts with a resource list of minority press outlets and community cable television programs.**

3. **The Judicial Council transmit to the State Bar and urge consideration of the recommendation that MCLE (mandatory continuing legal education) courses on the elimination of bias include discussion of the media's impact on public perception of bias in the courts and the use (or abuse) of the media in ways that affect bias in the courts.**

CLOSING COMMENTS

The Racial and Ethnic Bias Advisory Committee began its work a little more than five years ago. Its charge was to study the treatment of racial and ethnic minorities in the state courts, ascertain public perceptions about the judicial system, and make recommendations to the Judicial Council on reforms and remedial programs.

The 28-member committee early on recognized the enormous responsibility imposed by this charge. Determined to conduct a rigorous and objective investigation, the committee rejected any preconceived ideas about what problems, actual or perceived, might exist in the California courts. Instead, the advisory committee made the decision to hold public hearings to begin to identify possible issues for future research purposes.

Hearings were held throughout the state from November 1991 to June 1992. The reactions of committee members to the testimony were mixed. Some members were not too surprised by the perceptions held by the witnesses, others were very surprised, and all were troubled by the depth of emotion conveyed by many of the speakers.

The advisory committee did not conclude that the issues raised in the testimony were representative of the perceptions of California's population as a whole. Rather, committee members were concerned that the public-hearing testimony would be perceived as the selective accounts of disgruntled parties and would be rejected, particularly by the legal community and scholars. Accordingly, it was imperative that the advisory committee attempt to objectively verify the results of the public hearings or, alternatively, discover whether the public-hearing testimony was not at all indicative of public opinion.

The committee learned that the public-hearing testimony and the perceptions of the general public, as discerned by two scientific surveys, were very similar. The 1993 Judicial Council report *Justice in the Balance — 2020* illustrated that more than one-half of the Californians surveyed had doubts about the courts' ability to be fair. In fact, when asked to rate the California courts, 53 percent gave the courts only a "fair" or "poor" rating. Similarly, the random telephone survey commissioned by the advisory committee, *Fairness in the California State Courts*, pointed to a widely held public perception that the courts are *less* fair towards minority-group members than they are toward Whites.

A consistent theme at every public hearing was the perception that positions of authority — judges and attorneys, to name two — were predominantly occupied by White males and females. To assess the validity of this perception, the advisory committee engaged a consultant to conduct a demographic survey of the trial courts. To complement this study, the AOC also conducted its own demographic survey of attorneys from public defender and district attorney offices in the state's 58 counties. This study was important because these attorneys appear in the criminal courts on a daily basis, and the racial and ethnic composition of this group helps to shape public opinion.

The results of this research, discussed in Chapters 5 and 7, point to a court system in which most judges are White (89.32 percent) and male (77.34 percent).
In the offices of the public defenders, nearly 85 percent of all attorneys are White.
Of the public defenders, 81 percent of the attorneys are White.
The committee does not suggest by its analysis that any particular racial or ethnic configuration among members of the judiciary or the attorneys appearing in the courts would result in more or less fairness. Nevertheless, the advisory committee

is reminded that a significant portion of the general public questions the ability of the courts to judge persons of color fairly when courtroom authority figures are predominantly White.

The committee's research into the substantive area of case disposition and juror attitudes and behaviors has not been completed. The project, designed to be a juror survey and a case study of the outcomes of jury trials in selected counties, comparing similarly situated White and nonWhite defendants, has been delayed by circumstances unanticipated at its start. These circumstances will be detailed in the separate report soon to be submitted to the successor implementation body, the Access and Fairness Advisory Committee, appointed in 1994.

Lack of time and funding prevented the committee from engaging in original research in all of the areas of interest to its members. As a result, hired consultants and AOC staff were directed to review the existing literature in the areas of sentencing, jury composition and its affect on trial outcome, women and the justice system, and family and juvenile law, to name but a few, and report back to the committee. These reports form the basis for the discussions found in Chapters 8, "Women of Color and the Justice System"; Chapter 9, "Family and Juvenile Law Issues,"; Chapter 10, "Sentencing,"; and Chapter 11, "The Jury System."

Additionally, the committee has learned from the work of other commissions and task forces on racial and ethnic bias and used these studies to inform its recommendations to the Judicial Council on a variety of subjects. The methodology employed by the advisory committee has resulted in what the committee believes is a compelling report that will be read by judges, court staff, attorneys, and interested members of the public.

The recommendations found throughout the final report reflect the committee's concern about the gap between the public's perceptions and experiences and the genuine commitment to service and fairness shared by most court personnel. Education looms large as a means of bridging that gap: education for judges about the increasingly diverse communities they serve, and outreach programs to educate the public about the courts.

With the continuing support of the Judicial Council, the work of the advisory committee will continue with the implementation strategies developed by the Access and Fairness Advisory Committee and its Subcommittee on Racial and Ethnic Fairness. The subcommittee will develop a comprehensive implementation plan based on the recommendations developed by the Advisory Committee on Racial and Ethnic Bias. The advisory committee anticipates that its efforts will result in an expansion of the judicial system's traditional role as the guardian of justice.

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APPENDIX A

JUDICIAL APPOINTMENTS: HISTORICAL SUMMARIES

LOS ANGELES COUNTY COURTS[394] - AFRICAN AMERICAN JUDGES

Name	Start Year	Appointed	Court	Current Status	Remarks
Alston, Gilbert	1971 1977 1980	Appointed Appointed Appointed	LAMC Pasadena LASC	Resigned Elevated Retired	Reappointed to Pasadena, 1977 LASC, 1980
Aubry, Ernest L.	1976	Appointed	LAMC	Sitting	
Beverly, William C.	1980 1985	Appointed Appointed	Long Beach LASC	Elevated Sitting	LASC,1985
Blackwell, Glenette	1980	Appointed	LAMC	Sitting	
Boags, Charles D.	1979	Appointed	Beverly Hills	Removed	1990
Bowers, Bob S.	1993	Appointed	Compton	Sitting	
Broady, Earl	1965	Appointed	LASC	Retired	1978
Brown, Irma J.	1986	Appointed	Compton	Sitting	
Clay, William	1976	Appointed	LASC	Retired	
Cooper, Candace	1980 1987	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1987
Cunningham, David	1976	Appointed	LASC	Deceased	
DeShazer, Ellen C.	1995	Appointed	Compton	Sitting	
Dorn, Roosevelt	1979 1980	Appointed Appointed	Inglewood LASC	Elevated Sitting	LASC,1980

[394]Key to court abbreviations: Los Angeles County Superior Court (LASC); California Court of Appeal (DCA); California Supreme Court (SC); U.S. District Court (FDC); U.S. Circuit Court of Appeal (FCA).

Name	Start Year	Appointed	Court	Current Status	Remarks
Dunn, G. William	1979	Elected	Long Beach	Sitting	
Dunn, Reginald	1989	Appointed	LASC	Sitting	
Farrar, Dean E.	1980	Appointed	Compton	Sitting	
Forneret, Rodney G.	1981	Appointed	Inglewood	Sitting	
Garrott, Homer L.	1973	Appointed	Compton	Retired	1984
Griffith, Thomas L., Jr.	1953 1968	Appointed Appointed	LAMC LASC	Elevated Retired Deceased	LASC,1968
Hatter, Terry J.	1977	Appointed	LASC	Resigned	FDC,1980
Haynes, Marcelita V.	1993	Appointed	Compton	Sitting	
Hill, Hugo	1979	Appointed	Compton	Retired	1994
Jackson, Giles	1977	Appointed	LAMC	Retired	1986
Jefferson, Bernard	1960 1960 1976	Appointed Appointed Appointed	LAMC LASC DCA	Elevated Elevated	LASC,1960 DCA,1976
Jefferson, Edwin	1941 1948 1961	Appointed Appointed Appointed	LAMC LASC DCA	Elevated Elevated Retired	LASC,1948 DCA,1961 1975
Johnson, Barbara R.	1993	Appointed	LAMC	Sitting	
Johnson, Marion J.	1989	Elected	LAMC	Sitting	
Jones, Charles	1979	Appointed	LASC	Retired	1994
Jones, Morris Bruce	1990 1993	Appointed Appointed	Compton LASC	Elevated Sitting	LASC,1993
Lang, Xenophon F., Jr.	1984	Appointed	Compton	Sitting	

Name	Start Year	Appointed	Court	Current Status	Remarks
Lang, Xenophon F., Sr.	1966	Appointed	LAMC	Retired	1986
Luke, Sherrill D.	1981 1988	Appointed Elected	LAMC LASC	Elected Sitting	LASC,1988
Malone, Stanley	1975	Appointed	LASC	Retired	1991
Marshall, Consuelo	1977	Appointed	LASC	Resigned	FDC,1980
Matthews, Albert D.	1973	Appointed	LASC	Retired	1989
McBeth, Veronica Simmons	1981	Appointed	LAMC	Sitting	
McKay, Patti Jo	1980	Appointed	LAMC	Sitting	
Meigs, John V.	1993	Appointed	Inglewood	Sitting	
Miller, Loren, Jr.	1975 1977	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1977
Miller, Loren, Sr.	1964	Appointed	LAMC	Deceased	1967
Mills, Billy	1974	Appointed	LASC	Retired	1989
Milton, David	1987 1995	Appointed Appointed	LAMC LASC	Resigned Sitting	1992
Mitchell, Elvira R.	1985	Appointed	Pasadena	Sitting	
Moore, H. Randolph, Jr.	1977 1980	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1980
Morrow, Dion	1975 1978	Appointed Appointed	Compton LASC	Elevated Retired	LASC,1978 1995
Moss, Wardell G.	1980	Appointed	Inglewood	Sitting	
Nelson, Henry	1980	Appointed	LASC	Retired	1991
Niles, Alban I.	1982	Appointed	LAMC	Sitting	
Nunley, L. C.	1980	Appointed	LAMC	Sitting	

Name	Start Year	Appointed	Court	Current Status	Remarks
Obera, Marion L.	1970	Appointed	LAMC	Retired	1990
Ormsby, William M.	1981	Appointed	Inglewood	Sitting	
Pickard, Florence	1977	Appointed	LASC	Sitting	
Pitts, Donald F.	1984	Appointed	LASC	Sitting	
Porter, Everette M.	1972	Appointed	LAMC	Retired	1983
Reese, James M.	1975 1980	Appointed Appointed	Compton LASC	Elevated Retired	LASC,1986 1988
Ricks, Everett E.	1972 1979	Appointed Elected	Compton LASC	Elected Retired Deceased	LASC,1979 1986 1993
Roberson, Robert	1979	Appointed	LASC	Sitting	
Robinson, Roosevelt, Jr.	1978	Appointed	Inglewood	Retired	1996
Ross, William A.	1967 1970	Appointed Appointed	Compton LASC	Elevated Retired	LASC,1970 1985
Sandoz, John H.	1995	Appointed	LASC	Sitting	
Scarlett, Charles R.	1980	Appointed	LASC	Retired	1993
Shepard, Huey, P.	1971 1975	Appointed Appointed	Compton LASC	Elevated Resigned	LASC,1975 1981
Shumsky, Rosemary	1981	Elected	LAMC	Sitting	
Sinclair, Harold J.	1971	Appointed	LAMC	Retired	1988
Skyers, Ronald V.	1995	Appointed	Compton	Sitting	
Smith, Sherman W., Jr.	1979 1988	Appointed Elected	LAMC LASC	Elected Sitting	LASC,1988
Smith, Sherman W., Sr.	1963 1966	Appointed Appointed	LAMC LASC	Elevated Retired	LASC,1966 1975

Name	Start Year	Appointed	Court	Current Status	Remarks
Spencer, Vaino H.	1961 1977 1980	Appointed Appointed Appointed	LAMC LASC DCA	Elevated Elevated Sitting	LASC,1977 DCA,1980
Stevens, Emily A.	1988 1990	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1990
Thomas, Maxine	1980	Appointed	LAMC	Retired	1989
Thompson, G. Tom	1977	Elected	Compton	Retired	1983
Thompson, Leon	1980 1982	Appointed Appointed	LASC DCA	Elevated Deceased	1982 1988
Thompson, Sandra	1984	Appointed	South Bay	Sitting	
Tucker, Marcus O.	1976 1985	Appointed Appointed	Long Beach LASC	Elevated Sitting	LASC,1985
Veals, Craig E.	1994	Appointed	LAMC	Sitting	
Williams, David W.	1956 1963	Appointed Appointed	LAMC LASC	Elevated Resigned	LASC,1963 FDC,1969
Woods, Arleigh M.	1976 1980	Appointed Appointed	LASC DCA	Elevated Retired	1980 1995
Yates, Reginald	1989	Appointed	Pomona	Sitting	

LOS ANGELES COUNTY COURTS - ASIAN AMERICAN JUDGES

Name	Start Year	Appointed	Court	Current Status	Remarks
Aiso, John	1953 1957	Appointed Appointed	LAMC LASC	Elevated Elevated	LASC,1957 DCA,1968
Doi, David I.	1983	Appointed	LAMC	Sitting	
Fujisaki, Hiro	1977 1980	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1980
Fukuto, Morio	1974 1979	Appointed Appointed	South Bay LASC	Elevated Elevated	LASC,1979 DCA,1987
Hanki, Richard S.	1974 1979	Appointed Elected	Los Cerritos Los Cerritos	Defeated Retired	1976 1996
Higa, Robert	1978 1980	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1980
Hiroshige, Ernest	1980 1982	Appointed Appointed	South Bay LASC	Elevated Sitting	LASC,1982
Hom, Rose	1985 1988	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1988
Ito, Lance A.	1987 1989	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1989
Kakita, Edward Y.	1980	Appointed	LASC	Sitting	
Kennard, Joyce	1986 1987 1988 1989	Appointed Appointed Appointed Appointed	LAMC LASC DCA SC	Elevated Elevated Elevated Sitting	LASC,1987 DCA,1988 SC,1989
Khan, Abraham	1988 1995	Appointed Elected	Citrus LAMC	Defeated Sitting	1992
Kwan, Ruth A.	1995	Appointed	East LA	Sitting	
Kwong, Owen Lee	1989 1993	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1993
Lew, Arthur M.	1991 1994	Appointed Appointed	Long Beach LASC	Elevated Sitting	LASC,1994

Name	Start Year	Appointed	Court	Current Status	Remarks
Lew, Ronald S. W.	1982 1984	Appointed Appointed	LAMC LASC	Elevated Resigned	LASC,1984 FDC,1987
Lui, Elwood	1975 1980	Appointed Appointed	LAMC LASC	Elevated Elevated Retired	LASC,1980 DCA,1981; 1987
Mayeda, Jon M.	1981	Appointed	LAMC	Sitting	
Mock, Harry, Jr.	1980 1982	Appointed Appointed	LAMC LASC	Elevated Deceased	LASC,1982 1986
Nishimoto, Cary	1984 1987	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1987
Oki, Dan T.	1992	Appointed	Citrus	Sitting	
Recana, Mel Red	1981	Appointed	LAMC	Sitting	
Sarmiento, Cesar C.	1988 1993	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1993
Suzukawa, Steven C.	1989 1992	Appointed Appointed	Compton LASC	Elevated Sitting	LASC,1992
Takasugi, Robert M.	1973 1975	Appointed Appointed	East LA LASC	Elevated Resigned	LASC,1975 FDC,1976
Todd, Kathryn Doi	1978 1981	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1981
Tso, Jack B.	1976 1980	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1980
Wasserman, Fumiko H.	1986 1987 1989	Appointed Appointed Appointed	LAMC South Bay LASC	Resigned Elevated Sitting	Reappointed to South Bay 1987 LASC,1989

Name	Start Year	Appointed	Court	Current Status	Remarks
Watai, Madge	1978 1981	Appointed Appointed	LAMC LASC	Elevated Retired	LASC,1981 1996; State Bar Court 1996
Wong, Delbert	1959 1961	Appointed Appointed	LAMC LASC	Elevated Retired	LASC,1961
Wu, George H.	1993 1996	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1996
Yip, James	1978	Appointed	LAMC	Retired	1993

LOS ANGELES COUNTY COURTS - HISPANIC AMERICAN JUDGES

Name	Year Began	Appointed	Court	Current Status	Remarks
Alarcon, Arthur L.	1964	Appointed	LASC	Elevated	DCA,1978; FCA,1979
Alarcon, Gregory W.	1993 1996	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1996
Aragon, Conrad R.	1990	Appointed	East LA	Sitting	
Aranda, Benjamin, III	1979	Appointed	South Bay	Sitting	
Arguelles, John A.	1963 1969 1984 1987	Appointed Appointed Appointed Appointed	East LA LASC DCA SC	Elevated Elevated Elevated Retired	LASC,1969 DCA,1984 SC,1987 1989
Armijo, Joseph L.	1973	Appointed	Compton	Defeated Deceased	1976 1977
Austin, Elvira S.	1980	Appointed	Long Beach	Sitting	
Baird, Lourdes G.	1986 1987 1988	Appointed Appointed Appointed	East LA LAMC LASC	Resigned Elevated Resigned	Appointed to LAMC,1987 LASC,1988 FDC,1992
Baldonado, Arthur	1977	Appointed	LASC	Retired	1996
Barela, Henry T.	1987	Appointed	East LA	Sitting	
Barrera, Victor	1979 1981	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1981
Bazan, Alfonso M.	1976 1980	Appointed Appointed	Citrus LASC	Elevated Sitting	LASC,1980
Cardenas, Raymond	1975	Appointed	LASC	Retired	1995

Name	Year Began	Appointed	Court	Current Status	Remarks
Casas, J. B.	1983	Appointed	Rio Hondo	Defeated	1986
Chavez, Antonio	1968	Appointed	LAMC	Defeated	1978
Chavez, Victor	1990	Appointed	LASC	Sitting	
Chavez, Victoria	1988 1992	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC1992
Chaparro, Reynaldo	1980	Appointed	Downey	Retired	1990
Corral, Jaime	1979 1983	Appointed Appointed	Rio Hondo LASC	Elevated Sitting	LASC,1983
Diaz, Rudolph A.	1980	Appointed	Rio Hondo	Sitting	
Espinosa, Jr., Ruffo	1995	Elected	Southeast	Sitting	Huntington Park
Espinoza, Peter Paul	1994	Appointed	Southeast	Sitting	South Gate
Felix, Fred	1980	Appointed	Citrus	Deceased	1995
Galceran, Raphael H.	1956	Appointed	Rio Hondo	Elevated	LASC,1968. Appointed to municipal court when Rio Hondo was El Monte M.C. district.
Garcia, Albert J.	1986	Appointed	Compton	Resigned	1994
Godoy-Perez, Ramona	1980 1985 1993	Appointed Appointed Appointed	LAMC LASC DCA	Elevated Elevated Sitting	LASC,1985 DCA,1993

Name	Year Began	Appointed	Court	Current Status	Remarks
Gonzalez, Mario	1972	Appointed	East LA	Removed	1983
Guerra, Pablo de la	1863	Elected	LA County	Resigned Deceased	1873 (due to illness) Was "District Judge." 1874
Guirado, Edward J.	1953 1963	Succeeded Appointed	Whittier LASC	Elevated Retired Deceased	LASC,1963 1970.
Gutierrez, Gabriel	1977 1979	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1979
Hermo, Alfonso D.	1968	Appointed	Whittier	Sitting	
Ibanez, Richard A.	1975	Appointed	LASC	Retired	1994
Khan, Abraham A. (.5 Hisp.)	1988 1995	Appointed Elected	Citrus LAMC	Defeated Sitting	1992
Lopez, Daniel S.	1989 1994	Appointed Appointed	East LA LASC	Elevated Sitting	LASC,1994
Lopez, Robert	1974 1976	Appointed Appointed	Alhambra LASC	Elevated Retired Deceased	LASC,1976 1990; 1992
Luna, Ana Maria	1995	Elected	Southeast	Sitting	
Martinez, John	1981	Appointed	Alhambra	Sitting	
Martinez, Robert M.	1984 1985	Appointed Appointed	East LA LASC	Elevated Sitting	LASC,1985
Mireles, Raymond	1986 1987	Appointed Appointed	East LA LASC	Elevated Sitting	LASC,1987

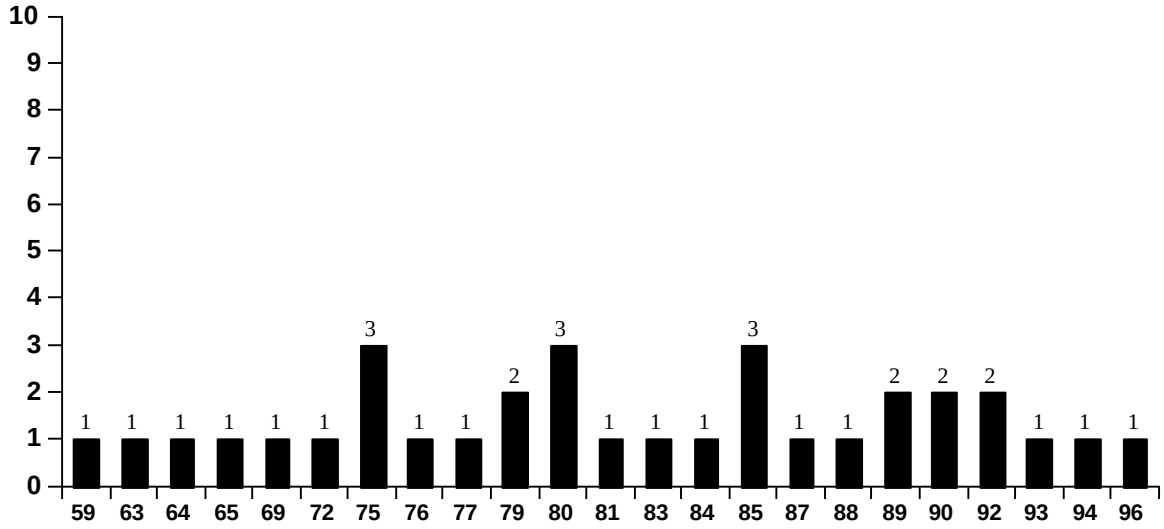
Name	Year Began	Appointed	Court	Current Status	Remarks
Montes, Richard	1976 1980	Appointed Appointed	Alhambra LASC	Elevated Sitting	LASC,1980
Moreno, Carlos R.	1986 1993	Appointed Appointed	Compton LASC	Elevated Sitting	LASC,1993
Muñoz, Aurelio	1979 1980	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1980
Newman, Phillip M.	1964 1975	Appointed Appointed	LAMC LASC	Elevated Retired	LASC,1975 1982
Olvera, Augustín	1850	Elected	LA County	Retired	1st elected judge LA Co. Term ended 1853 (was local judge 1849). Olvera St. named for him. Later held other positions.
Ortega, Reuben	1984 1988	Appointed Appointed	LASC DCA	Elevated Sitting	DCA,1988
Otero, S. James	1988 1990	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1990
Paez, Richard A.	1981	Appointed	LAMC	Resigned	FDC,1994; Nom. to FCA,1995, pending.
Perez, David D.	1975 1981 1985	Appointed Appointed Appointed	East LA LAMC LASC	Resigned Elevated Sitting	Reappointed to LAMC,1981 LASC,1985
Pratt, Daniel S.	1988 1989	Appointed Appointed	East LA LASC	Elevated Sitting	LASC,1989

Name	Year Began	Appointed	Court	Current Status	Remarks
Ramirez, Daniel J.	1994	Appointed	Southeast	Sitting	
Romero, Enrique	1989 1992	Appointed Appointed	LAMC LASC	Elevated Sitting	LASC,1992
Romero, Richard	1987 1989	Appointed Appointed	East LA LASC	Elevated Sitting	LASC,1989
Ruiz, Gilbert	1975	Appointed	East LA	Sitting Retired	 1996
Sanchez, Leopoldo	1961 1965	Elected Appointed	East LA LASC	Elevated Defeated	LASC,1965
Sanchez, Yvonne T.	1992	Appointed	Whittier	Sitting	Appointed. before elected term began
Sanz, Manuel Q.	1977	Elected	East LA	Resigned Deceased	1980
Sepulveda, Ignacio	1879	Elected	LASC	Resigned	1884 (became U.S. official in Mexico); prev. Co. judge 1870-73 & District judge 1874
Teran, Carlos M.	1957 1959	Appointed Appointed	East LA LASC	Elevated Retired	LASC, 1959 (oath) 1977
Torres, Ricardo	1979	Appointed	LASC	Sitting	
Uranga, Carlos S.	1980	Appointed	Alhambra	Sitting	
Vega, Benjamin U.	1966	Appointed	East LA	Retired	1986
Velarde, Carlos	1969 1972	Appointed Appointed	East LA LASC	Elevated Retired	LASC,1972 1989

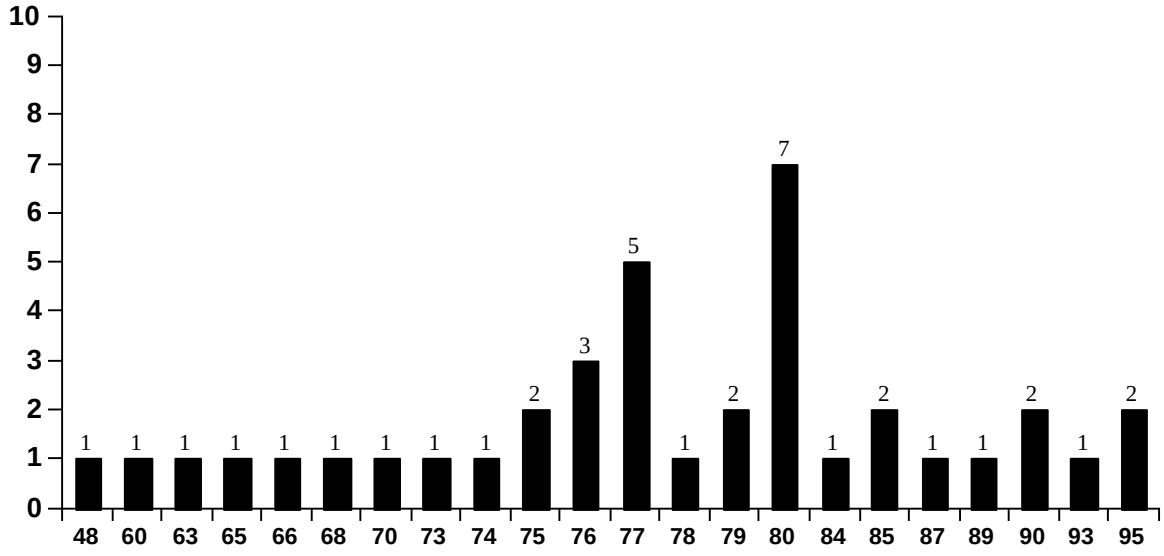
LOS ANGELES COUNTY COURTS - NATIVE AMERICAN JURISTS

Name	Year Began	Appointed	Court	Current Status	Remarks
Gabourie, Fred W.	1976	Appointed	LAMC	Defeated	1980

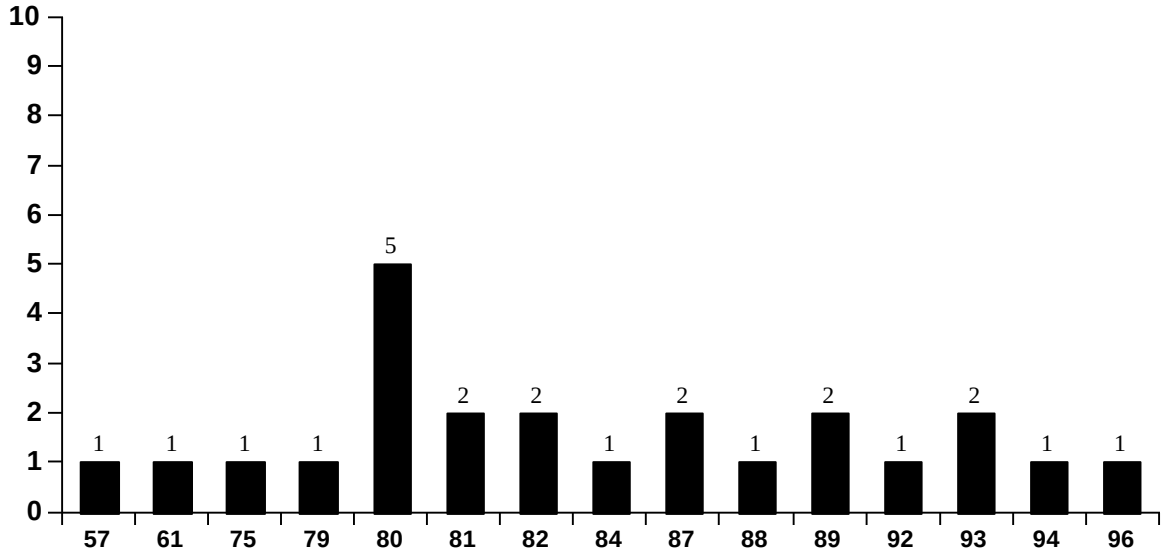
Appointment Pattern for Latino Jurists
(Los Angeles Superior Courts Only)



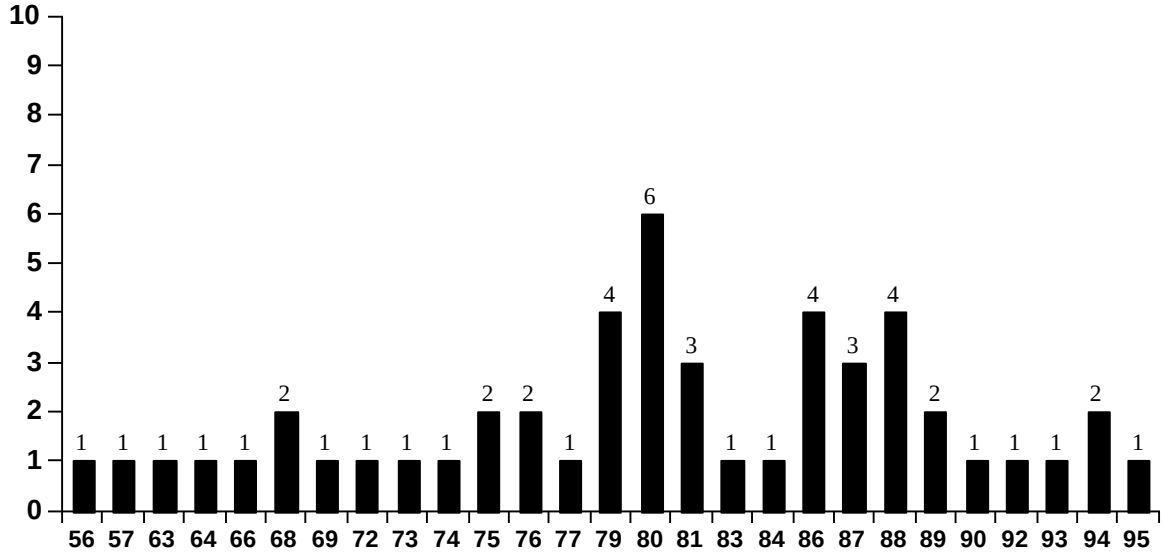
Appointment Pattern for African American Jurists
(Los Angeles Superior Courts Only)



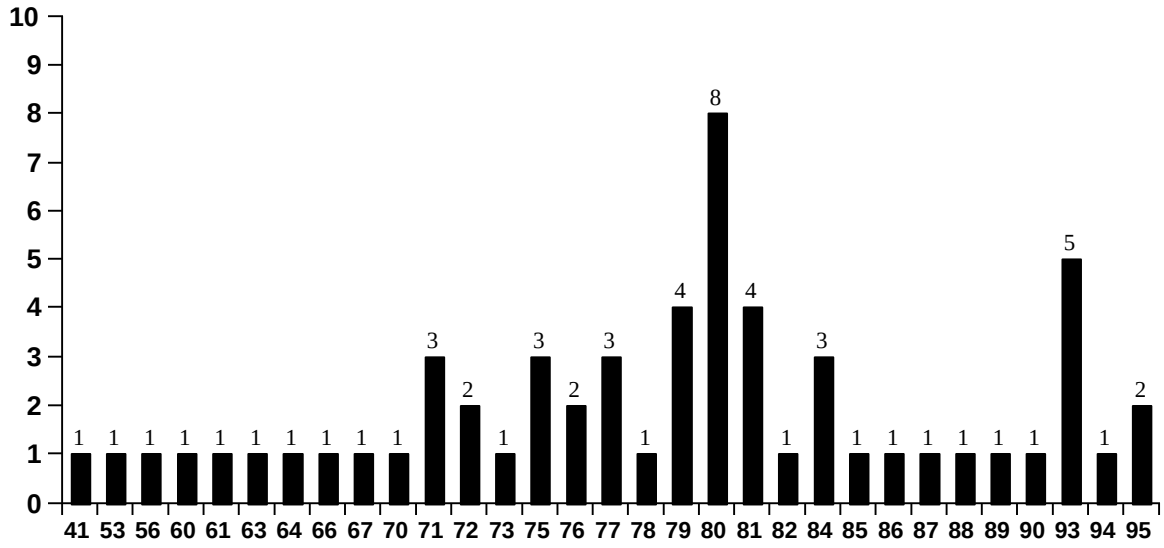
Appointment Pattern for Asian American Jurists
(Los Angeles Superior Courts Only)



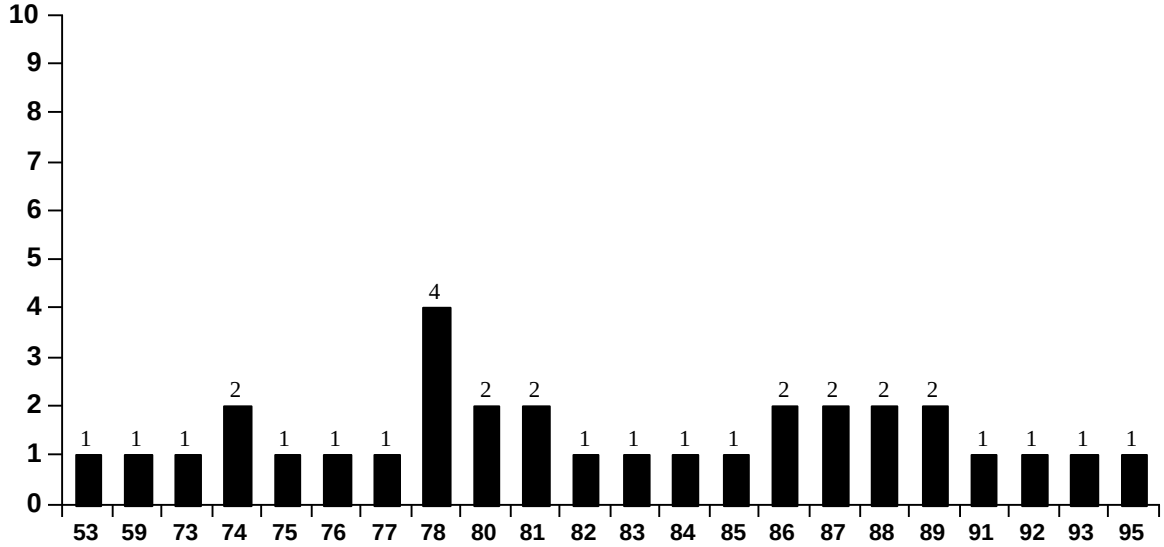
Appointment Pattern for Latino Jurists
(Los Angeles Municipal Courts Only)



Appointment Pattern for African American Jurists
(Los Angeles Municipal Courts Only)



Appointment Pattern for Asian American Jurists
(Los Angeles Municipal Courts Only)



APPENDIX B

RESOLUTIONS OF THE CONFERENCE OF CHIEF JUSTICES OF THE STATE COURTS

Conference of Chief Justices
RESOLUTION XXI
Equal Employment Opportunity and Affirmative Action in State Courts

WHEREAS, the principle of equal treatment of all persons before the law is essential to the very concept of justice; and

WHEREAS, there are a multitude of federal, state and local laws and policies requiring all persons and institutions, both public and private to avoid actions that may discriminate against any person on the basis of race, sex, color, national origin, religion, age or handicap and to take affirmative steps to overcome the effects of discrimination on such grounds; and

WHEREAS, the state courts have been instrumental in enforcing such laws and policies as they apply to other private and public parties in cases coming before the courts; and

WHEREAS, the judiciary and administrative staffs of many state courts are not fully representative of women and racial minorities; and

WHEREAS, there are a variety of officers and agencies, many outside the judicial branch of government, that control the processes by which persons are selected to serve as judges or as members of the administrative staffs of the courts; and

WHEREAS, many of the processes used to staff many state courts lack the fundamentals of a merit-based personnel system and, therefore, lack the administrative structure and organization necessary for the establishment of effective equal employment opportunity and affirmative action programs; and

WHEREAS, effective equal employment opportunity and affirmative action programs are not only legally required and morally desired, but are also practically necessary for obtaining the most qualified personnel to serve on the bench and in administrative positions in the court systems.

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges state judicial leaders to encourage and promote the full

participation in the work forces of the court systems under their jurisdiction of all persons regardless of their race, sex, color, national origin, religion, age or handicap; and

BE IT FURTHER RESOLVED that the court system and each major local court encourage each state court system and each major local court with significant control over personnel administration to adopt merit-based personnel systems including specific equal employment opportunity and affirmative action plans that encompass all facets of court personnel management including recruitment, hiring, training, promotion and advancement; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices calls upon officials within the legislative and executive branches of state government who select and appoint persons to the state judiciary, and members of judicial selection commissions or advisory groups who assist them, to incorporate affirmative action values as they decide whom to recommend and appoint to judicial positions; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices encourages executive agencies that control or share in the selection of court personnel to implement equal employment opportunity and affirmative action plans and programs as they staff the courts; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices urges the National Center for State Courts to continue to provide advice and technical assistance to the state courts in carrying out the above policies.

Adopted as proposed by the Discrimination in the Courts Committee of the Conference of Chief Justices at the Eleventh Midyear Meeting in Williamsburg, Virginia, on January 28, 1988.

Conference of Chief Justices
RESOLUTION XVIII
Task Forces on Gender Bias and Minority Concerns

WHEREAS, the Conference of Chief Justices has established a Committee on Discrimination in the Courts because the principle of equal treatment of all persons before the law is essential to the very concept of justice; and

WHEREAS, there are a multitude of federal, state and local laws and policies regarding all persons and institutions, both public and private to avoid actions that may discriminate against any persons on the basis of race, sex, color, national origin, religion, age or handicap and to take affirmative steps to overcome the effects of discrimination on such grounds; and

WHEREAS, the state courts have been instrumental in enforcing such laws and policies as they apply to other private and public partisan cases coming before the courts; and

WHEREAS, the Conference of Chief Justices is concerned that all participants in the judicial system are treated fairly and that the judicial system operate free of discrimination against any person on the basis of race, sex, color, national origin, religion, age or handicap.

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges positive action by every chief justice to address gender bias and minority concerns in the state courts; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices urges each chief justice in every state to establish separate task forces devoted to the study of (1) gender bias in the court system and (2) minority concerns as they relate to the judicial system.

Adopted as proposed by the Discrimination in the Courts Committee of the Conference of Chief Justices at the Fortieth Annual Meeting in Rockport, Maine, on August 4, 1988.

Conference of Chief Justices
Resolution Urging Further Efforts for Equal Treatment of All Persons

WHEREAS, the Conference of Chief Justices has established a Committee on Discrimination in the Courts because the principle of equal treatment of all persons before the law is essential to the very concept of justice; and

WHEREAS, there are a variety of federal, state and local laws and policies regarding all persons and institutions, both public and private, to prevent discrimination against any persons on the basis of race, gender, color, national origin, religion, age or disability, and in some states sexual orientation, and to take affirmative steps to overcome the effects of discrimination on such grounds; and

WHEREAS, the state courts have been instrumental in enforcing such laws and policies as they apply to other private and public parties in cases coming before the courts; and

WHEREAS, the Conference of Chief Justices is concerned that all participants in the judicial system are treated fairly and that the judicial system operate free of discrimination against any person; and

WHEREAS, Resolution XVIII adopted by the Conference of Chief Justices in 1988 urges positive action by every chief justice to address gender bias and minority concerns in the state courts, and further urges each chief justice in every state to establish separate task forces devoted to the study of (1) gender bias in the court system and (2) minority concerns as they relate to the judicial system.

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges each chief justice in every state to further the efforts for equal justice, as defined in the clauses above, in the court system by establishing task forces to remedy any discrimination and to implement the recommendations of the task force studies.

Adopted by the Conference of Chief Justices at the Sixteenth Midyear Meeting in Williamsburg, Virginia, on January 28, 1993.

Conference of Chief Justices
RESOLUTION IX
In Support of the "First National Conference on Eliminating Racial and Ethnic Bias in the Courts"

WHEREAS, the Conference of Chief Justices (the Conference) represents the leadership of state judicial systems and must ensure that justice is administered fairly to all who come before the courts; and

WHEREAS, the Conference believes that all who are employed by and conduct business in state judicial systems should be treated equally and that state judicial systems operate free of discrimination against any person; and

WHEREAS, the Conference has established a Committee on Discrimination in the Courts in furtherance of the principle that equal treatment of all persons under the law is essential to the very concept of justice; and

WHEREAS, several studies have documented that racial and ethnic bias exists in the judicial systems of some states; and

WHEREAS, the National Center for State Courts in cooperation with the State Justice Institute will conduct the "First National Conference on Eliminating Racial and Ethnic Bias in the State Courts" in Albuquerque, New Mexico, March 2 - 5, 1995;

NOW, THEREFORE, BE IT RESOLVED that:

- the conference endorses and supports the "First National Conference on Eliminating Racial and Ethnic Bias in the Courts."

- the Conference urges each chief justice to appoint a representative state team to attend the "First National Conference on Eliminating Racial and Ethnic Bias in the Courts"; and

- the Conference urges each chief justice to give full consideration to the recommendations of the respective state teams.

Adopted as proposed by the Discrimination in the Courts Committee of the Conference of Chief Justices at the Forty-sixth Annual Meeting in Jackson Hole, Wyoming, on August 4, 1994.

Conference Of Chief Justices
RESOLUTION XII
Regarding Racial, Ethnic and Gender Fairness in the Courts

WHEREAS, the Conference of Chief Justices represents the leadership of state judicial systems, which must ensure that the administration of justice in the state courts is fair and impartial; and

WHEREAS, the Conference has established a Committee on Discrimination in the Courts in furtherance of the principle that equal treatment of all persons under the law is essential; and

WHEREAS, the Conference endorsed and encouraged participation at the *First National Conference on Eliminating Racial and Ethnic Bias in the Courts* held in Albuquerque, New Mexico, March 2-5, 1995, at which over 400 judicial, legal and academic leaders participated to develop strategies to identify and eliminate the effects of racial and ethnic bias in the judicial branch; and

WHEREAS, state judicial systems are now refining the strategies they developed at the conference, and therefore have a need to share information about effective strategies; and

WHEREAS, the state court systems or bar associations of more than 40 states have established task forces or commissions to eliminate the effects of gender, racial and ethnic bias in the courts; and

WHEREAS, there is a need for a clearinghouse to compile and exchange information about efforts to address racial, ethnic and gender bias in the courts; and

WHEREAS, the establishment of an information clearinghouse with the capacity to conduct research, develop educational curricula, provide technical assistance and serve as the focal point for other activities to address the issues of racial, ethnic and gender fairness in the courts will foster the fair and impartial administration of justice;

NOW, THEREFORE, BE IT RESOLVED that the Conference calls upon each Chief Justice to give full consideration to the recommendations of his or her respective state team growing out of the *First National Conference on*

Eliminating Racial and Ethnic Bias in the Courts, and to the recommendations of the state task forces and commissions; and

BE IT FURTHER RESOLVED that the Conference endorses the establishment of an information clearinghouse with the capacity to conduct national scope research, develop educational curricula, provide technical assistance and share information that will foster the fair and impartial administration of justice.

Adopted as proposed by the Discrimination in the Courts Committee of the Conference of Chief Justices, at the Forty-Seventh Annual Meeting, in Monterey, California on August 3, 1995.