WASHINGTON STATE

MINORITY AND JUSTICE TASK FORCE

FINAL REPORT

December 1990

Justice Charles Z. Smith
Chairperson
Washington State Supreme Court

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DEDICATION

To our family, friends and colleagues who supported our efforts during the past thirty months so that we could devote our time to the work of the Task Force;

To citizens everywhere who participate in the struggle for human dignity and equality manifesting fair treatment of all persons in our great American democratic society, and particularly in our courts;

To all persons who believe in justice, fairness and recognition of racial, ethnic and cultural diversity as an ideal in our society;

We dedicate this report and commend for somber reflection the poetic words of Harvard Law School Professor Derrick A. Bell, Jr. (written in 1968 to commemorate a dramatic gesture for human rights by African American athletes at the Summer Olympics in Mexico):

> The dramatic finale of an
> Extraordinary achievement
> Performed for a nation which
> Had there been a choice
> Would have chosen others, and
> If given a chance
> Will accept the achievement
> And neglect the achievers.
> Here, with simple gesture, they
> Symbolize a people whose patience
> With exploitation will expire with
> The dignity and certainty
> With which it has been endured . . .
> Too long.

Members and Staff of the
Washington State Minority and Justice Task Force

FOREWORD

During the past thirty months, the legislatively-mandated Washington State Minority and Justice Task Force has conducted research and provided awareness training.

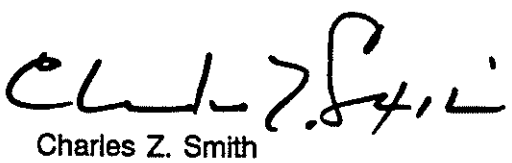
Our Task Force has been in the forefront. We conducted the first comprehensive bar survey to identify the number of minority attorneys in Washington State, as well as their occupational characteristics. The Task Force conducted the first courtwide cultural awareness education program designed for all court staff and other professionals who work in the judicial system. Our educational efforts have been recognized by the National Judicial College and the National Center for State Courts. The Task Force has also participated in the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts (consisting of comparable agencies in New York, New Jersey, Michigan, Massachusetts, Florida and the District of Columbia) and has provided advice to comparable task forces, commissions and advisory committees in other states.

As we conclude this thirty-month project with the release of the Task Force's Final Report, I am pleased to report that the Task Force's initial efforts will be continued by the newly-created Supreme Court Minority and Justice Commission.

In concluding, I also wish to commend the Legislature, the Courts and all the citizens of our state for their resolve and commitment to this undertaking. We must remain committed to a state judicial system which accords fair and unbiased treatment to all its citizens. Our democratic society can do no less.

I am personally deeply indebted to the members of our Task Force and our technical support members for their intense dedication to achievement of our goals. If one person can be singled out as absolutely vital to our mission, it is Ms. Désirée B. Leigh, our Project Director, whose intelligence, sensitivity, integrity, experience, awareness, assertiveness and positive communications skills earned the respect of citizens everywhere who were fortunate enough to meet her.

I must similarly express my personal appreciation to Ms. Denise Kilborn, Special Assistant, for her extraordinary intelligence, competence, dedication and skills which resulted in complete documentation, correspondence and preparation of formatted, edited and camera-ready reports for our Task Force.



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- Washington Defender Association
- Northwest Defenders Association
- Seattle-King County Defender Association
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- Washington Association of Defense Attorneys
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The Task Force especially thanks those persons who testified at the 1988 public forums and those who provided written testimony relating to the treatment of minorities in the Washington courts.

TABLE OF CONTENTS

	Page
DEDICATION	ii
FOREWORD	iii
MEMBERSHIP	iv
EDITORIAL ADVISORY BOARD	vi
CONTRIBUTING AUTHORS, RESEARCH ASSISTANTS AND STAFF	vii
ACKNOWLEDGEMENTS	viii
LIST OF TABLES	xiv
LIST OF FIGURES	xviii
DEFINITIONS	xx
EXECUTIVE SUMMARY	xxi
FINAL REPORT OF THE MINORITY AND JUSTICE TASK FORCE	
SECTION I: BACKGROUND OF TASK FORCE	1
CHAPTER ONE: THE WASHINGTON STATE MINORITY AND JUSTICE TASK FORCE: ITS PURPOSE, STRUCTURE, GENERAL SCOPE, FUNDING, AND SUPPORT	3
SECTION II: CONCLUSIONS, FINDINGS, AND RECOMMENDATIONS	7
CHAPTER TWO: CONCLUSIONS AND FINDINGS	9
CHAPTER THREE: RECOMMENDATIONS	15

Page

SECTION III: PERCEPTIONS REGARDING THE TREATMENT OF MINORITIES 23

CHAPTER FOUR: REVIEW OF 1988 PUBLIC FORUMS: PUBLIC PERCEPTIONS 25

CHAPTER FIVE: RACIAL AND ETHNIC BIASES IN THE ADMINISTRATION OF JUSTICE: PERCEPTIONS OF LAWYERS, JUDGES AND COURT PERSONNEL 34

SECTION IV: REPRESENTATION OF MINORITIES IN THE LEGAL PROFESSION AND IN THE COURT SYSTEM 54

CHAPTER SIX: RACIAL, ETHNIC, AND GENDER DIFFERENCES IN THE WASHINGTON STATE BAR 57

CHAPTER SEVEN: COMPOSITION AND SELECTION OF THE WASHINGTON STATE JUDICIARY 77

CHAPTER EIGHT: REPRESENTATION OF MINORITIES IN NONJUDICIAL COURT POSITIONS 100

SECTION V: CIVIL MATTERS 116

CHAPTER NINE: A REVIEW OF DIFFERENCES IN SETTLEMENT AMOUNTS: RESULTS OF ASBESTOS STUDY 118

CHAPTER TEN: LANDLORD-TENANT MATTERS 132

SECTION VI: CRIMINAL MATTERS 143

CHAPTER ELEVEN: REVIEW OF PROSECUTORIAL AND PUBLIC DEFENDER STANDARDS AND GUIDELINES 146

CHAPTER TWELVE: A REVIEW OF SELECTED PRACTICES AND PROCEDURES USED BY THE DEPARTMENT OF CORRECTIONS 162

SECTION VII: EDUCATION PROGRAM 183

CHAPTER THIRTEEN: THE DEVELOPMENT OF A COMPREHENSIVE CULTURAL AWARENESS EDUCATION PROGRAM: A MODEL FOR STATE COURTS 186

Page

SECTION VIII: SUMMATION AND CONCLUDING REMARKS 195

CHAPTER FOURTEEN: THE CHALLENGE FOR THE COURT SYSTEM 197

APPENDIX 199

SOURCES 278

LIST OF TABLES

		Page
Table 4-1	All Issues Discussed at Public Forums and by Correspondents	31
Table 5-1	Do Non-Minority Defendants Receive the First-Time Offender Waiver More Than Minority Defendants?	37
Table 5-2	Are Minority Defendants More Likely to Receive Longer Jail Sentences Than Non-Minorities Convicted of the Same Crime and All Other Factors Being Equal?	38
Table 5-3	Do Non-Citizen Defendants Understand the Impact of a Guilty Verdict on Their Present and Future Immigration Status?	40
Table 5-4	Have You Observed Minority Defendants Represented by Court-Appointed Lawyers Pleading Guilty More Than Non-Minority Defendants Charged With the Same Crime and All Other Factors Being Equal?	41
Table 6-1	Representation of Minorities in the Washington Bar and General Population	61
Table 7-1	Sources of Voter Information	89
Table 7-2	Campaign Expenses--King County	90
Table 7-3	Anxiety and the Appointment Process	93
Table 7-4	Anxiety and the Election Process	95
Table 8-1	Job Categories Where Minorities are Underrepresented in Comparison to Their Availability by County as of June 30, 1989	105
Table 8-2	Racial and Ethnic Groups That are Underrepresented in Comparison to Their Availability by County as of June 30, 1989	106

		Page
Table 8-3	Demographic Representation: Supreme Court Summary Data as of June 30, 1989	110
Table 8-4	Demographic Representation: Supreme Court Agencies Summary Data as of June 30, 1989	111
Table 8-5	Demographic Representation: Court of Appeals Summary Data as of June 30, 1989	112
Table 8-6	Demographic Representation: Superior Courts Summary Data as of June 30, 1989	113
Table 8-7	Demographic Representation: Courts of Limited Jurisdiction Summary Data as of June 30, 1989	114
Table 8-8	Demographic Representation: Administrative Hearings Summary Data as of June 30, 1989	115
Table 9-1	Age by Non-Minority and Minority Status	121
Table 9-2	Settlement Data by Work Location and Type of Disease	123
Table 9-3	Settlement Data by Non-Minority/Minority Status, Type of Disease and Age	125
Table 9-4	Settlement Data by Deceased and Non-Minority/ Minority Status, and by Work Location and Disease	126
Table 9-5	Settlement by County and Non-Minority/Minority Status	127
Table 10-1	Tenant Characteristic: Non-Minority and Minority Status	133
Table 10-2	Group of Tenants	134
Table 10-3	Gender of Tenants	134
Table 10-4	Tenant's County of Residence	135
Table 10-5	Tenant Minority and Non-Minority Status and Case Resolution	138

		Page
Table 11-1	Do You Perceive There to be a Problem With Ethnic and Racial Bias in Washington State Courts?	152
Table 11-2	Does This Problem (Racial and Ethnic Bias) Occur in Criminal Prosecution?	153
Table 11-3	Do You Believe That Minorities May Encounter Bias or Prejudice for Reasons Other Than Their Racial/Ethnic Minority Status?	154
Table 11-4	Would You Favor Statewide or Uniform Standards or Guidelines for Prosecuting Attorneys?	155
Table 11-5	Would You Favor Each County Prosecutor Developing His/Her Own Standards or Guidelines?	157
Table 11-6	When Cases Involving Possible Racial or Ethnic Bias Arise, Would You Consider Establishing and Using a Standing Committee Managed by the Washington Association of Prosecuting Attorneys, Which Would Serve as a Source to Discuss the Problems or Issues?	157
Table 11-7	Would You Favor Statewide or Uniform Standards or Guidelines for Public Defenders?	158
Table 11-8	Would You Favor Each County Developing its Own Standards or Guidelines for Public Defenders?	159
Table 12-1	Do You Believe Cultural Differences Might Influence Your Sentence Recommendations?	177
Table C-1	Attorneys Surveyed by Type of Practice	216
Table C-2	Attorney Respondents by Gender	217
Table C-3	Attorney Respondents by Age	217
Table C-4	Attorney Respondents by Racial/Ethnic Group	217
Table C-5	Attorney Respondents by Primary Practice	218
Table C-6	Judicial Officers Surveyed and Their Response	218

		Page
Table C-7	Judicial Respondents by Gender	219
Table C-8	Judicial Respondents by Age	219
Table C-9	Judicial Respondents by Racial/Ethnic Group	220
Table C-10	Court Personnel Surveyed and Their Response	220
Table C-11	Court Personnel by Gender	221
Table C-12	Court Personnel by Age	221
Table C-13	Court Personnel by Racial/Ethnic Group	222
Table C-14	Court Personnel by Occupation	222

LIST OF FIGURES

		Page
Figure 5-1	Do Criminal Defense Lawyers Systematically Use Peremptory Challenges to Eliminate Minorities From Juries?	42
Figure 5-2	Do Prosecutors Systematically use Peremptory Challenges to Eliminate Minorities From Juries?	42
Figure 6-1	Attorney Occupations–Type of Law Practice	62
Figure 6-2	Attorney Incomes–Reported Gross Annual Incomes	62
Figure 6-3	Racial and Ethnic Differences in Types of Law Practice	64
Figure 6-4	Racial and Ethnic Differences in Attorney Income	64
Figure 6-5	Gender Differences in Types of Law Practice	65
Figure 6-6	Gender Differences in Attorney Income	65
Figure 6-7	Racial, Ethnic and Gender Differences in Types of Law Practice	66
Figure 6-8	Racial, Ethnic and Gender Differences in Attorney Income	66
Figure 6-9	Racial and Ethnic Differences in Law Schools Attended	69
Figure 6-10	Racial, Ethnic and Gender Differences in Law Schools Attended	69
Figure 6-11	Differences in Attorney Incomes by Law School Attended	71
Figure 9-1	Asbestos Cases by Non-Minority/Minority Status and Gender	120
Figure 9-2	Work Location and Non-Minority/Minority Status	122
Figure 9-3	Type of Disease and Non-Minority/Minority Status	122

		Page
Figure 9-4	Settlements by Disease Type and Non-Minority/ Minority Status	124
Figure 9-5	Settlements by Work Location and Non-Minority/ Minority Status	124
Figure 10-1	Type of Dispute by Non-Minority/Minority Status	136
Figure 10-2	Case Resolution	138
Figure 10-3	Case Results and Non-Minority/Minority Status	139
Figure 10-4	Race/Ethnicity Influence in Case Outcome	140
Figure 10-5	Economic Status Influence on Case Outcomes	141
Figure 12-1	Race and Ethnicity of In-Custody and Out-of-Custody Offenders	163
Figure 12-2	Comparison of In-Custody Offenders	164
Figure 12-3	Comparison of Out-of-Custody Offenders	164
Figure 12-4	Race and Ethnicity of Responding Community Corrections Officers	166
Figure 12-5	Comparison of Non-Minority/Minority Offenders Undergoing Presentence Investigations	166
Figure 12-6	Standard Information Collected and Verified For Presentence Investigations (PSI)	169
Figure 12-7	Supplemental Factors Influencing Recommendations in Presentence Investigations (PSI)	171
Figure 12-8	Supplemental Factors Influencing Recommendations Inside the Standard Range	174
Figure 12-9	Supplemental Factors Influencing Recommendations Outside the Standard Range	176

DEFINITIONS

1. **Minority** as defined for the purpose of this report refers to African Americans (Blacks); Asians and Pacific Islanders; Hispanics (Latinos); and Native Americans. Any appropriate subgroups falling within these racial and ethnic categories are also properly designated as "minorities" for the purpose of the Task Force's investigation. It should also be noted that the term "people of color" also refers to "minorities". Therefore, these terms, "minorities" and "people of color" may be used interchangeably in this report.

2. **Non-minority** as defined for the purpose of this report refers to Caucasians or Whites. These terms may be used interchangeably in this report.

3. **Minority bias** is defined as conscious or unconscious acts or decisions which may or may not result in apparent disparate treatment. Minority bias may include racial, ethnic, cultural and linguistic biases.

WASHINGTON STATE
MINORITY AND JUSTICE TASK FORCE
EXECUTIVE SUMMARY

The Washington State Minority and Justice Task Force, appointed by the Chief Justice of the Supreme Court in 1988, was established by the State Legislature to study the treatment of minorities in the state court system, to recommend reforms and to provide an education program for the judiciary.

The scope and magnitude of the legislative mandate was not fully realized until the Task Force held public forums around the state in late 1988. The testimony heard at the public forums suggest that many minorities in our state distrust the very institution established to protect their rights as citizens–the courts. It therefore became incumbent upon this Task Force to review the problems and issues brought to our attention at these forums. For instance, speakers commented on the low representation of minorities as judges and court employees; the poor quality of court interpreters for non-English speaking citizens; the underrepresentation of minorities on the existing jury source list; and the apparent need for cultural awareness training for all court officials and court employees.

Subsequent to the public forums and despite the Task Force's limited funding[1], it conducted ten empirical studies and sponsored seven introductory cultural awareness seminars. Some of the Task Force's conclusions and recommendations are summarized in the following sections.

SELECTED CONCLUSIONS

- Minorities believe that bias pervades the entire legal system in general and hence, they do not trust the court system to resolve their disputes or administer justice even-handedly.

- There is a perception that minorities are underrepresented, if represented at all, on most juries.

- In general, a study of landlord-tenant cases that went to trial did not show significant differences in minority and non-minority case outcomes. However, those cases that did not go to trial showed differences in the manner in which those cases were resolved.

---

[1]Between 1987 and 1990, the Legislature allocated $317,000.00 for the Minority and Justice Task Force to conduct its empirical studies, to provide cultural awareness seminars for the judiciary and to cover general operating costs.

- A sample of asbestos cases showed that minorities received lower average settlement amounts than non-minorities.

- Based on responses to questionnaires sent to prosecutors and public defenders, it was concluded that systemic institutionalized bias may negatively impact those who lack financial resources, many of whom are minorities.

- A sample of out-of-custody and in-custody defendants showed that minorities are more likely to be held in custody following conviction and prior to sentencing.

- The fact that minorities tend to be government attorneys and are less likely to hold positions in law firms is a concern. The Task Force's findings show that minorities' apparent levels of educational attainment are, on the average, equivalent to or higher than those of non-minority bar members.

- In 1988, the percentage of minorities on the bench (about 4%) was slightly less than the percentage of minority lawyers (5%). In 1988, the percentage of minorities on the bench (about 4%) was substantially less than the estimated percentage of minorities in the general population (about 11%).

- As of November 1990, most minority judges in this state served on the bench in Seattle and King County.

- To the extent that minorities are represented in nonjudicial court positions, they were concentrated in office/clerical categories, according to data collected by the Task Force in June 1989.

- Some courts may have equal employment opportunity statements. But, few courts have implemented comprehensive programs designed to increase minority representation through specific policies and procedures, despite the widespread problem of minority underrepresentation.

- Jurisdictional issues continue to be a concern of tribal and state courts, particularly with respect to child custody cases and the appropriate application of the Indian Child Welfare Act.

SELECTED RECOMMENDATIONS

- Funding for the Supreme Court Minority and Justice Commission.

  The Task Force recommends that the State Legislature appropriate funds for the Supreme Court Minority and Justice Commission for the purpose of (a) conducting additional research as recommended by the Minority and Justice Task Force; (b) overseeing implementation of the Task Force's recommendations; (c) developing ongoing awareness training for judges, other legal professionals and court staff; (d) recommending measures to prevent possible bias in the state court system; and (e) retaining the necessary staff to carry out the work of the Commission.

- Development of a Workforce Diversity Program for the Court System.[2]

  The Task Force recommends that the State Legislature immediately fund a Workforce Diversity Program for the court system designed to increase the number of minority employees in the court system. Specifically, the program would set forth the minimum elements that the courts would adopt for improving minority representation among nonjudicial court employees, with additional program elements for those courts with unusual or unique problems.

- Legislation to Conduct an Implementation Plan to Enlarge the Jury Source List.

  The Task Force recommends that the State Legislature pass Second Substitute Senate Bill 5953 (2SSB 5953) in the 1991 legislative session. The bill provides for an implementation plan to expand the jury source list to include licensed vehicle drivers and state identicard holders. Currently, the lists of jurors are drawn from the registered voter rolls.

- Establishment of a Community Law Education Program.

  Based on testimony heard at the 1988 public forums, the Task Force recommends funding from the State Legislature to conduct a series of law-related community seminars, which would include a minority outreach component.

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[2]A Workforce Diversity Program would be a program specifically designed to address the underrepresentation of minorities in the nonjudicial workforce of the court system. It can be described as follows: "The Washington State Court System will establish specific policies and procedures for annual reporting in order to identify job categories where minorities are underrepresented; will recruit, hire, and retain qualified minorities in order to eliminate existing underrepresentation in specific occupational categories and locations; and will provide an ongoing commitment to the goal of a racial and ethnically diverse nonjudicial workforce."

- Continued Awareness Training and Education.

  The Task Force recommends that the State Legislature appropriate funds for continuation of the introductory cultural awareness seminars developed by the Task Force in 1990 and the development of intermediate and advanced seminars. Seminars would include substantive areas of the law and topics on institutional biases.

- Brochures and Seminars on the Judicial Selection Process.

  The Task Force recommends that the Legislature appropriate funds to the Minority and Justice Commission to coordinate the publication of brochures and the organization of seminars to inform potential or interested judicial aspirants about the judicial selection process and other relevant issues. This program would also encourage participation of minority attorneys and the minority community.

- Publication of Information on Bar Membership.

  The Task Force recommends that the Washington State Bar Association collect and publish on an annual basis information concerning the composition of its minority and non-minority membership.

- Increase the Number of Minority Law School Students.

  In view of the small percentage of minority attorneys in this state, law schools in the state must be encouraged to continue their efforts to recruit more minority students.

- Measures to Encourage Cooperative Approaches Between Tribal and State Courts.

  The Task Force recommends that the Supreme Court and the Office of the Administrator for the Courts develop measures to assist all state courts in improving cooperation and communication between the tribal and state court systems, especially on matters involving child custody.

SECTION I

OVERVIEW

SECTION I: BACKGROUND OF THE TASK FORCE

The legislatively-mandated Washington State Minority and Justice Task Force, which comes under the auspices of the State Supreme Court, has been authorized to study the treatment of minorities as litigants, attorneys, judges and court personnel. During the past thirty months, the Minority and Justice Task Force held public forums and conducted several empirical studies which included: the first comprehensive bar survey to identify the differences between minority and non-minority attorneys in Washington; and the first courtwide demographic study to identify the minority and non-minority composition of the state's court personnel. With logistical support from the Office of the Administrator for the Courts and additional funding from the Board for Trial Court Education, the Task Force presented several cultural awareness seminars to judges, attorneys and nonjudicial court personnel.

Section I highlights the work and progress of the Task Force and discusses its general purpose and goals.

CHAPTER ONE

THE WASHINGTON STATE MINORITY AND JUSTICE TASK FORCE: ITS PURPOSE, STRUCTURE, GENERAL SCOPE, FUNDING, AND SUPPORT

PURPOSE

Pursuant to legislation enacted by the 1987 State Legislature, the Washington State Minority and Justice Task Force ("Task Force") was established by the Supreme Court in 1988. The general intent of the enacting legislation is to initiate measures to prevent minority bias in the state courts.[1] More specifically, the law calls for (a) a study of the status of minorities as litigants, lawyers, judges, and court employees; (b) recommendations for implementing reform; and (c) providing attitude awareness training for judges and legal professionals.[2]

The Task Force's legislative mandate is an ambitious one given that the prevention of bias requires identification and recognition of its various manifestations which may be overt, subtle or totally unconscious acts or decisions. Moreover, such acts or decisions may go unrecognized by many persons who are part of a complex legal institution. They may also be perpetuated by a court's institutional policies and procedures, thus making the task of identification or recognition a formidable one. An additional concern is being able to address the perceptions of bias and the appearance of unfairness which many minorities hold about the very institution established to protect their rights as citizens–the courts. Therefore, the Task Force's purpose may be stated simply in its legislative mandate. Yet, its arduous task is to recognize or identify bias as it is perceived by some and manifested by others; and to recommend realistic reforms to correct existing bias and to prevent possible biased treatment in the future. In the final analysis, the Task Force's main purpose is to improve upon our system of administering justice to all of our citizens.

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[1]For the purposes of this report, minority bias (for example, racial, ethnic, cultural, and linguistic) is defined as conscious or unconscious acts or decisions which adversely impact minorities and which may or may not result in apparent disparate treatment.

[2]Laws of 1987, 1st Ex. Session, ch. 7, section 110(3)(a)-(c), p. 2673.

GENERAL MEMBERSHIP AND SCOPE OF THE TASK FORCE

Washington State Supreme Court Justice Charles Z. Smith serves as Chairperson of the Minority and Justice Task Force. The other twenty appointed members and the sixteen technical support members of the Task Force include private citizens, academicians, lawyers, judges, and other professionals who interact with the judicial system.[3] Task Force Members serve on one of five Subcommittees. The Task Force's five main subcommittees are:

Subcommittee I	The Perceptions and Treatment of Minority Litigants and Minority Lawyers in the Washington Court System.
Subcommittee II	The Prosecution and Adjudication of Criminal Cases: Treatment of Minority Defendants.
Subcommittee III	The Adjudication of Civil Cases: Treatment of Minority Litigants.
Subcommittee IV	The Underrepresentation and Treatment of Minority Judges, Minority Court Officials, and Other Minority Court Employees.
Subcommittee V	An Educational Program Designed to Increase Cultural Awareness and to Prevent Minority Bias in the Courts.

In 1989, the Task Force added a Legislative Liaison Subcommittee to assist the Task Force in developing a legislative agenda.

Considering its broad mandate and initial limited appropriation of only sixty-five thousand dollars ($65,000.00),[4] the Task Force confined its investigation to the following "minority" groups: African American (Blacks); Asians and Pacific Islanders; Latinos (Hispanics); and Native Americans. Any appropriate subgroups falling within these racial/ethnic categories were properly designated as "minorities" for purposes of this Task Force's investigation.

In an effort to better understand the legal issues and other judicial matters of concern to the minority community in Washington State, the Task Force held public forums around the state in late 1988. The Task Force heard testimony from legal professionals and members of the community, and welcomed written comments from the public.

The Task Force also conducted qualitative and quantitative research in an effort to accumulate information and data from a variety of sources. Research activities included classification of the testimony presented at the public forums, along with correspondence

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[3] A list of the Task Force Members is provided on pages iv and v of this report.

[4] From April 1988 through June 1989, the Task Force's limited appropriation of $65,000.00 was supplemented by the Office of the Administrator for the Courts which allocated approximately thirty-thousand dollars ($30,000.00) for staff.

received by the Task Force. This research project was designed to summarize the perspectives and views of forum speakers and correspondents, thereby identifying some of the key court-related issues of concern to the state's minority community. After reviewing the issues raised by public forum speakers and correspondents, the Task Force then solicited the views of judges, lawyers, and court personnel. For this purpose, three similar surveys were designed to obtain data on these groups' perceptions and observations concerning the treatment of minorities in the state court system.

At the public forums, testimony was also given about the poor representation of minorities in the legal profession and as employees in the court system. Consequently, the Task Force undertook two studies designed to collect demographic information on lawyers, judicial officers, and court personnel. With the assistance of the Washington State Bar Association, the Minority and Justice Task Force conducted a survey of the Bar's membership as of December 1988. Based on responses from 6,348 Bar members, or forty-three percent (43.0%) of the active Bar membership as of December 1988, the Task Force was able to develop a profile of minority lawyers in Washington State. It was the first bar survey of its type to be conducted in Washington State and one of the few surveys of its type in the nation. The second demographic study was a court personnel survey. It was the first survey in Washington State designed to examine the racial and ethnic composition of all court personnel by job categories. Out of a total of 250 courts, the survey obtained responses from 242 courts or a 96.8% response rate. This exceptionally high response rate was due in part to the diligence of many court administrators, clerks and their staffs.

The Task Force's other research activities included: a review of prosecutors' and public defenders' guidelines and their perceptions of racial and ethnic bias; a comparable study of community corrections officers; and two separate questionnaires developed to collect data on selected landlord-tenant problems and settlement amounts awarded minorities in asbestos cases.

In accordance with its legislative mandate, the Minority and Justice Task Force provided awareness training for judges and other members of the state justice system. As currently designed, the proposed cultural awareness education program is divided into three phases to allow as many court personnel as possible to participate in the program. Phase I and Phase II have already been presented.

Phase I included a three-hour presentation on "Fairness in the Courts" by Justice Juanita Kidd Stout, Pennsylvania Supreme Court (retired), and Justice Bruce McM. Wright, New York Supreme Court. Phase I also included an hour and one-half choice session on cultural awareness. This session, presented by Dr. Edwin H. Nichols, introduced participants to cultural stereotyping and how it perpetuates cultural biases. Phase I was presented at the 1989 Fall Judicial Conference, with a subsequent presentation by Dr. Nichols at the 1990 Conference.

Phase II of the Task Force's education program was a two-day seminar offered throughout the Spring and Summer of 1990. The seminar trainers conducted group discussions on the state's changing demographics and the value systems of various racial and ethnic groups. Trainers and participants also shared strategies and ideas for improving

communication and working relationships with persons from different racial, ethnic, cultural, and linguistic backgrounds. Group exercises were also designed to help participants develop skills for increasing their level of cross-cultural competency.

The Task Force's final activity is the publication of its research findings, conclusions, and recommendations in its Final Report to the State Legislature, courts and public.

The Task Force's work will be continued by a permanent Commission. On October 4, 1990 the Supreme Court signed an order establishing a five-year renewable Minority and Justice Commission. Commission Members will be appointed by the Chief Justice.

FUNDING AND SUPPORT

The State Legislation has allocated $317,000.00 to assist the Task Force in carrying out its mandate since its creation in 1988. These funds have been allocated for the research and program activities delineated earlier in this Chapter and for staff, which included a full-time Project Director, a full-time Research Specialist, a part-time Content Specialist Advisor for the cultural awareness education program, and several temporary research assistants.

The Task Force also received considerable support for its education program from the state judiciary's Board for Trial Court Education. It set aside approximately $32,000.00 to help defray travel and per diem costs of court employees who attended the two-day cultural awareness seminar (Phase II). The Trust and Endowment Committee of the Superior Court Judges' Association also awarded the Task Force a $2,500.00 grant to defray costs associated with the judicial and court personnel surveys.

The Supreme Court provided the Task Force with an administrative assistant, who worked with the Project Director in carrying out the daily operations of the Task Force. The Office of the Administrator for the Courts provided additional clerical and administrative support for many of the research projects, in addition to the assistance of an Education Specialist who provided logistical support to the cultural awareness education program.

Significant contributions of time and expertise were given by numerous volunteers who are acknowledged on pages viii through x.

SECTION II

OVERVIEW

SECTION II: CONCLUSIONS, FINDINGS, AND RECOMMENDATIONS

First, this section summarizes the findings and conclusions set forth in Chapters Four through Thirteen. Second, the section provides a summary of the various Task Force recommendations. In general, the recommendations have been directed at specific institutions or organizations for consideration and action. Some of the recommendations are: funding for the Supreme Court Minority and Justice Commission; the immediate development and implementation of a Workforce Diversity Program designed to increase the low representation of minorities among nonjudicial court staff; enactment of legislation to enlarge the jury source list; establishment of a community law education program; seminars on the judicial selection process; continued cultural awareness training and education for the judiciary; passage of the proposed Minority Criminal Justice Education Act; and funding for additional research.

CHAPTER TWO

CONCLUSIONS AND FINDINGS

INTRODUCTION

The conclusions of the Task Force are summarized in this chapter and are based on qualitative and quantitative research and studies conducted by several researchers. The conclusions focus on five broad areas of concern. Those areas are:

- The perceptions about the treatment of minority litigants in the Washington court system;
- The treatment of minority litigants in civil and criminal matters;
- The number and underrepresentation[1] of minorities as lawyers and judges;
- The number and underrepresentation[1] of minorities as nonjudicial court employees; and
- The education and training of legal professionals and court staff regarding the existence of bias in the court system.

[1] Representation may be defined in terms of the simple proportion of a specific group compared to their proportion in the general population. An alternative definition views representation in terms of a group's relative socioeconomic standing compared with another group.

GENERAL PERCEPTIONS ABOUT THE TREATMENT OF MINORITY LITIGANTS

Many minorities, some lawyers and a few judges hold similar perceptions about the treatment of minority litigants. These general perceptions, however, are not necessarily shared by all persons working in the courts. The Task Force lists below the more significant and disturbing perceptions held by minorities, some lawyers and a few judges:

1. Minorities believe that bias pervades the entire legal system in general and hence they do not trust the court system to resolve their disputes or administer justice even-handedly.

2. There is a perception that in criminal proceedings, minorities receive disparate treatment and harsher sentences despite the guidelines set out in the Sentencing Reform Act (especially with regard to the first offender waiver and the exceptional sentence provisions).

3. There is a perception that a lack of uniformity exists in prosecutorial decision-making regarding criminal cases involving minority persons.

4. Minorities believe that some law enforcement officials tend to treat minority persons with disrespect and engage in offensive behavior toward minority persons.

5. Those working in the judicial system believe that the quality of justice delivered to minority litigants who require the services of an interpreter for legal proceedings are adversely impacted by the unavailability of a sufficient number of competent and trained interpreters in the court system.[2]

6. Those minorities who must rely on public defender organizations perceive themselves to be disadvantaged because those agencies remain understaffed, poorly funded, and lack sufficient available resources.

7. There is a perception that minorities are underrepresented, if represented at all, on most juries.

8. There is a perception that some judges, lawyers, other officers of the court, and court staff have made offensive remarks and have demonstrated other biased attitudes toward minorities appearing in court.

9. Minorities perceive that they do not have access to rehabilitation programs as readily as non-minority defendants.

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[2]The need for foreign language interpreting is significantly similar to the need for sign language interpreting. Also, there are comparable concerns with respect to the quality of justice provided to the hearing-impaired litigant.

10. There is a perception that the criminal justice system provides inadequate protection, access, support, and services to minority victims of crime.

THE TREATMENT OF MINORITY LITIGANTS IN CIVIL AND CRIMINAL MATTERS

A summary of the conclusions follow.

Civil Matters

1. In general, a study of landlord-tenant cases that went to trial did not show significant differences in the minority and non-minority case outcomes. However, those cases that did not go to trial showed differences in the manner in which those cases were resolved. The study also showed a disproportionately high number of minorities involved in landlord-tenant disputes.

2. In a study of asbestos cases, the case data showed that minorities received lower average settlement amounts than non-minorities. Although this limited study can not be applied to all personal injury cases, it does mean that other personal injury cases may need to be examined to determine if similar results are occurring.

Criminal Matters

1. A majority of county prosecutors and public defenders in Washington State agree that people who have fewer economic resources are disadvantaged in the criminal justice system. For instance, they are less able to make bail and to afford alternatives to incarceration.

2. Based on responses to questionnaires sent to prosecutors and public defenders, it was concluded that systemic institutionalized bias may negatively impact those who lack financial resources, many of whom are minorities. In addition, the existence of bias in the criminal justice system may infrequently be the result of racial and ethnic bias on the part of individual actors.

3. The majority of county prosecutors do not appear to have specific procedures for filing criminal charges.

4. A sample of out-of-custody and in-custody defendants showed that minorities are more likely to be held in custody following conviction and prior to sentencing. Consequently, minority defendants are less likely to give positive assistance in the pre-sentence investigation.

5. Language and cultural barriers between community corrections officers and minorities may adversely impact the ability of community corrections officers to do adequate presentence investigations, particularly in cases involving non-English speaking minority offenders.

THE NUMBER AND UNDERREPRESENTATION OF MINORITIES AS LAWYERS AND JUDGES

Lawyers

Conclusions about the number and representation of minority lawyers and their treatment is based on the results of the bar survey conducted in December 1988 and released in a February 1990 report prepared by Dr. George S. Bridges.[3]

1. Asians, Blacks (African Americans), Latinos (Hispanics), Native Americans, and other minorities made up approximately five percent (5%) of the total sample of 6,348 lawyers. Thus, we estimate that minorities make up about 5% of the bar membership.

2. The large majority of lawyers surveyed worked in private practice, either in law firms or as sole practitioners.

3. Nearly one-fourth of all lawyers reported gross annual incomes in excess of $75,000.

4. Non-minority lawyers were more likely than minority lawyers to work in private practice and earn in excess of $75,000 annually.

5. Minority lawyers were more likely to work as government agency lawyers.

6. More lawyers in the sample received their legal training at the University of Washington Law School than at any other law school. A higher proportion of minorities than non-minorities attended out-of-state ranked law schools[4] (with the exception of Native American lawyers).

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[3]George S. Bridges, Ph.D., is a Professor of Sociology at the University of Washington in Seattle, Washington.

[4]There are many rankings of graduate degree programs at major universities. Two commonly cited rankings of law schools were considered for this analysis. These included the rankings in Jack Gourman, The Gourman Report: A Rating of Graduate and Professional Programs in American and International Universities, Northridge, California: National Education Standards Press, 1989; and Scott Van Alstyne, "Ranking the Law Schools: The Reality of Illusion?," American Bar Foundation Research Journal, No. 3 (1982): pp. 649-684.

7. Across most Washington counties, the proportion of minority lawyers was substantially lower than the percentage of minorities in the general population. In some rural counties, differences between the concentration of minorities in the general population and in the Bar were pronounced.

8. Racial and ethnic differences in incomes were associated with differences between non-minority and minority lawyers in terms of relative years of experience and types of practice. Few minority lawyers had the years of experience or positions in law firms which typically command the highest incomes.

9. The fact that minorities are less likely to hold positions in law firms is a concern because their apparent levels of educational attainment are, on the average, equivalent to or higher than those of non-minorities.

Judges

Conclusions about the number and underrepresentation of minorities as judges is based on the demographic survey conducted by the Task Force and research conducted by Dr. Charles H. Sheldon.[5]

1. As of April 1990, of the 371 judges in the state of Washington (Supreme Court, Court of Appeals, Superior Courts, District Courts, Municipal Courts), 16 (4.3%) were identified as racial and ethnic minorities.

2. In 1988, the percentage of minorities on the bench (about 4%) was slightly less than the percentage of minority lawyers (5%). In 1988, the percentage of minorities on the bench (about 4%) was substantially less than the percentage of minorities in the general population (about 11%).

3. A formal judicial screening process exists in King County and for the state appellate courts. However, some aspects of the judicial screening process may need revision. In some counties. For instance, the perpetuation of an informal system in the selection of prospective candidates may be an impediment to minority judicial aspirants. Also, while appointing authorities may need to have a thorough process of review, they may also need to ensure that the selection process remains open and competitive.

4. With the exception of a minority person serving on the Washington State Supreme Court and a minority person as a Pierce County Superior Court Judge, all minority judges serve on courts in Seattle and King County.

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[5]Charles H. Sheldon, Ph.D., is a Professor of Political Science at Washington State University in Pullman, Washington.

THE NUMBER AND UNDERREPRESENTATION OF MINORITIES AS NONJUDICIAL COURT EMPLOYEES

Conclusions regarding the representation of nonjudicial court employees are based on the demographic survey conducted by the Task Force in June 1989 and the study conducted by Joann Francis of the Washington Consulting Group. The conclusions are:

1. To the extent that minorities are represented in nonjudicial court positions, they were concentrated in office/clerical categories.

2. Administrator[6] is one nonjudicial job category where minorities were grossly underrepresented. According to a sampling of 21 counties, 11 counties showed that minorities were underrepresented in this position in comparison to their availability in the county workforce.

3. Some courts may have equal employment opportunity statements. Few courts have implemented comprehensive programs designed to increase minority representation through specific policies and procedures, despite the widespread problem of minority underrepresentation.[7]

4. Although many courts indicate that they have an affirmative action policy or adhere to general county policies, it has not resulted in addressing the state court system's problems with respect to minority employment.

EDUCATION FOR LEGAL PROFESSIONALS AND COURT STAFF

1. There is a need for ongoing cultural awareness education as an effective means of dealing with individual biases and educating legal professionals and court staff about existing institutional biases.

2. The initial efforts at providing cultural awareness seminars met most of the general parameters proposed by the Task Force. The seminars were well attended by legal professionals, court staff and other criminal justice personnel.

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[6]Administrator includes occupations in which employees set broad policies, exercise overall responsibility for execution of these operations, or provide specialized consultation on a regional, district or area basis.

[7]On October 4, 1990, the Washington State Supreme Court adopted an "Equal Opportunity Program" which sets forth the Supreme Court's general policies for providing equal employment opportunities to persons from "protected groups." This general policy applies to the departments under the direction of the Supreme Court and does not apply to other state and local courts. Please refer to Appendix K for the text.

CHAPTER THREE

RECOMMENDATIONS

This chapter of the report sets forth the various recommendations of the Task Force. In general, recommendations have been directed at specific institutions or organizations for consideration and action.

FOR THE LEGISLATURE:

1. **Funding for the Supreme Court Minority and Justice Commission.**

The Task Force recommends that the State Legislature appropriate funds for the Supreme Court Minority and Justice Commission for the purpose of (a) conducting additional research as recommended by the Minority and Justice Task Force (see page 21); (b) overseeing implementation of the Task Force's recommendations; (c) developing ongoing awareness training for judges, other legal professionals and court staff; (d) recommending measures to prevent possible bias in the state court system; and (e) retaining the necessary staff to carry out the work of the Commission.

2. **Development of a Workforce Diversity Program for the Court System.**[1]

The Task Force recommends that the State Legislature immediately fund a Workforce Diversity Program for the court system designed to increase the number of minority

[1] A Workforce Diversity Program would be a program specifically designed to address the underrepresentation of minorities in the nonjudicial workforce of the court system. It can be described as follows: "The Washington State Court System will establish specific policies and procedures for annual reporting in order to identify job categories where minorities are underrepresented; will recruit, hire, and retain qualified minorities in order to eliminate existing underrepresentation in specific occupational categories and locations; and will provide an ongoing commitment to the goal of a racial and ethnically diverse nonjudicial workforce."

employees in the court system. Specifically, the program would set forth the minimum elements that the courts would adopt for improving minority representation among nonjudicial court employees, with additional program elements for those courts with unusual or unique problems.

3. **Legislation to Conduct an Implementation Plan to Enlarge the Jury Source List.**[2]

The Task Force recommends that the State Legislature pass Second Substitute Senate Bill 5953 (2SSB 5953) in the 1991 legislative session. The bill would provide for an implementation plan to expand jury source lists to include licensed vehicle drivers and state identicard holders. Currently, the lists of jurors are drawn from the lists of registered voters.

4. **Establishment of a Community Law Education Program.**

Based on testimony heard at the 1988 public forums, the Task Force recommends funding from the State Legislature to conduct a series of law-related community seminars, which would include a minority outreach component. In 1990, the Asian Bar Association of Washington (ABAW) conducted a series of seminars to help Seattle residents in the Asian community better understand the legal system. Given the success of this program, it is envisioned that similar seminars could be co-sponsored by the Supreme Court Minority and Justice Commission, minority bar associations, and other law-related groups for all state residents, particularly minority citizens.

5. **Brochures and Seminars on the Judicial Selection Process.**

The Task Force recommends that the State Legislature appropriate funds for the Minority and Justice Commission to develop brochures and to organize seminars to inform potential or interested judicial aspirants about the judicial selection process, the laws and practices concerning fundraising, dictates of the Code of Judicial Conduct, and campaign organization and strategies. This program would include a minority outreach component to ensure that potential minority candidates and the minority public are encouraged to participate.

6. **Continued Awareness Training and Education.**

The Task Force recommends that the State Legislature appropriate funds for continuation of the introductory cultural awareness seminars developed by the Task Force in 1990 and the development of intermediate and advanced seminars. Seminars would include substantive areas of the law and topics on institutional biases.

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[2]Concern has been expressed that persons on the Department of Licensing list would not be qualified jurors, especially with respect to citizenship. It is noted that U.S. citizenship is not confirmed under the existing jury system until after a questionnaire is received from a prospective juror and again during voir dire examination at the beginning of trial before the juror is qualified to serve.

7. **Passage of the Proposed Minority Criminal Justice Education Act.**[3]

The Task Force recommends that the State Legislature pass the Proposed Minority Criminal Justice Education Act in the 1991 legislative session. The legislation would establish a conditional scholarship program designed to encourage minorities to serve as prosecutors, public defenders and law enforcement officials in Washington State. The program would cover a student's tuition and fees, if the student agrees to serve a certain number of years as a prosecutor, public defender or a law enforcement official. Similar programs for other professionals, especially teachers and public health officials, have been implemented in this state.

8. **Establishment of a Conditional Scholarship Program for Legal Aid Lawyers.**

The Task Force recommends that the State Legislature pass legislation establishing a conditional scholarship program to encourage minorities to serve as legal aid lawyers. The program would cover a student's tuition and fees if the student agrees to serve a certain number of years as a legal aid lawyer.

FOR THE COURTS:

1. **Adoption of the Task Force's Proposed Equal Employment Opportunity Mission Statement.**[4]

In view of the fact that a courtwide Workforce Diversity Program may require years to develop and fully implement, the Task Force recommends that all courts consider immediate adoption and implementation of the Task Force's proposed equal employment opportunity mission statement. This would be a first step in correcting the low number of minority court employees.

2. **Adoption of a Workforce Diversity Program.**

Given the underrepresentation of minorities as nonjudicial court employees, the Task Force recommends that the courts immediately commence development of a Workforce Diversity Program. (Refer to page 15 for additional information.)

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[3]The proposed Minority Criminal Justice Education Act is the product of an ad hoc Minority Criminal Justice Working Group which includes: Pierce County Prosecutor's Office; HECB-Minority Affairs; Office of Indian Affairs; Commission on Hispanic Affairs; Commission on Asian American Affairs; Commission on African American Affairs; and Minority and Justice Task Force.

[4]Please refer to Appendix B for the full text of the Task Force's proposed Equal Employment Opportunity Mission Statement.

3. **Legislation to Conduct an Implementation Plan to Enlarge the Jury Source List.**

The Task Force recommends that the courts support Second Substitute Senate Bill 5953 (2SSB 5953) in the 1991 legislative session. The bill provides for an implementation plan to expand jury source lists to include licensed vehicle drivers and state identicard holders. Currently, the lists of jurors are drawn from the registered voter rolls.

4. **Continued Awareness Training and Education.**

The Task Force recommends that issues involving racial and ethnic bias in the court system be a permanent component of new judges' seminars, as well as integrated throughout the continuing education curricula provided to judges and court staff.

5. **Increase the Number of Minorities Hired as Bailiffs, Law Clerks, Magistrates, and Commissioners at all Levels of the Judiciary.**

The Task Force recommends that all presiding judges carefully review their evaluation and selection policies and procedures and develop personnel policies and procedures designed to improve the number of minority bailiffs, law clerks, magistrates, and commissioners.

6. **Measures to Encourage Cooperative Approaches Between Tribal and State Courts.**

The Task Force recommends that the Supreme Court and the Office of the Administrator for the Courts develop measures to assist all state courts in improving cooperation and communication between the tribal and state court systems, especially on matters involving child custody.

The Task Force also recommends that interested tribal court judges be integrated into membership of the appropriate judicial associations. The same cooperative effort should be considered by other relevant court management associations (e.g., Superior Court Administrators).

7. **Conduct Educational Programs for Court Interpreters.**

The Task Force recommends that the Office of the Administrator for the Courts provide funds for the Court Interpreters Advisory Committee to conduct continuing educational programs for court interpreters.

8. **Development of a Complaint Referral Process or Procedure.**

Given the number of complaints received at the public forums and throughout the Task Force's existence, the Task Force recommends development of a procedure for processing such complaints, perhaps through appointment of an ombudsman. The Task Force also recommends that any proposed procedure be reviewed by the Minority and Justice Commission for its advice and recommendations.

9. **Support for the Proposed Minority Criminal Justice Education Act.**

The Task Force recommends that the Office of the Administrator for the Courts support passage of the proposed Minority Criminal Justice Education Act. The bill would establish a conditional scholarship program designed to encourage minorities to serve as prosecutors, public defenders and law enforcement officials in Washington State. (Refer to page 17 for additional information.)

10. **Support for Establishment of a Conditional Scholarship Program for Minority Legal Aid Lawyers.**

The Task Force recommends that the Office of the Administrator for the Courts support passage of legislation to establish a conditional scholarship program for minority legal aid lawyers. (Refer to page 17 for additional information.)

11. **Creation of a Task Force or Advisory Committee to Examine Issues Affecting Persons with Disabilities and Their Access to the Courts.**

The Task Force recommends that the Supreme Court create a task force or advisory committee to examine issues affecting persons with disabilities, their access to the courts and their treatment.

12. **Staffing for the Supreme Court Minority and Justice Commission.**

The Task Force recommends that the Office of the Administrator for the Courts provide sufficient staffing to the Minority and Justice Commission to carry out its duties and programs. Such staffing should be selected in consultation with the Minority and Justice Task Force or the newly-established Minority and Justice Commission.

13. **Funding for the "Juvenile Disposition and Placement Study".**[5]

The Task Force recommends that the Board for Judicial Administration support proposed legislation to appropriate funds to the Division of Juvenile Rehabilitation of the Department of Social and Health Services for a study to analyze possible disparate treatment of racial and ethnic juveniles in the juvenile justice system.

14. **Continued Funding for the Indigent Defense Task Force.**

Given the concerns raised by minorities who must rely on public defender organizations, the Task Force recommends that the Office of the Administrator for the Courts continue to fund the Indigent Defense Task Force.

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[5]The Juvenile Disposition and Placement Study is being proposed by the African American Affairs Commission for the 1991 legislative session.

FOR THE WASHINGTON STATE BAR ASSOCIATION AND OTHER BAR-RELATED ASSOCIATIONS:

1. **Publication of Information on Bar Membership.**

The Task Force recommends that the Washington State Bar Association collect and publish on an annual basis information concerning the composition of its minority and non-minority membership.

2. **Legislation to Conduct an Implementation Plan to Enlarge the Jury Source List.**

The Task Force recommends that the Washington State Bar Association and other bar-related associations support passage of legislation to expand jury source lists (2SSB 5953). (Please refer to page 16 for additional information.)

3. **Increase Minority Representation on Judicial Screening Committees.**

The Task Force recommends that judicial screening committees continue to assure adequate minority representation in their composition.

4. **Judicial Screening Committees Should Screen for Cross-Cultural Awareness and Sensitivity.**

The Task Force recommends that judicial screening committees consider adopting procedures to determine whether a judicial candidate has had cultural awareness training or experience in understanding a culturally diverse community.

FOR THE LAW SCHOOLS:

1. **Increase the Number of Minority Law School Students.**

In view of the small percentage of minority attorneys in this state, law schools in the state must be encouraged to continue their efforts to recruit more minority students.

2. **Increase Financial Assistance to Minority Law School Students.**

The Task Force recommends increased private and public funding for law schools to recruit and retain minority students.

3. **Instruction on the Effects of Racial and Ethnic Bias.**

The Task Force recommends that law schools include regular courses covering the existence and effects of racial and ethnic bias in the courts, in the legal system and in the profession.

FOR THE SUPREME COURT MINORITY AND JUSTICE COMMISSION:

1. **Development of a Workforce Diversity Program for the Court System.**

The Task Force recommends that the Supreme Court Minority and Justice Commission assist in overseeing development of the Workforce Diversity Program described in recommendation number two to the Legislature and the courts. (Please refer to page 15 for additional information).

2. **Adoption of the Task Force's Equal Employment Opportunity Mission Statement.**

The Task Force recommends that the Commission encourage the courts to adopt and implement immediately the Task Force's Equal Employment Opportunity Mission Statement.

3. **Brochures and Seminars on the Judicial Selection Process.**

The Task Force recommends that the Minority and Justice Commission coordinate publication of brochures and organization of seminars to inform potential or interested judicial aspirants about the judicial selection process and other relevant issues. (Please refer to page 16 for additional information.)

4. **Continued Awareness Training and Education.**

The Task Force recommends that the Minority and Justice Commission oversee the development and implementation of all awareness training and education involving racial and ethnic bias in the courts. The Commission's collective knowledge and expertise would ensure that relevant programs and seminars would be presented to judges, other legal professionals, and court staff.

5. **Review of the Complaint Referral Process or Procedure.**

The Task Force recommends that the Minority and Justice Commission provide advice and recommendations on an appropriate procedure for processing complaints. (Please refer to page 18 for additional information.)

6. **Recommendations for Additional Research.**

The Task Force recommends that the Minority and Justice Commission conduct additional research, which would include:

a) a prosecutorial discretion pilot study to examine prosecutorial decision-making and case outcomes involving minority defendants;

b) a bar survey to obtain additional information on the reasons that minority lawyers typically receive less compensation than non-minority lawyers and have limited access to law firms;

c) an update of court demographic survey to collect current statistical data on the racial and ethnic identification of judges and court staff;

d) a trial court project to enhance information presented during educational programs by studying the more subtle forms of bias (e.g., communicative styles, body language);

e) a study of policies and procedures in the courts relating to utilization of minorities as consultants, vendors, suppliers, and those under contract with the courts; and

f) a study of court rules to determine whether they inherently result in discrimination against minorities.

OTHER GENERAL RECOMMENDATIONS:

1. **Additional Research.**

The Task Force also recommends that the following research be undertaken:

a) a study to determine whether judges set higher bail for minorities compared with non-minorities and if so, why;

b) a study to determine whether prosecutors recommend higher bail for minorities compared with non-minorities and if so, why;

c) a study to determine whether persons who makes screening decisions for amenability for release recommend disparate treatment for minorities and if so, why;

d) a study to examine the quality of legal representation afforded minority litigants, particularly in areas of Washington State where there are few or no minority lawyers despite sizeable minority populations;

e) a study to determine the feasibility of public financing of nonpartisan judicial races; and

f) a study of different types of personal injury cases to determine whether minorities receive lower settlement amounts, given the conclusions of the asbestos study which showed that minorities tended to receive lower average settlement.

2. **Judicial Selection Process of Appointing Authorities.**

Appointing authorities are encouraged to continue a judicial selection process which will bring to their attention racial and ethnic minority persons who meet the criteria for appointment.

SECTION III

OVERVIEW

SECTION III: PERCEPTIONS REGARDING THE TREATMENT OF MINORITIES

Early in its existence, the Task Force decided it was important to obtain information on the perceptions minorities and non-minorities have about the treatment of minorities in the state court system and in the judicial system. Consequently, the Task Force held public forums around the state to gather information on these public perceptions. Subsequent to the public forums, the Subcommittee on "The Perceptions and Treatment of Minority Litigants and Minority Lawyers" conducted an opinion survey to solicit the views and observations of lawyers, judges and court personnel regarding the treatment of minorities as litigants, lawyers, judges and court personnel.

This section's chapters were prepared under the direction and guidance of Subcommittee I.

Subcommittee I: The Perceptions and Treatment of Minority Litigants and Minority Lawyers.

Vicki J. Toyohara
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CHAPTER FOUR

REVIEW OF 1988 PUBLIC FORUMS: PUBLIC PERCEPTIONS[1]

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INTRODUCTION

In 1988, the Task Force held five public forums around the state and heard testimony from legal professionals and other members of the community. This chapter outlines the ten issues most frequently mentioned by forum participants and correspondents, as well as other issues which may have real or potential discriminatory impact on minorities involved in the legal system. The selected views and opinions of those who came before the Task Force reflect the growing concerns of the minority community in this state.

BACKGROUND

Five regional public forums were held during the fall of 1988 in the following locations: 1) Bellingham; 2) Seattle; 3) Spokane; 4) Pasco (Tri-Cities area); and 5) Sunnyside (Yakima area). At these forums, a total of seventy-four (74) persons provided testimony concerning minorities in the legal system. In addition, fifty-three (53) persons sent correspondence to the Task Force, sixteen (16) of whom had spoken at one of the forums.

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[1]This chapter is adapted from 1988 Public Forums on Racial/Ethnic Bias in the State Court System by Julie R. Hunt, Ph.C. The report was prepared for the Washington State Minority and Justice Task Force and released in January 1990.

The information provided by the forum speakers and the correspondents is not intended to be a comprehensive survey of the general opinion of Washington State citizens. Rather, it is a summary of their perspectives and views. The reader should also bear in mind that the categorization of the speakers' and correspondents' remarks is subject to some variation.[2]

MAIN ISSUES DISCUSSED AT PUBLIC FORUMS AND BY CORRESPONDENTS

In general, the ten issues mentioned most frequently by forum speakers and correspondents regarding the treatment of minorities in the courts were:

- Language Barriers and the Competence of Court Interpreters;
- General Perception of Bias in the Legal System;
- The Underrepresentation of Minority Employees in the Legal System;
- Perception that Minorities Receive Harsher Sentences and Treatment;
- Underrepresentation of Minorities on Jury Pools and Jury Panels;
- Complaints Against Law Enforcement;
- Need for Cultural Awareness Education Programs;
- Courtroom Interaction Between Minorities and Non-minorities;
- Representation of Minorities by Public Defenders; and
- The Treatment of Minority Victims of Crime.

To highlight some of the specific concerns expressed by forum speakers and correspondents, a few explanatory remarks about these issues follow.

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[2]The classification scheme for coding the public forum remarks and information from the correspondents was developed by the author in consultation with various Task Force Members. All testimony or remarks from the public forums, except those of Task Force Members, were classified and appear in the author's earlier publication, 1988 Public Forums on Racial/Ethnic Bias in the State Court System.

With respect to the classification methodology, the same forum speaker or correspondent may have raised an issue within a particular category more than once. It was then recorded twice provided the issue was mentioned at different points in that person's remarks. This was done to indicate the importance of an issue. Also, if a speaker's or correspondent's comments provided different perspectives on the same "main issue," then those comments were given multiple credits under that "main issue," but were coded under different sub-categories. For example, the same speaker/correspondent may have mentioned the need for sign language interpreters and also noted the poor quality of courtroom interpreting in general. Both remarks fall under the main issue of "Language Barriers/Court Interpreters", but are coded separately under different sub-category headings. This accounts for the difference in the number of citations and the number of forum speakers/correspondents within any one area.

Language Barriers/Court Interpreters

A total of thirty-six (36) persons either provided testimony at the public forums or wrote to the Task Force expressing their concerns about language barriers and the availability of court interpreters. Among the thirty-six (36) persons, eighty-one (81) remarks were coded, ranging from a general concern about the lack of interpreters available in the legal system to the poor quality of translation by some interpreters. Several recommendations were made not only to increase the number and proficiency level of courtroom interpreters, but also to educate interpreters about the legal system. Other noteworthy suggestions were to require certification of all interpreters and to provide interpreters throughout the system, such as in small claims court and in alcohol and drug rehabilitation programs.

General Perception of Bias in the Legal System

Twenty-eight (28) forum speakers/correspondents provided thirty-one (31) remarks expressing the view that bias against minorities pervades the legal system in general.[3] For example, one attorney from the Yakima area stated, "As I get involved more and more in the criminal system or civil system . . . there is a clear message to me, and your question from this body, is there discrimination? The answer is a simple yes. . . . Just look around you, open your eyes and you will see it. There is discrimination throughout the entire process."[4] This perception, in conjunction with the lack of minority employees in the system, is seen as contributing to the distrust and suspicion with which minorities view the court system.

Underrepresentation of Minority Employees in the Legal System

Another issue frequently mentioned was the underrepresentation of minority employees in the legal system, including the judiciary and court staff. A total of twenty-six (26) forum speakers/correspondents mentioned this problem, for a total of fifty-three (53) remarks. Several speakers mentioned that this underrepresentation suggests unfairness within the court system and perpetuates the distrust which minorities have of the legal system. Active recruitment of minorities was therefore recommended by some forum participants.

Perception that Minorities Receive Harsher Sentences and Treatment

A number of citations referred to the perception that in some instances minorities receive harsher sentences for the same crime than do non-minorities. Nineteen (19) persons

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[3]In a 1988 opinion survey conducted by GMA Research of Bellevue, Washington, only 49% of the respondents stated that minorities and non-minorities are treated with equal fairness, with 31% of the respondents indicating that they are not treated equally and 14% remaining neutral. See Draft Report on the Washington State Judicial Survey (Bellevue, Washington: GMA Research Corporation, May 1988), p. 81.

[4]Julie R. Hunt, 1988 Public Forums on Racial/Ethnic Bias in the State Court System (Olympia: Washington State Minority and Justice Task Force, Office of the Administrator for the Courts, January 1990), p. 33.

provided twenty-eight (28) remarks, many citing other research studies and statistics to support this contention. Several remarks concerned the application of sentencing guidelines under the Sentencing Reform Act.

Underrepresentation of Minorities on Jury Pools and Jury Panels

The Task Force also received a total of twenty-seven (27) remarks from eighteen (18) persons regarding the low representation of minorities on juries. In fact, some attorneys and judges voiced their concern that most juries in Washington State are either all-white or predominately white. This may be due in part to inadequate representation of minorities on the jury pool source list. To address the problem, one Seattle attorney recommended that current jury pools be expanded to incorporate the Department of Licensing listings, which include Washington State drivers and holders of state identification cards.

Complaints Against Law Enforcement

Eighteen (18) forum speakers/correspondents made a total of twenty (20) remarks concerning the treatment of minorities by law enforcement officials. Several persons indicated that some police officers, particularly traffic officers, appear to harass individuals on the basis of their minority status alone. A few speakers also mentioned racial slurs, physical abuse, and other inappropriate behavior being directed at minority persons by law enforcement officers.

One attorney from the Bellingham area shared her observations with the Task Force. She noted that:

> ". . . I used to live on the road that was the direct access to the reservation, and the police used to sit there, and it was called fishing in the barrel. Basically, the police were under the assumption that if they sat there long enough, they were going to find somebody with a cracked windshield, with a cracked taillight, and if you pulled enough people over, they were likely not to have a license or have a warrant out for their arrest, and the thought was that was just one useful way to spend their time. I don't think you would find people on the local law enforcement who deny that that was practiced, and if you sat in our courts for any period of time, I think that you would have to agree that that is just absolutely true, that somebody of color driving in this town with the most minor sort of imperfection in their vehicle is mostly likely to be pulled over by law enforcement, whereby, I have got a nick in my windshield, I could probably drive until the end of time without being pulled over to discuss that matter with the local police."[5]

[5]Ibid, p. 28.

Need for Cultural Awareness Education Programs

Testimony was repeatedly given on the critical need for a comprehensive multicultural education program for all persons employed in the legal system. The fifteen (15) forum speakers/correspondents provided nineteen (19) remarks addressing the need for this type of program. One recommendation included a mandatory education program at all levels of the legal system and the courts in order to increase the cultural awareness of judges, attorneys and other professionals.

Courtroom Interaction Between Minorities and Non-Minorities

The Task Force also received a total of sixteen (16) comments from thirteen (13) forum speakers/correspondents regarding biased behavior or offensive remarks by some judges, attorneys and court employees during court proceedings involving minorities. While some of these acts may be classified as overt discrimination, others appear to be more subtle or unconscious. For instance, one correspondent described "an experience in court in which the judge made inappropriate comments about a group of Hispanic men in the courtroom. When her case came up, she mentioned to the judge that she felt his comments were inappropriate. She later found out that the judge had recommended the stiffest fine possible for her offense."[6]

Representation of Minorities by Public Defenders

Twelve (12) forum speakers and correspondents noted that the majority of minority defendants are represented by public defenders. It was reported that less than adequate representation may occur because public defender agencies are frequently overworked and understaffed.

The Treatment of Minority Victims of Crime

Nine (9) forum speakers/correspondents expressed their concern that minority victims can be treated unfairly during the investigation, plea bargaining or sentencing stage. To some, it appeared that little emphasis was placed on the welfare of the minority victim, especially when the defendant was another minority.

OTHER ISSUES OF SIGNIFICANCE TO MINORITIES

In addition to the recurring problems and issues already identified in the previous section, a few forum speakers and correspondents identified other specific or persistent problems faced by minorities in the legal system. These issues are briefly outlined below:

- Minorities are often systematically discriminated against by being denied the first offender waiver in criminal cases.

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[6]Ibid, p. 31.

- Minorities often do not understand legal proceedings in general due to language and cultural barriers or lack of education about the system.

- The difference in monetary damages awarded in civil cases was raised by a few forum speakers. This difference is recognized by members of the legal profession and legal investigators as a problem that continues in part due to the use of statistical tables which attempt to measure the "life worth" of minorities and non-minorities.

- Minorities are often unable to access rehabilitation programs due to language or financial barriers, which can lead to an increase in the likelihood of incarceration or recurrence of the untreated problem.

- Minority defendants are less likely to be released on their personal recognizance than are non-minority defendants.

- Prosecutorial discretion was also periodically mentioned. Specifically, the fact that the charge selected by the prosecutor carries increased importance under the Sentencing Reform Act and the possible impact which this may have on minorities who may be charged with a different offense than a white counterpart similarly situated.

SUMMARY TABLE OF ALL ISSUES DISCUSSED AT PUBLIC FORUMS AND BY CORRESPONDENTS

The following table is intended to provide the reader with the scope and range of issues which were brought to the Task Force's attention. Table 4-1 contains a list of all issues, the number of forum speakers/correspondents, and the total number of times a remark was mentioned. Table 4-1 follows on pages 31 through 33.

TABLE 4-1
ALL ISSUES DISCUSSED AT PUBLIC FORUMS AND BY CORRESPONDENTS

Issue	Number of Forum Speakers/ Correspondents	% of Total Speakers/ Correspondents*	Number of Times Mentioned**
Access to Legal Assistance	2	2%	2
Accountability and Sensitivity of Court Officials	2	2%	3
Civil Cases/Civil Matters	5	5%	9
Complaints Against Corrections Officials and Institutions	6	5%	6
Complaints Against Law Enforcement	18	16%	20
Complaints Against the Legal System in General	5	5%	5
Courtroom Interaction	13	12%	16
Disproportionate Number of Minority Defendants/Inmates	3	3%	3
Diverse Minority Population in Washington State	3	3%	3
General Perception of Bias in the Legal System	28	25%	31
Jury Pool/Panel: Underrepresentation of Minorities	18	16%	27
Language Barriers/Court Interpreters	36	32%	81

*The total number of speakers and correspondents is 111. Percentages were rounded to the nearest whole percent and the sum of the percentages is greater than 100% because the same speaker or correspondent may have spoken or written about more than one issue.

**The same speaker/correspondent may have raised an issue within a particular category more than once. This accounts for the difference in the number of forum speakers/correspondents and the number of times which an issue is mentioned within any one category.

TABLE 4-1, continued
ALL ISSUES DISCUSSED AT PUBLIC FORUMS AND BY CORRESPONDENTS

Issue	Number of Forum Speakers/ Correspondents	% of Total Speakers/ Correspondents*	Number of Times Mentioned**
Minorities Seek Limited Pleas	1	1%	1
Minority Attorneys	4	4%	4
Minority Employees in the Legal System: Discrimination Against	4	4%	5
Minority Employees in the Legal System: Underrepresentation	26	23%	53
Minority Judges	2	2%	2
Minority Litigants	4	4%	4
Minority Victims of Crime	9	8%	13
Need for Cultural Awareness Education Program	15	14%	19
Perception of Juror Bias Toward Minorities	9	8%	10
Perception that Minorities Receive Harsher Sentences and Treatment	19	17%	28
Presentence/Probation Reports on Minorities	2	2%	2
Pre-Trial Release	6	5%	7
Problems of Immigrants/Farmworkers	8	7%	12
Prosecutorial Discretion	7	6%	8
Public Forums/Task Force - Acknowledgements and Comments	7	6%	7

*The total number of speakers and correspondents is 111. Percentages were rounded to the nearest whole percent and the sum of the percentages is greater than 100% because the same speaker or correspondent may have spoken or written about more than one issue.

**The same speaker/correspondent may have raised an issue within a particular category more than once. This accounts for the difference in the number of forum speakers/correspondents and the number of times which an issue is mentioned within any one category.

TABLE 4-1, continued
ALL ISSUES DISCUSSED AT PUBLIC FORUMS AND BY CORRESPONDENTS

Issue	Number of Forum Speakers/ Correspondents	% of Total Speakers/ Correspondents*	Number of Times Mentioned**
Recommendations for Additional Research	6	5%	6
Representation of Minorities by Public Defenders	12	11%	17
Specific Personnel Needs in the System	2	2%	2
Tribal Courts: Failure to Recognize the Authority of	2	2%	7
Understanding of Legal Process and Outcomes	8	7%	8

*The total number of speakers and correspondents is 111. Percentages were rounded to the nearest whole percent and the sum of the percentages is greater than 100% because the same speaker or correspondent may have spoken or written about more than one issue.

**The same speaker/correspondent may have raised an issue within a particular category more than once. This accounts for the difference in the number of forum speakers/correspondents and the number of times which an issue is mentioned within any one category.

CHAPTER FIVE

RACIAL AND ETHNIC BIASES IN THE ADMINISTRATION OF JUSTICE: PERCEPTIONS OF LAWYERS, JUDGES AND COURT PERSONNEL

Prepared by
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BACKGROUND

To explore the perceptions and issues raised by members of the public and legal community at the 1988 public forums, the Task Force's subcommittees conducted a survey of lawyers, judges and court personnel about perceptions of racial and ethnic bias in the administration of justice.

Issues raised in the statewide public forums and discussions by Task Force Members identified four major concerns regarding potential biases:

- Biases in the administration of criminal justice;
- Biases in the administration of civil cases;
- Biases involving tribal and state court jurisdictional issues; and
- Biases regarding minority representation in the legal profession and in the court system.

The Task Force conducted three separate surveys targeting the perceptions of different types of respondents about these types of biases. One of the surveys examined judicial personnel, focusing on the perceptions of judges, magistrates and commissioners. A second survey measured the perceptions of court personnel across all levels of the Washington State courts. The third survey measured the perceptions of Washington lawyers with trial and other courtroom experience. Each survey included questions on perceptions of courtroom

Patterns of Courtroom Interaction

A related problem is that defense lawyers and prosecutors, during courtroom interaction, may show less courtesy toward minorities than non-minorities. Speakers at the public forums recounted instances where lawyers made offensive, racist remarks and treated minorities rudely.

In an attempt to determine if this form of overt discrimination is perceived as a pervasive problem by lawyers, judges and court personnel, the surveys asked respondents about their observations of disrespectful behavior directed toward minorities in courtroom interactions. Overall, relatively few respondents felt that defense lawyers or prosecutors were "sometimes" or "often" disrespectful toward minorities. Approximately six percent (6%) of all respondents felt that defense lawyers were discourteous or disrespectful, while approximately nine percent (9%) of all respondents felt that prosecutors were discourteous or disrespectful. However, minority respondents were much more likely than non-minorities to perceive this problem as serious. For example, more than one-fourth of minority court personnel and minority lawyers (28% and 27%, respectively) felt that prosecutors were "sometimes" or "often" disrespectful to minorities in court.

Minority Distrust of the Criminal Justice Process

Most survey respondents felt that minorities distrust the legal process, feeling that they will not be judged by a jury of their peers or that they are otherwise disadvantaged in court. When asked about how respondents think minority defendants in criminal cases feel they will be treated by the court system, approximately sixty percent (60%) of all judges felt that minority defendants "sometimes" or "often" see themselves as disadvantaged in court, feel that they will not be judged by a jury of their peers, or that they are likely to be found guilty because of their minority status. Further, minority respondents were much more likely to perceive this problem as pervasive in the courts–approximately eighty-six percent (86%) of all minority judges, court personnel and lawyers suggested that minority defendants see themselves as disadvantaged due to their race or ethnicity.

PERCEPTIONS OF BIAS IN THE ADMINISTRATION OF CIVIL CASES

A major concern expressed by speakers at public forums held by the Task Force was discrimination against minority litigants involved in civil cases. Speakers suggested that civil courts consistently make smaller awards in personal injury cases to minority litigants than to non-minority litigants. Others expressed concern that minorities are treated less favorably in domestic relations cases and in cases involving disputes between agricultural workers and their employers. In the latter type of case, civil courts in farming communities were seen by some to protect consistently the interests of agricultural employers.

In response to these and other concerns, the surveys of judges, lawyers and court personnel collected information on perceptions of bias in the following aspects of the administration of civil cases:

- Racial and Ethnic Disparities in Settlement Awards;
- Differential Treatment of Minorities in Domestic Relations Cases;
- Differential Treatment of Minorities in Cases Between Agricultural Workers and Employers;
- Use of Alternative Forms of Dispute Resolution;
- Composition of Juries;
- Patterns of Courtroom Interaction; and
- Minority Distrust of the Civil Justice Process.

This part of Chapter 5 describes the survey findings with respect to these areas.

Racial and Ethnic Disparities in Settlement Awards

Despite the concerns expressed in the public forums, relatively small percentages of judges, lawyers and court personnel felt that juries awarded smaller settlement amounts in personal injury cases to minorities than to non-minorities. For example, seven percent (7%) of court personnel and nine percent (9%) of judges reported observing smaller awards and/or judgments to minorities "sometimes" or "often." However, minority officials were more likely than non-minorities to perceive differences in settlement amounts as a serious problem. Thirty-eight percent (38%) of all minority lawyers and twenty-two percent (22%) of minority court personnel reported observing differential awards "sometimes" or "often."

Differential Treatment of Minorities in Domestic Relations Cases

Similar patterns emerged in response to questions about the treatment of minorities in domestic relations cases. Most respondents–eighty-seven percent (87%)–reported "never" observing minority parties in domestic relations cases treated less advantageously than non-minority parties. The strongest perception of bias was reported by minority lawyers--twenty-nine percent (29%)–answered that they have observed civil courts "sometimes" or "often" treat minorities less advantageously.

Differential Treatment of Minorities in Cases Between Agricultural Workers and Employers

Although relatively few respondents gave answers to questions about cases between agricultural workers and their employers, relatively few of those responding perceived this form of bias as pervasive or occurring frequently. For example, only sixteen percent (16%) of all lawyers and seven percent (7%) of all court personnel reported observing this problem "sometimes" or "often."

Use of Alternative Forms of Dispute Resolution

Technical support members to the Task Force and speakers at public forums expressed the opinion that minority litigants in civil cases do less well monetarily than non-minority litigants partly because they are less likely to settle out-of-court or use alternative methods of case resolution. Yet, the survey results offer little support for this assertion. The

majority of respondents in the survey (84% of lawyers, 87% of court personnel and 93% of judges) said that they "never" or "seldom" observed non-minority litigants settling out-of-court more than minority litigants. Similarly, the majority of all respondents reported that they "never" or "seldom" observed minority litigants seeking recourse through arbitration more than non-minority litigants (94% of lawyers, 99% of judges and 96% of court personnel).

Composition of Juries

Large percentages of all respondents have observed lawyers in civil cases use peremptory challenges to systematically eliminate minorities from juries. Forty-three percent (43%) of minority lawyers reported observing plaintiffs' lawyers using peremptory challenges to eliminate minorities "sometimes" or "often." Further, forty-one percent (41%) of all lawyers indicated that defense lawyers in civil cases systematically eliminate minorities from juries "sometimes" or "often." Because the survey questions did not specify the exact circumstances under which lawyers use the peremptory challenges, it was not possible to ascertain whether lawyers use this tactic when their client or the opposing counsel's client is a minority.

Patterns of Courtroom Interaction

Few non-minority respondents reported that lawyers in civil cases are less respectful or discourteous in cross-examining minority litigants or witnesses than in cross-examining non-minorities. For example, fewer than three percent (3%) of non-minority judges and fewer than two percent (2%) of non-minority court personnel indicated they have observed minority witnesses or litigants treated more harshly "sometimes" or "often." In contrast, over twenty-two percent (22%) of minority lawyers answered that they have observed this form of bias "sometimes" or "often."

Minority Distrust of the Civil Justice Process

A majority of all respondents felt that minority litigants in civil cases and disputes perceive themselves to be disadvantaged. More than one-half of all judges and lawyers (55% and 62% respectively) suggested that minority litigants "sometimes" or "often" see themselves as disadvantaged in these types of cases.

The underrepresentation of minorities in the court system as a whole affects the way minority litigants perceive their chances in civil cases. A large proportion of all respondents believe that minority litigants in civil cases perceive themselves to be disadvantaged. Over 49% of all court personnel, over 55% of all judges and over 62% of all lawyers suggested that minority litigants "sometimes" or "often" see themselves as disadvantaged in civil matters.

PERCEPTIONS ABOUT TRIBAL AND STATE COURT JURISDICTIONAL ISSUES[4]

Background

Approximately 150 federal Indian reservations are served by recognized tribal courts nationally. Those tribal courts may vary widely in their form but their function generally is the same as that of their state court system counterparts. In addition, most contemporary tribal courts are influenced by tribal custom and tradition in their judicial function.

The form of tribal courts in Washington State includes those located on and wholly operated by individual Indian tribes such as those on the Yakima Indian Reservation and the Colville Indian Reservation in Eastern Washington and the Northwest Intertribal Court System based in Edmonds, Washington, which handles certain tribal/state criminal and child welfare matters for its sixteen member tribes. Each of the twenty-six Indian tribes in Washington has access to either its own tribal court or the Northwest Intertribal Court System.[5]

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[4]Please note that the questions dealing with tribal and state court jurisdictional issues varied from survey to survey. Please refer to Appendices D through F for specific questions.

[5]The tribal court's powers generally are based in the quasi-sovereign status of federally recognized Indian tribes. See, e.g., Williams v. Lee, 358, U.S. 217 (1959); U.S. v. Wheeler, 435 U.S. 313 (1978). The Supreme Court has affirmed the tribal courts' inherent powers to adjudicate civil disputes affecting interests of both Indians and non-Indians if the dispute arises from events occurring on an Indian reservation. See, e.g., Lewis v. Salois, 16 ILR 3135 (1989), citing Montana v. United States, 450 U.S. 544 (1981). In addition, a federal Court of Appeals has stated that tribal courts generally are the exclusive forum for adjudication of disputes between Indians and non-Indians if the dispute arises on a reservation. See, Snow v. Quinault Indian Nation, 709 F.2d 1319 (9th Cir. 1983).

The results of the Minority and Justice Task Force survey of court personnel, judges, and attorneys concerning exposure to Indian law and tribal court issues typically represent a relatively small percentage of the survey's total respondents. A significant number of the respondents indicated the questions were not applicable in their particular practice.

Nevertheless, it would appear that the relatively low number of responses is not indicative of either an invalid sample or other statistical anomaly or infirmity. Instead, the responses would appear to be a valid indicator of the typical level of involvement with tribal courts in Washington State. Apparently, the vast majority of Washington attorneys simply have not had the opportunity to either practice in a tribal court or to deal with a recognizable Indian law issue.

At this time, it appears the general survey results indicating that a relatively low percentage of the attorneys practicing in Washington have practiced in tribal court or have dealt with Indian law issues are accurate. For example, only six percent of the attorneys responding to the question of how often they had appeared before a tribal court answered "often" or "sometimes." In addition, approximately more than half of the judges and attorneys

A recent report of the "Civil Jurisdiction on Indian Project" identifies several areas of the law or instances in Washington State where there is uncertainty as to the particular court system which may have jurisdiction.[6] For instance, the report states the project survey shows,

> ". . . tribal courts quite generally recognize state court judgments. Frequently, tribal court respondents indicated that their court system recognized state court decisions, but the reverse was not true."[7]

Thus, a problem may exist in terms of state courts failing to recognize the decisions of tribal courts when it is appropriate. But, the problem may go unrecognized or not be corrected by some jurists because they may be inclined to believe that the state court is the correct forum for resolving a particular dispute, when, in fact, it may not be. In response to a question about whether state courts accord "full faith and credit" to the tribal courts decisions, approximately forty percent (40%) of the lawyers responding indicated that they "sometimes" or "often" had seen instances where full faith and credit was not accorded to the tribal courts.

Almost certainly, the single most common and recognizable Indian law issue which confronts Washington courts and those who practice in them is a custody dispute involving Indian children which brings into play the federal Indian Child Welfare Act (25 U.S.C.S. 1901, et seq.). Generally, the ICWA and its subsequent decisions govern the

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who responded regarding any involvement in child custody cases (which would involve the Indian Child Welfare Act) indicated they had had any experience in that area.

Because of the relatively low number of responses, some caution certainly is appropriate in interpreting the results but, as indicated above, the numbers may simply reflect the individual practitioners' lack of opportunity to deal with those specific issues.

Generally speaking, fewer than one in ten of those attorneys responding "sometimes" or "often" appear before tribal courts. Moreover, even when those who "seldom" appear before tribal courts are added to the total number of responding attorneys, the total number of attorney respondents to the question of how often one has appeared before a tribal court is remarkably low–less than 20%. Therefore, of the 707 respondents in this survey section, 598 attorneys or eighty percent (80%) indicated that they had never appeared before a tribal court in any capacity.

Given the long history of tribal courts and what certainly appears to be their continuing vitality, it is becoming more and more likely that individual practioners in Washington will have an opportunity to either practice in a tribal court setting or deal with an Indian law issue.

[6]H. Ted Rubin, Tribal Courts and State Courts: Disputed Jurisdiction Concerns and Steps Toward Resolution (Draft) (Denver, Colorado: Institute for Court Management, National Center for State Courts, 1989), p. 3.

[7]Ibid, p. 6.

disposition of minor Indian children, including their custody and/or adoption. Moreover, a tribal entity's decision regarding such dispositions generally appears to be entitled to full faith and credit by state courts if the threshold requirement of the Act are met.

Of the seven minority judges who responded, six (90%) "never" saw instances where state courts preempted tribal court decisions in child custody matters. Of the 106 non-minority judges who responded, 79 (75%) "never" observed this occurrence, while only five stated that they have "often" or "sometimes" seen this occur. The lawyers responding made similar responses. Of those who answered, thirty-four percent (34%) of the minorities and twenty-one percent (21%) of the non-minorities stated they saw some instances where this occurred "sometimes" or "often," while a large share of minority and non-minority lawyers (66% and 49% respectively) stated they "never" or "seldom" saw this occur.

PERCEPTIONS ABOUT MINORITY REPRESENTATION IN THE LEGAL PROFESSION AND IN THE COURT SYSTEM

The survey of court personnel, judges, and lawyers also included questions concerning minority representation within the court system. The survey asked whether minority representation is "adequate" for various positions within the system. A majority of respondents believe minority representation to be inadequate. For no position do more than 40% of respondents feel that minorities are represented adequately. Particularly large percentages of respondents indicated concern over minority representation at the following levels: in the judiciary at the court of appeals and district court levels; among court employees as administrators and county clerks; and among lawyers as prosecutors and private lawyers. A striking aspect of the results is the much larger percentages of minority versus non-minority respondents who believe minorities to be underrepresented in the court system. For most positions within the court system, over half of minority respondents feel that minorities are underrepresented.

Minority Representation in the Judiciary

The greatest concern among survey respondents over inadequate representation in the judiciary is directed at the appellate level. Slightly more than forty percent (40%) of all respondents and about three-fourths of the minority lawyers felt minorities are not adequately represented on the court of appeals. A large proportion of all respondents, (41%), also indicated that minorities are not sufficiently represented among the judiciary presiding over district courts. A particularly high percentage of minority respondents felt this to be the case; about three-fourths of minority lawyers and about one-half of minority court personnel indicated there are too few minority district court judges. As reported in Chapter 8, these perceptions about the lack of minority representation on the court of appeals and district courts may be valid. As of June 1990, there were no minority judges serving on the court of appeals or on a district court in this state.[8] For the Supreme, Superior, and Municipal courts, non-minority respondents were almost evenly split between those who feel minority representation is

[8]See Chapter 7 of this report, page 79.

sufficient and those who believe it is insufficient. Similarly, slightly more than one-half of minority respondents believe that minority representation is too low for each of these levels.

Minority Representation Among Court Employees

With respect to court employees, analysis of the court system revealed that minorities are more highly represented in lower level jobs.[9] Therefore, it is not surprising that only a small minority of survey respondents felt that minorities are adequately represented among court administrators and county clerks. About eighteen percent (18%) of all respondents indicated that there are a sufficient number of minority court administrators and nearly twenty-four percent (24%) of all respondents believe there are enough minority county clerks.

With regard to bailiffs and court clerks, non-minority respondents were almost evenly split in their opinions concerning minority representation. However, a large proportion of minority respondents felt that there are too few minorities working in these positions. For both bailiff and court clerk positions, over half of minority respondents indicated minority representation is inadequate. A smaller percentage of all respondents indicated concern over minority representation among support staff. Only 27% of all respondents believed there are an insufficient number of minority support staff.

Opportunities for Advancement

The surveys included a general question concerning whether the court system offers advancement opportunities to minorities. A higher percentage of minority as compared to non-minority respondents felt that the courts fail to offer such opportunities. This is particularly the case among attorney respondents. Seven percent (7%) of non-minority lawyers as compared to thirty-eight percent (38%) of minority lawyers felt that minorities are not provided with advancement opportunities. This disparity seems to suggest that while most minority and non-minority lawyers agree that too few minorities work in higher level positions within the court system, they disagree as to the cause of this problem. Most non-minorities feel that the courts use fair practices in making promotions, while many minorities believe they are not given access to promotion opportunities.

SOME GENERAL PERCEPTIONS ABOUT THE TREATMENT OF MINORITIES

The surveys also examined the cultural awareness or sensitivity of persons working in the courts. Questions asked how often respondents had observed court employees, lawyers, and judges: (1) making jokes or demeaning comments about minorities; (2) lacking cross-cultural understanding; (3) failing to communicate effectively with minorities; and (4) stereotyping or labelling minorities in relation to their ethnic status. Although many respondents indicated that they have not frequently witnessed these types of incidents, a

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[9]For instance, while 218 of 953 clerical workers in the sample are minorities, they constitute only 10 of 167 court administrators and county clerks.

sizable percentage expressed concern. For instance, over one-third of all respondents indicated that they have observed court personnel, lawyers, and judges "sometimes" or "often" lacking cross-cultural understanding. As in other parts of the survey, higher percentages of minority and attorney respondents than other respondents reported commonly observing problems of minority bias.

Jokes or Demeaning Remarks

During the Task Force public hearings, various speakers related anecdotes in which court officials made jokes or demeaning remarks about minorities. Although a majority of survey respondents indicated that they have rarely, if ever, observed these kinds of incidents, many lawyers expressed concern about this problem. Thirty-seven percent (37%) of lawyers indicated they have heard their colleagues "sometimes" or "often" making these kind of comments.

The people most likely to witness, notice or report incidents involving insensitive comments are minorities themselves. Over thirty-six percent (36%) of minority court employees reported having observed other court employees making biased comments "sometimes" or "often" while forty-four percent (44%) of minority lawyers reported witnessing other lawyers making insensitive remarks "sometimes" or "often."

Cross-Cultural Understanding

Fairly large percentages of respondents suggested that a lack of cross-cultural understanding is common. Thirty-three percent (33%) of all respondents indicated having "sometimes" or "often" observed judges lacking in this kind of awareness. Approximately forty percent (40%) of all respondents answered that they have "sometimes" or "often" noticed this problem among court employees and lawyers. One-half of non-minority lawyers and seventy-one percent (71%) of minority lawyers indicated having observed other lawyers "sometimes" or "often" lacking cross-cultural understanding. Over one-half of minority court personnel reported noticing that their fellow court employees "sometimes" or "often" lack cross-cultural understanding.

Communication with Minorities

Approximately seventy percent (70%) of all respondents answered that they have "seldom" or "never" witnessed court personnel, lawyers and judges failing to communicate effectively with minorities. Yet the same concern was again indicated by attorney respondents with respect to other lawyers, with thirty-five percent (35%) answering that they have observed lawyers "sometimes" or "often" communicating ineffectively with minorities; over one-half of minority lawyers answered that they have noticed this problem among colleagues "sometimes" or "often." Minority respondents also indicated concern with respect to judges and court personnel. For instance, over one-half of minority court personnel answered that they have witnessed other court personnel communicating ineffectively with minorities "sometimes" or "often", forty percent (40%) of both minority lawyers and minority court personnel answered "sometimes" or "often" with respect to judges.

Stereotyping and Labelling Minorities

All survey respondents were asked if perceptions of recent immigrants affect perceptions of minorities in general. Seventy percent (70%) of all respondents answered that they have "never" or "seldom" observed court employees', lawyers' or judges' perceptions of new immigrants coloring their perceptions of minorities in general. However, approximately sixty percent (60%) of minority lawyers indicated that they have observed this problem "sometimes" or "often" among court personnel, lawyers, and judges.

Lawyers were asked whether perceptions of illegal aliens influenced the perception of minorities in general. The majority of all respondents answered that they have observed this "seldom" or "never" to be the case. However, over one-half of minority respondents indicated they have "sometimes" or "often" witnessed court employees', lawyers', and judges' perceptions of illegal aliens impact their perceptions of minorities in general. Lawyers were also asked if a process of labelling minority litigants by their ethnicity is common in the courts. Again, the majority of respondents answered that they have "seldom" or "never" seen this happen. The greatest concern seems to be with regard to lawyers. Twenty-seven percent (27%) of non-minority lawyers and forty-five percent (45%) of minority lawyers answered that they have observed lawyers "sometimes" or "often" labelling minority litigants.

SUMMARY

The Task Force's survey of lawyers, judges, and court personnel was intended to provide the Task Force with information on the court's perceptions about minority litigants, judges, lawyers, and court personnel, especially their treatment. Disparity between the perceptions of most minorities and most non-minorities is seen consistently throughout this Chapter. Occasionally, minorities and non-minority survey respondents concur.

Since the survey results reflect respondents' observations and perceptions of discrimination and bias, consciously or unconsciously, directed against minorities, some differences among respondents as to the extent of bias should be expected. Minority and non-minority respondents often diverge on the occurrence of such behavior, with minority respondents perceiving more bias than do most white respondents. Moreover, lawyers seem to observe or are willing to report more discriminatory or biased behavior than judges or court personnel. With respect to judges, most non-minority judges observed little, if any, minority bias. Because the pool of minority judicial officers is so small (eighteen responded to the survey), it is difficult to discern whether the low perception of discrimination by white judges is due to their status as judges or as non-minorities.

Some of the important survey results can be summarized as follows:

- More minority than non-minority lawyers perceive disparate treatment of minorities in certain court proceedings (e.g., use of sentencing alternatives, granting deferred prosecution, setting bail amounts, and

release of defendants on their own recognizance). However, non-minority judges and court personnel perceive a lower level of the same disparate treatment.

- Most survey respondents think that minorities and non-citizens are adequately represented by legal counsel or are afforded their full legal rights. Many respondents do, however, feel that the impact of a guilty verdict on immigration status is commonly not explained adequately to defendants who are not citizens and who do not speak English.

- A large proportion of respondents recognize that minorities are rarely represented adequately in jury pools and on jury panels in criminal cases. There is concern, particularly among minority respondents, that lawyers use peremptory challenges to eliminate minorities from juries. There is also concern among all respondents that jurors give less credibility to the testimony of minority victims and witnesses.

- Few non-minority survey respondents perceive that prosecutors and defense lawyers treat minorities with less respect than non-minorities during cross-examinations. Minority respondents are more likely to perceive this form of bias.

- A majority of all respondents believe that minority defendants commonly feel that because of their race or ethnicity, they will be treated unfairly in a proceeding.

- Few lawyers reported observing disparate treatment in awards or settlement amounts given to minorities compared with non-minorities. Few non-minority judges or non-minority court personnel perceive civil proceedings to be biased with respect to awards or settlement amounts.

- A large proportion of minority lawyers perceive that minority litigants negotiate out-of-court settlements less often than non-minority litigants. Few non-minority respondents perceive this difference.

- A larger proportion of minority respondents than non-minority respondents perceive lawyers in civil cases to be less respectful in cross-examining minority witnesses and litigants than in cross-examining non-minorities.

- Large percentages of all respondents believe that in civil cases, lawyers, particularly defense lawyers, commonly use peremptory challenges to systematically eliminate minorities from juries.

- A majority of all respondents believe that minority litigants commonly see themselves as disadvantaged in civil cases.

- For almost all positions within the court system, a majority of the minority respondents consider minority underrepresentation to be a problem, while only some of the white respondents believe that minorities are underrepresented.

- A majority of the minority respondents believe that advancement opportunities are not available for minorities; whereas, most white respondents tended to believe that such opportunities are available for minorities in the court system.

- Lawyers and minorities are most likely to witness, notice or report incidents involving cultural insensitivity or a lack of cultural awareness among persons working in the courts. For lawyers, this is partially explained by the fact that they participate in the informal, pretrial negotiations in which incidents of cultural bias are most likely to occur; judges are somewhat distanced from these informal interactions.

- A higher percentage of minority than non-minority respondents report incidents of cultural bias. This is perhaps due to the fact that minority lawyers and court employees have more contact with minority litigants who are the victims of cultural bias. It may also be the case that minorities and non-minorities interpret incidents differently, minorities being more likely to notice the less overt or more subtle forms of bias.

The results reported in this Chapter point to differences in the extent to which bias is perceived. Minority respondents perceive and observe more discriminatory behavior, while the perception of bias is lowest among non-minority court personnel and non-minority judges. The Task Force also contends that the existence or perception of minority bias may be most prevalent in those areas where one sees a concurrence among lawyers, such as in the use of peremptory challenges to eliminate minorities from juries. With few minorities making it onto jury panels and then being ostensibly eliminated, it is not surprising that minorities feel some discomfort about being judged by a predominately white jury within a court system run primarily by whites.

Thus, minorities and non-minorities within the justice system may disagree on whether or not there is significant bias within the state court system. At almost all levels of the judicial system, whites, according to these survey results, do not perceive the same degree of bias as that perceived by minorities. For the Task Force, this is the most disturbing aspect of these survey results--a clear divergence of perception of bias by whites and minorities. Are minorities perceiving or observing frequent acts of discrimination or biased behavior, while such acts or behavior are going unobserved by whites who may be accustomed to the status quo?

OVERVIEW

SECTION IV: REPRESENTATION OF MINORITIES IN THE LEGAL PROFESSION AND IN THE COURT SYSTEM

At the 1988 public forums, the poor representation of minorities in the legal profession and in the court system as attorneys, judges and nonjudicial employees was repeatedly raised as a concern by forum speakers. Consequently, the Task Force conducted two demographic surveys to determine if this perception or concern was valid. First, the Subcommittee on "The Perceptions and Treatment of Minority Litigants and Minority Lawyers" conducted a bar survey to determine the racial, ethnic and gender differences in the Washington State Bar Association. With the assistance of the Bar Association and nine bar-related associations, Subcommittee I was able to achieve a forty-three percent (43%) response rate, an excellent return rate for a first-time effort. The findings from the Bar survey, which are reported in Chapter Six, do substantiate the perception that minorities are underrepresented in the legal profession. Specifically, the Bar survey analyses comparing the proportions of minorities by racial groups in the state population and in the survey sample show that the proportion of attorneys is smaller than would be expected if the number of attorneys were proportional to the number of minorities in the general population.

Second, the Subcommittee on "The Underrepresentation of Minorities as Judges, Court Officials and Other Court Personnel" conducted the first courtwide demographic study designed to examine the racial and ethnic composition of state court personnel by job categories. A survey instrument was sent to all the state courts. The survey requested staff demographic information, including a listing of staff names.

The responses included in the total count consist of complete and partial reports from each court. Complete reports are those which include the survey form and staff list. For superior courts, complete reports include both the administrator and the county clerk of a court. Partial reports are those with a missing requirement, e.g., no name listing, no county clerk report or no administrator report.

From a total of 250 courts (1 Supreme, 3 Court of Appeals, 63 Superior, 183 District/Municipal), the survey obtained responses from 242 courts, a 96.8% response rate.

As noted earlier, the Subcommittees responsible for the findings reported in the following Chapters are:

Subcommittee I: The Perceptions and Treatment of Minority Litigants and Minority Lawyers.

Vicki J. Toyohara
Chairperson

Donna J. Cummings
Rafael A. Gonzalez
Irene Gutierrez
Honorable Donald D. Haley
Marilyn A. Wandrey

Subcommittee IV: The Underrepresentation of Minority Judges, Court Officials and Other Court Personnel.

Ruperta Alexis-Caldwell
Chairperson

Peter Bacho
Hector X. Gonzalez, Jr.
Nina A. Harding
Patricia Lee
Mary Campbell McQueen
Charles H. Sheldon, Ph.D.
Mary Alice Theiler

CHAPTER SIX

RACIAL, ETHNIC AND GENDER DIFFERENCES IN THE WASHINGTON STATE BAR[1]

Prepared by
George S. Bridges, Ph.D.

INTRODUCTION

In accordance with its legislative mandate, the Washington State Minority and Justice Task Force was charged with the responsibility of studying the status of minority attorneys. Prior to the Task Force's efforts in this area, little empirical data had been collected and analyzed about the status of minority attorneys. In view of the paucity of data, the Task Force requested the assistance of the Washington State Bar Association in conducting the first comprehensive survey of minority and women attorneys in Washington State.

We are now able to provide information on an issue of great importance to the minority and legal community–a profile of attorneys in Washington State. The issue is of concern to the minority community because some of its members have expressed disillusionment and dismay with the low representation of minorities in the legal profession, which is strikingly apparent to most minorities when they observe our state court system. The issue remains of paramount concern to the legal community, because it is essential that it has some idea of the general composition of the Bar.

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[1]This chapter is adapted from Racial, Ethnic and Gender Differences in the Washington Bar: Results from the 1988 Washington State Bar Survey by George S. Bridges, Ph.D. The report was released by the Washington Minority and Justice Task Force in February 1990.

The Task Force hopes that this first-time effort to identify the number of women and racial and ethnic minorities in the bar is not the last one. It is our hope that the legal community will continue this process for its future benefits.

BACKGROUND

A survey questionnaire was developed by the Minority and Justice Task Force and the Washington State Bar Association Task Force on Opportunities for Minorities in the Legal Profession, in cooperation with other bar-related groups.[2] A copy of the questionnaire is included in Appendix G of this report. The questionnaire was mailed to all active bar members of the Washington State Bar Association in December 1988. The primary purpose of the survey was to describe the current standing of racial and ethnic minorities and women in the legal profession. Consistent with this purpose, the survey was designed with four general objectives:

(1) To describe the social and occupational characteristics of attorneys in Washington State;

(2) To describe racial, ethnic and gender differences in the legal education of attorneys in Washington State;

(3) To describe the concentration of minority and women attorneys practicing law across Washington's thirty-nine counties; and

(4) To ascertain whether there exist unwarranted racial, ethnic and gender differences in the occupations and incomes of attorneys in Washington State.

A total of 6,348 questionnaires were returned by the deadline, February 10, 1989, representing a response rate of forty-three percent (43%) from the 14,750 active bar members. An analysis of the sample is included in Appendix H. Not all of those who returned the survey answered all of the questions. For the most part, however, responses were complete and useful.

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[2]The various bar-related groups and organizations which assisted the Task Force included: The Young Lawyers Division; Loren Miller Bar Association; Asian Bar Association of Washington; Washington Hispanic Bar Association (formerly La Raza Bar Association); Washington State Bar Association Task Force on Opportunities for Minorities in the Legal Profession; Seattle-King County Bar Association Opportunities for Minorities in the Legal Profession Committee; Young Lawyers Division Committee on Minorities in the Legal Profession; Gender and Justice Task Force; and Washington Women Lawyers.

SOCIAL AND OCCUPATIONAL CHARACTERISTICS OF ATTORNEYS

The Bar survey collected information on the demographic characteristics, occupations and incomes of attorneys. The analysis of this information focused on the following issues:

- The composition of the Bar's membership, especially the number and proportion of minority attorneys in the survey sample;
- The types of legal practice and income levels of attorneys; and
- Racial, ethnic and gender differences in legal practices and incomes of attorneys.

Composition of the Washington Bar

Of all attorneys in the survey, only a small percentage are racial and ethnic minorities. Non-minorities constitute roughly ninety-three percent (93%) of all attorneys. Asians and Pacific Islanders are the most heavily represented racial minority, constituting two percent (2%) of all attorneys in the survey. Approximately one percent (1%) is African American (Black). Hispanics (Latinos)[3], Native Americans and other racial or ethnic minorities constitute less than one percent (1%), respectively. Approximately two percent (2%) of the survey respondents did not indicate their racial and ethnic status. Twenty-eight percent (28%) of the attorneys in the survey were women.

[3]In the Bar survey, the questionnaire was worded in a manner requiring persons to choose between racial and ethnic backgrounds in responding to questions about race and ethnicity. The term "Hispanic" was treated as a distinct racial and ethnic group. As a result, the sample survey includes under the category of "Hispanics" persons whose racial identification may be White, African American, Asian and Pacific Islander, Native American or some other racial group.

A major concern of the Task Force is whether there exists "underrepresentation" of minority attorneys; that is, whether the proportion of minority attorneys in the state is significantly less than the proportion of minorities in the general population.[4] The analyses comparing the relative proportions of minorities by racial groups in the state population and in the survey sample show that for all racial minorities, the proportion of attorneys is smaller than would be expected if the number of attorneys was proportional to the number of minorities in the general population.[5] (See Table 6-1 on page 61.) This pattern is consistent with the disproportionality observed for the country as a whole.

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[4]The issue of "representation" is complicated. The term has many definitions and uses. One definition views "representation" in terms of the simple proportion of minority attorneys in the state and whether that proportion is less than or equal to the proportion of minorities in the general state population. An alternative definition views "representation" in terms of the relative social standing of minority and white attorneys. According to this latter definition, minorities may be underrepresented if minority attorneys have lower incomes and less prestigious occupations than white attorneys with similar qualifications or years of experience.

[5]Part of this apparent "underrepresentation" may be explained by differences in the composition of the survey sample and the general population. For example, African Americans of Spanish origin may have identified themselves as "Hispanics" and not African Americans in the survey sample but have been counted as African Americans in census figures on the general population. As a result, the proportion of African Americans in the survey sample would be smaller than the actual proportion of African Americans in the Washington Bar and in the general population. In this circumstance, the survey results would indicate there were fewer African American attorneys than there actually were.

It should be noted, however, that this possible bias in the sample is not large. Even if all of the survey respondents classifying themselves as "Hispanic" were in fact Hispanics of African descent and could be counted as "African American," there would still be a problem of "underrepresentation" of African Americans in the legal profession given the size of this population in Washington State.

TABLE 6-1
REPRESENTATION OF MINORITIES IN THE
WASHINGTON BAR AND GENERAL POPULATION

Race/ Ethnicity	Bar Sample	Percent of Washington State's[1] General Population
Asian and Pacific Islander	2.0%	2.3%
African American	1.3%	2.6%
White	93.1%	91.4%
Hispanic[2]	.6%	--
Native American	.4%	1.4%
Other	.7%	2.1%

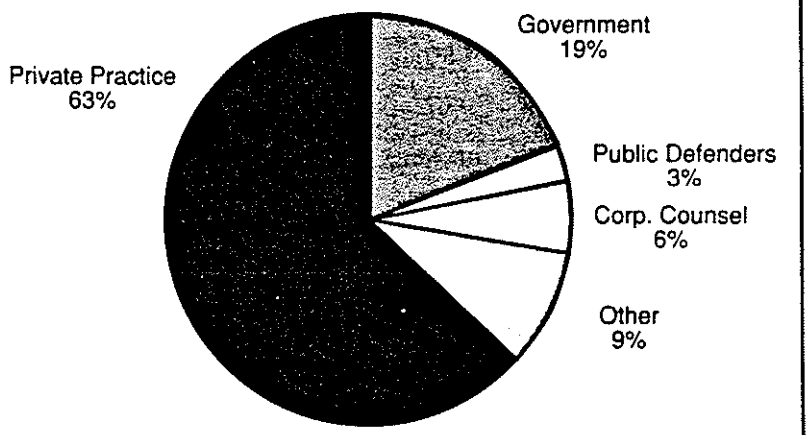
[1] 1980 Census.

[2] According to 1980 census information, Hispanics constitute nearly three percent (3.0%) of the general population in Washington State. Yet, it is impossible to compare sample survey estimates of the proportion of Hispanic attorneys in the state with census data on the state's Hispanic population. In the Bar survey, the term "Hispanic" was treated as a distinct racial and ethnic group. In the census data, persons of Hispanic origin may be of any distinct racial group, because the census figures treat ethnicity and race as different personal characteristics which are distinct but related. Thus, persons describing themselves as "Hispanics" in the survey may or may not be represented as Hispanics in the census figures. Accordingly, statistical comparisons between Hispanic attorneys in the sample and Hispanics in the general population were not computed.

Types of Legal Practice and Incomes of Attorneys

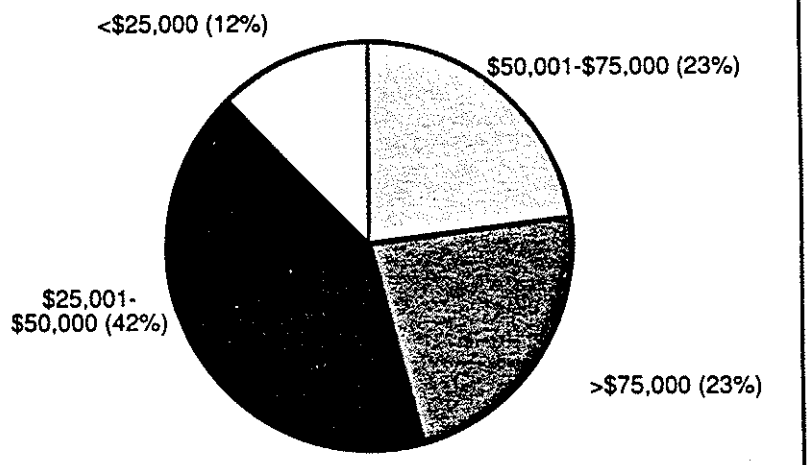
Figure 6-1 shows the distribution of occupations reported by survey respondents. Most attorneys --sixty-three percent (63%)--are employed in private practice in law firms or as sole practitioners. In contrast, sixteen percent (16%) work in or for government agencies, five percent (5%) as corporate counsel, and three percent (3%) as public defenders. Finally, many attorneys--nearly ten percent (10%) in the survey--work in other occupations, many of them law-related.

FIGURE 6-1
ATTORNEY OCCUPATIONS--
TYPE OF LAW PRACTICE



Survey respondents were also asked to report their gross annual incomes. Figure 6-2 exhibits the income distribution. The largest group of attorneys reported incomes in the range of $25,001-50,000--approximately forty-two percent (42%) fell into this category. However, nearly one-fourth --approximately twenty-three percent (23%)--reported average incomes in excess of $75,000, a substantially higher income category.

FIGURE 6-2
ATTORNEY INCOMES--
REPORTED GROSS ANNUAL INCOMES



Of those attorneys reporting the highest income levels, the large majority work in private practice. Most telling about income differences is the number of attorneys reporting more than $75,000 in gross annual income.

Significantly larger shares of attorneys in private practice and corporate counsel reported incomes in excess of $75,000--approximately thirty-one percent (31%)--than did attorneys in any other occupational categories. Further, while the median reported income--the midpoint across the entire range of incomes--for attorneys in private practice was in the $50,000-$75,000 range, the median income among attorneys in government practice ranged between $25,000 and $50,000.

Racial, Ethnic and Gender Differences in Incomes and Law Practice

Figure 6-3 on page 64 exhibits types of law practice by different racial and ethnic groups. The figure shows that a large majority of white attorneys--approximately sixty-seven percent (67%)--are employed in private practice. Typically, smaller percentages of minority attorneys--fifty-one percent (51%) of African Americans, forty-five percent (45%) of Asians and Pacific Islanders, fifty-three percent (53%) of Hispanics--reported working in private practice.

In contrast to white attorneys, a larger share of minorities are employed as government agency lawyers and public defenders. For example, African Americans are roughly three times more likely than whites to work as public defenders--ten percent (10%) compared to three percent (3%)--and almost twice as likely to work as government lawyers--twenty-five percent (25%) compared to fifteen percent (15%).

Differences in reported annual incomes across racial and ethnic groups clearly reflect differences in legal practice. Figure 6-4 on page 64 shows the differences in incomes across racial and ethnic lines, exhibiting for each group the distribution of reported income levels. One-fourth of all white attorneys report incomes in excess of $75,000. Nearly half as many African Americans--thirteen percent (13%)--and fewer than half as many Asians and Pacific Islanders--ten percent (10%)--report equally high incomes.

A much larger share of minorities than whites report incomes ranging from $25,001-$50,000. Nearly one-half of all African American and Native American attorneys (49% and 46% respectively) and more than one-half of all Asian and Pacific Islander and Hispanic attorneys (58% and 56% respectively) report incomes in this range. In contrast, just forty percent (40%) of white attorneys report similar income levels.[6]

Equally pronounced differences exist between men and women in incomes and law practices. Figure 6-5 on page 65 shows the disparity between men and women attorneys in types of law practice. While nearly three-fourths (72%) of men attorneys are employed in private practice, approximately one-half (51%) of women attorneys are in private practice. Women attorneys are nearly twice as likely as men to be employed as government lawyers (23% and 12% respectively) and more than three times as likely to work as public defenders (7% and 2% respectively).

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[6]The large differences in incomes between racial and ethnic groups in part arise because minority attorneys are less likely to be in private practice than white attorneys. It may also arise because minority attorneys in private practice are less likely than whites to work in law firms.

FIGURE 6-3
RACIAL AND ETHNIC DIFFERENCES IN TYPES OF LAW PRACTICE

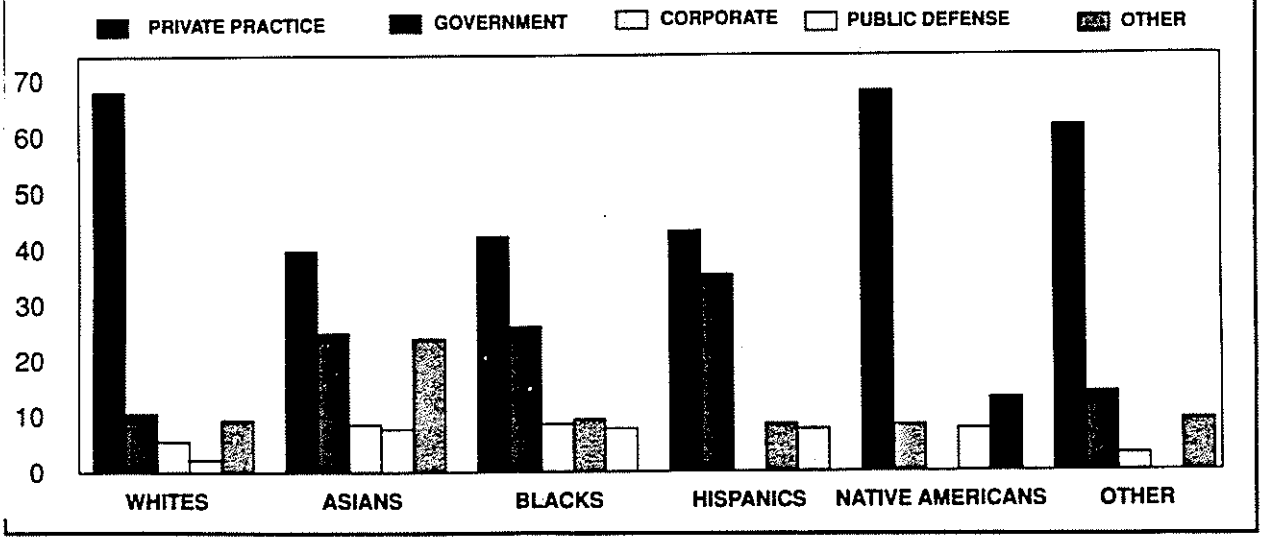
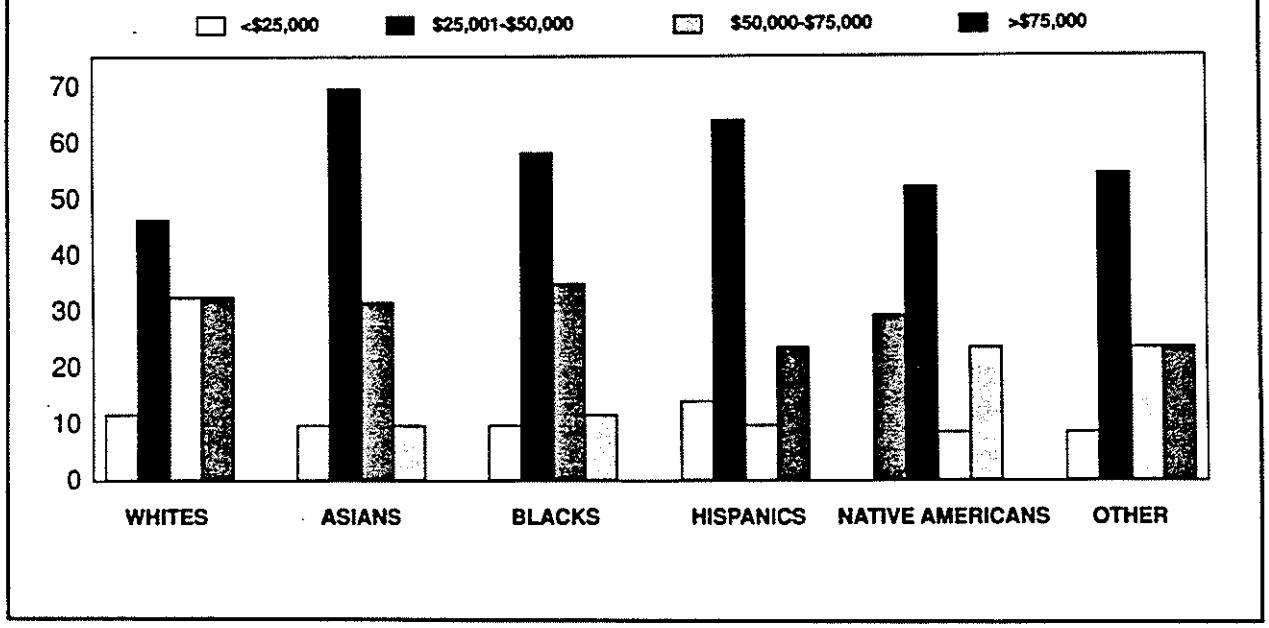


FIGURE 6-4
RACIAL AND ETHNIC DIFFERENCES IN ATTORNEY INCOME



These differences in practice have a clear bearing on reported incomes. Figure 6-6 reports the distributions of income levels for men and women. While thirty percent (30%) of men attorneys report incomes in excess of $75,000, just seven percent (7%) of women report similar income levels. Further, more than twice as many women attorneys as men report incomes of $25,000 or less.

A final concern is how the combined effects of race, ethnicity and gender are related to law practices and incomes. At issue is whether there exist large differences between minority men and women and white men and women in types of practice and income levels. Figure 6-7 on page 66 shows the distribution of law practices for these four groups. Two findings are particularly important. First, across all four groups, minority women attorneys are least likely to be in private practice. While forty percent (40%) of minority women practice law in private firms, seventy-three percent (73%) of white men, fifty-seven percent (57%) of minority men and fifty-two percent (52%) of white women are in private practice. Second, minority women are much more likely than any other group to be employed either as a government lawyer or a public defender. In contrast to white men, for example, minority women attorneys are more than twice as likely to work for a government agency (12% and 28% respectively) and six times more likely to work as a public defender (2% and 12% respectively).

FIGURE 6-5
GENDER DIFFERENCES IN TYPES OF LAW PRACTICE

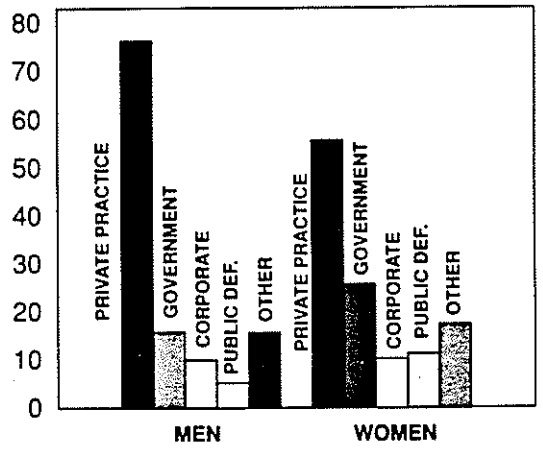
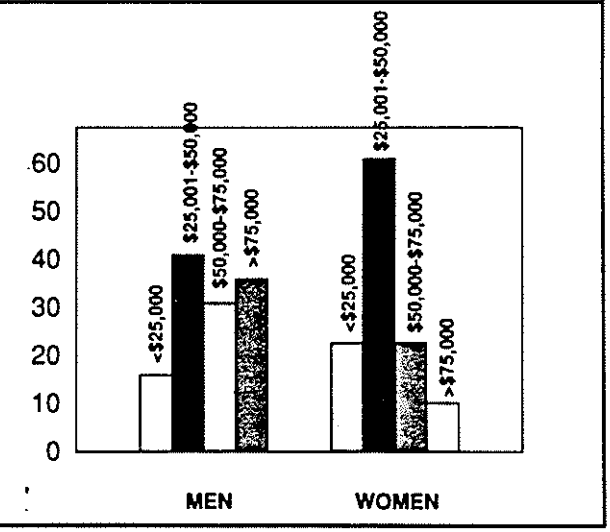


FIGURE 6-6
GENDER DIFFERENCES IN ATTORNEY INCOME



Equally apparent are the reported income disparities between these groups. Figure 6-8 on page 66 shows the income distributions for minority men and women and white men and women. White men are much more likely to earn in excess of $75,000 annually (30%) than minority men (19%), white women (7%), and minority women (8%). In fact, the largest disparities in incomes exist between men and women, regardless of race or ethnicity.

FIGURE 6-7
RACIAL, ETHNIC AND GENDER DIFFERENCES
IN TYPES OF LAW PRACTICE

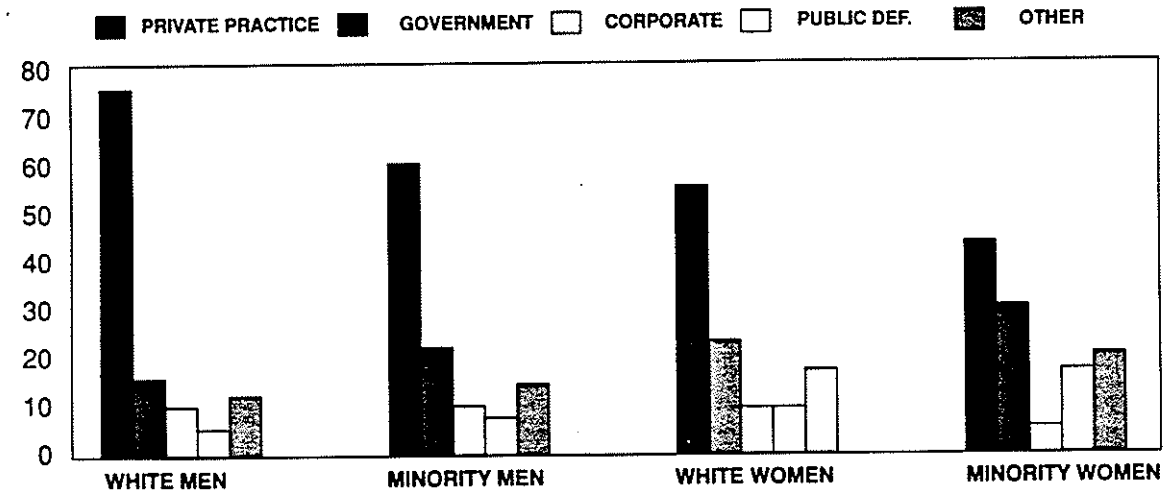
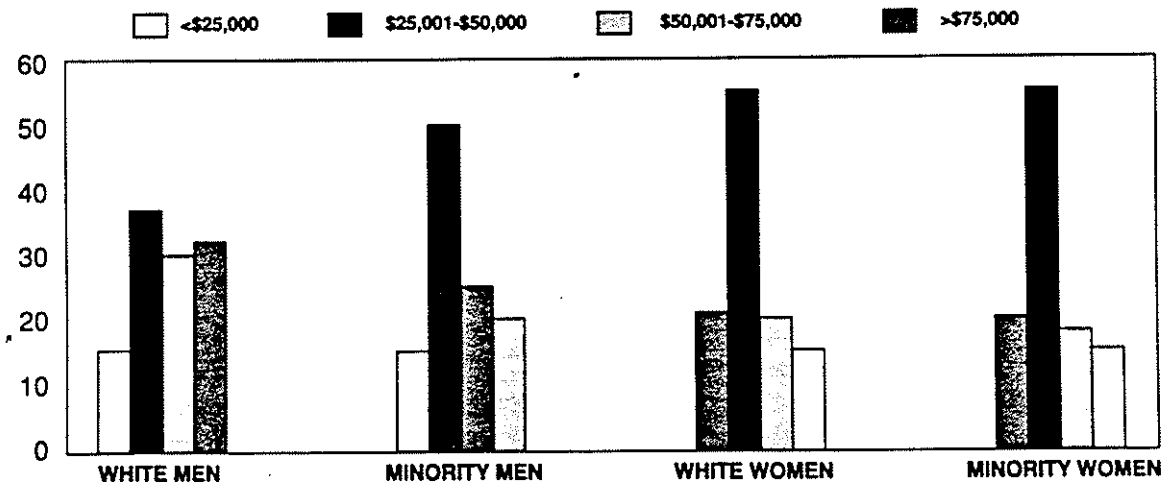


FIGURE 6-8
RACIAL, ETHNIC AND GENDER DIFFERENCES
IN ATTORNEY INCOME



In sum, virtually all but a small percentage of attorneys in the survey are white. The mix of racial and ethnic minorities includes Asians and Pacific Islanders, African Americans, Hispanics, Native Americans, and other racial and ethnic minorities. This mix adds up to only five percent (5%) of the total sample (6,348). Further, women are much more heavily represented in the Bar than any racial or ethnic minority group, constituting slightly more than one-fourth of the survey sample. Yet, in general, the law remains a male-dominated profession.

Important differences exist between racial and ethnic groups and between men and women in law practices and incomes. Nearly one-half of the attorneys report gross annual incomes in excess of $50,000, and, on average, most attorneys work in private practice. Whites, and particularly white men, are much more likely than minorities to work in private practice and earn in excess of $75,000 annually. On the average, women attorneys earn less than men. This may be due in part to occupational differences. Minority attorneys and women attorneys are much more likely than other groups to hold positions in government which pay significantly lower salaries than private law firms.

LEGAL EDUCATION AND RACIAL, ETHNIC AND GENDER DIFFERENCES IN THE BAR

Disparities in incomes and occupations such as those reported earlier in this chapter may be due in part to differences in education and placement. As part of the Bar survey, respondents were asked about their legal education. The analysis of this information focused on the following issues:

- Racial, ethnic and gender differences in legal education; and
- Differences in the types of law practice and incomes by legal education.

Racial, Ethnic and Gender Differences in Legal Education

Of attorneys included in the Bar survey, more received their legal education from the University of Washington than from any other academic institution. Nearly two-thirds of the attorneys graduated from in-state schools--twenty-four percent (24%) from the University of Washington, eighteen percent (18%) from the University of Puget Sound and fourteen percent (14%) from Gonzaga University. About one-half of those who attended law school out-of-state, or twenty-one percent (21%) of the total sample, attended law schools which ranked in the top twenty percent (20%) of all accredited law schools in the country.[7]

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[7]There are many rankings of graduate degree programs at major universities. Two commonly cited rankings of law schools were considered for this analysis. These included the rankings in Jack Gourman, The Gourman Report: A Rating of Graduate and Professional Programs in American and International Universities, Northridge, California: National Education Standards Press, 1989; and Scott Van Alstyne, "Ranking the Law Schools: The Reality of Illusion?," American Bar Foundation Research Journal, (1982): No. 3, pp. 649-684.

Figure 6-9 on page 69 shows the distribution of racial and ethnic groups by law school attended. Although there are no sizable differences in the proportions of racial and ethnic groups who attended in-state universities, there is a particular noteworthy difference among those who attended out-of-state law schools. With the exception of Native Americans, a higher proportion of minority attorneys attended out-of-state ranked law schools than white attorneys. Whereas twenty-one percent (21%) of white attorneys attended ranked law schools in other states, thirty-seven percent (37%) of all African American attorneys, twenty-five percent (25%) of Asian and Pacific Islander attorneys, and twenty-one percent (21%) of Hispanic attorneys attended these same schools. Only eight percent (8%) of Native American attorneys attended out-of-state ranked law schools.

There also exist significant differences between men and women in law schools attended. While more male attorneys attended the University of Washington than any other law school (27%), more women attorneys attended the University of Puget Sound (28%) than any other law school. About one-quarter of white women and minority women attended the University of Puget Sound Law School (28% and 25% respectively). In contrast, more white and minority men attended the University of Washington Law School (26% and 37% respectively).

Finally, when compared with white men attorneys, minority men and minority women were equally or more likely to have attended ranked law schools from out-of-state. Figure 6-10 on page 69 shows the distribution of law schools attended by race, ethnicity and gender. While twenty-two percent (22%) of white men attended these schools, twenty-six percent (26%) of minority men and twenty-five percent (25%) of minority women attended them. Relative to the other groups, white women were less likely (17%) to have been educated at these schools.

A review of writing and research on ratings suggested that the former ranking, The Gourman Report, would be less useful for our purposes than the latter for two reasons. First, The Gourman Report offers no empirical method or criteria for ranking the schools. Second, the ranking is relatively recent. Because a majority of the lawyers responding to the Bar survey are not recent law school graduates and because school rankings change over time, it was decided that a recent ranking would be inappropriate for the analysis.

Most writings and research on law school rankings suggest that the Van Alstyne rankings are the most valid of all the available rankings. Based on empirical criteria (e.g., median LSAT scores and grade point averages of students), Van Alstyne ranks the top twenty percent of all accredited law schools which he defines as the best law schools in the country. These law schools are listed in Appendix I.

For a discussion of this and other rankings see: Alice I. Youmans, Joan S. Howland and Myra K. Saunders, "Questions and Answers," Law Library Journal, Vol. 81 (1989): pp. 165-168; and Lynn C. Hattendorf, "College and University Rankings: An Annotated Bibliography of Analysis, Criticism and Evaluation," Research Quarterly, Vol. 25 (1986): pp. 332-347.

FIGURE 6-9
RACIAL AND ETHNIC DIFFERENCES IN LAW SCHOOLS ATTENDED

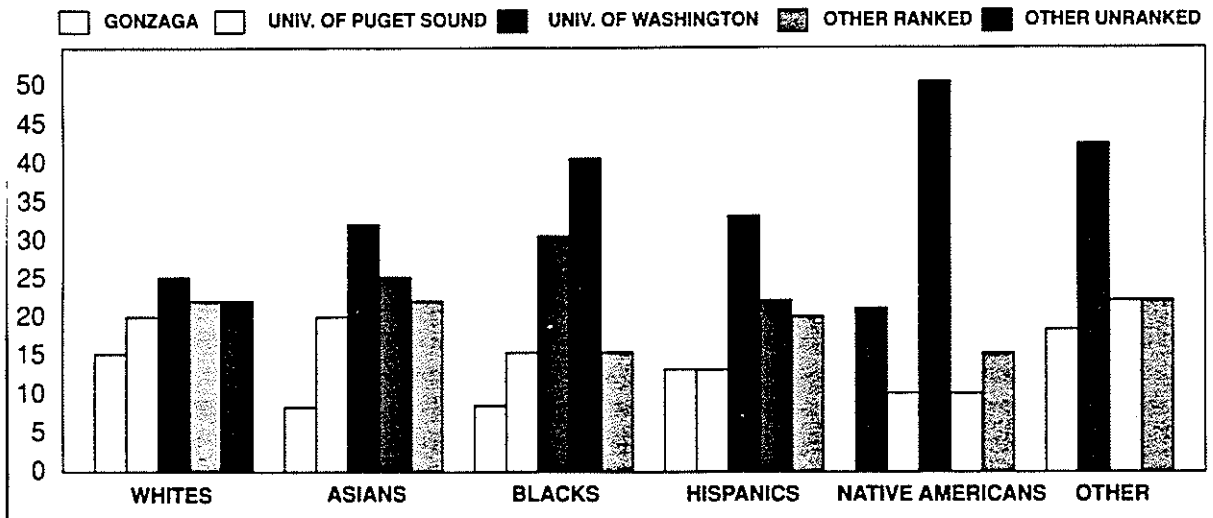
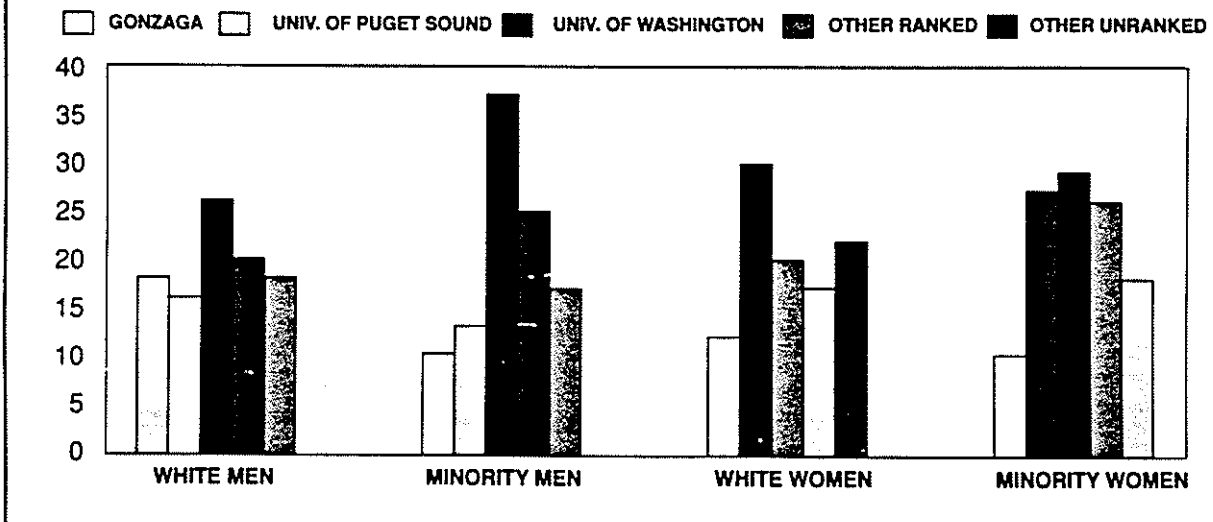


FIGURE 6-10
RACIAL, ETHNIC AND GENDER DIFFERENCES
IN LAW SCHOOLS ATTENDED



Differences in Law Practice and Incomes by Legal Education

Although important differences exist in the law schools attorneys attended, with few exceptions did these differences actually translate into differences in terms of the type of legal practice selected by the attorneys. Perhaps the only noteworthy finding is that a much smaller share of attorneys educated in out-of-state ranked law schools were currently practicing law as government lawyers than attorneys who attended any of the Washington law schools or unranked out-of-state law schools. While only nine percent (9%) of attorneys from out-of-state ranked law schools worked as government lawyers, almost twice as many from Gonzaga, the University of Puget Sound, the University of Washington and out-of-state unranked law schools were employed as government lawyers (18%, 20%, 16%, and 16% respectively).

There exist at least two plausible explanations for this finding. The first is that attorneys graduating from the out-of-state ranked law schools are more likely than others to command better jobs in private practice and are therefore less likely to work as government lawyers. An alternative explanation is that many of the attorneys from these law schools may in fact work as government lawyers early in their careers. Then, they may shift to private practice at some later point. Since the present finding does not distinguish attorneys by their stage of career, it may be that attorneys in the survey from ranked law schools are typically at a later career stage than other attorneys in the sample.[8]

As might be expected, attorneys educated at out-of-state ranked law schools reported incomes that were higher on the average than attorneys educated within the state or at unranked law schools elsewhere. Figure 6-11 on page 71 shows the distribution of incomes by law school attended. While thirty-two percent (32%) of attorneys from ranked out-of-state law schools reported incomes in excess of $75,000, smaller percentages of attorneys educated at Gonzaga, the University of Puget Sound, the University of Washington or unranked law schools in other states (23%, 11%, 29%, and 18% respectively) reported income levels as high.

In summary, more attorneys in the sample received their legal training at the University of Washington than at any other university. However, many attorneys were educated at out-of-state ranked law schools. Moreover, with the exception of Native Americans, a higher proportion of racial and ethnic minorities than whites were educated at these law schools. In contrast, a smaller percentage of women than men attended out-of-state ranked law schools.

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 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.

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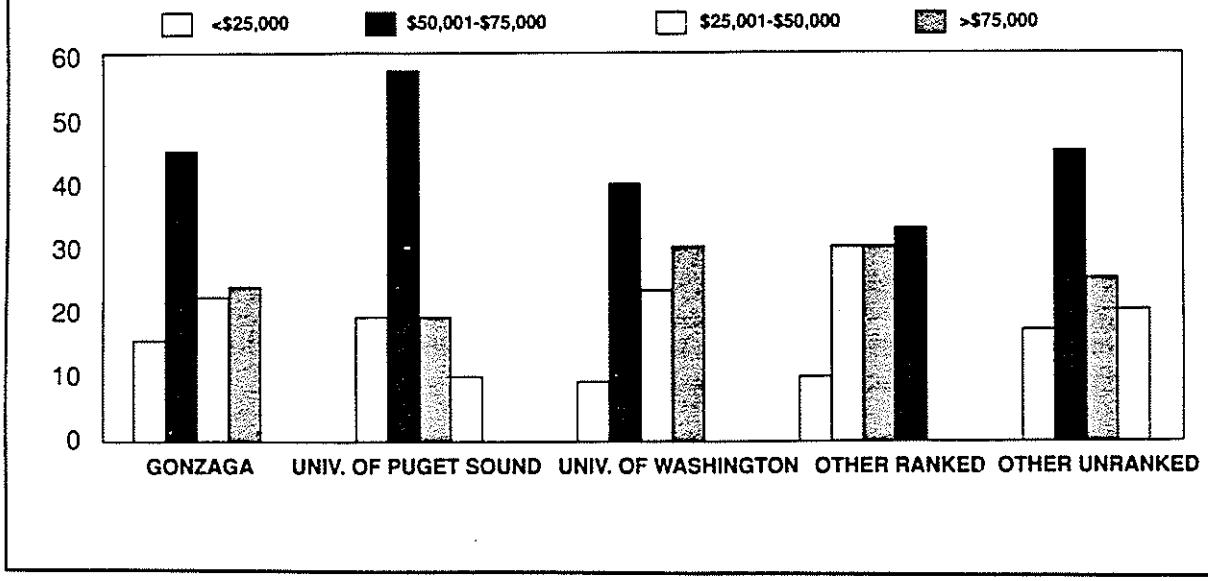
[8]There is evidence in the survey data which supports the assertion that attorneys in the sample from ranked law schools are at a later career stage than others. Typically, these attorneys have practiced law longer than others.

FIGURE 6-11
DIFFERENCES IN ATTORNEY INCOMES
BY LAW SCHOOL ATTENDED



COUNTY COMPARISONS: SELECTED ATTORNEY CONCENTRATION

The analysis of the Bar survey also examined the concentration of minority and women attorneys across Washington's thirty-nine counties. The analysis focused on the following issues:

- Racial, ethnic and gender differences in attorney concentration; and
- County differences in terms of the proportionality of minority attorneys to minorities in the general population.

Attorney Concentration

As might be expected, the heaviest concentrations of minorities in the general population were in western Washington counties, with the majority in King, Pierce and Snohomish counties. Consistent with these patterns is the concentration of attorneys in the sample who are racial and ethnic minorities. Their concentration was typically highest in counties with the largest concentration of minorities. The analyses revealed that the counties with large minority populations–King, Pierce, Snohomish and Spokane counties–have typically higher percentages of minority attorneys than other counties. Counties with the largest share

of women attorneys are primarily in western Washington--typically, King, Pierce, Snohomish, Kitsap, and Thurston counties.

Population and County Comparisons

The study also compared minority populations in each county with the number of minority attorneys in each county. The purpose of this comparison was to identify those counties in which the proportion of minority attorneys was either substantially lower (or greater) than the proportion of minorities in the general population.[9]

Two findings are important. First, in many counties, the percentage of minorities in the population exceeds that for attorneys by a factor of two or more. There are substantially fewer minority attorneys than the proportionate representation of minorities in the general population. Second, in some primarily rural counties, the concentration of minorities in the population exceeds that of attorneys by a factor of more than three. That is, the percentage of minority attorneys in those counties is three or more times smaller than would be expected given the number of minorities in the general population.

In sum, minority attorneys are concentrated, like minorities in the general population, primarily in urban counties across Washington State. However, in very few cases are there ever more minority attorneys than the percentage of minorities in the general population. Across most Washington counties, the proportion of minority attorneys is substantially lower than the proportion of minorities in the general population. In some rural counties, the differences are pronounced.

THE PROBLEM OF UNWARRANTED RACIAL, ETHNIC AND GENDER DIFFERENCES IN INCOMES OF ATTORNEYS IN WASHINGTON STATE

Many factors may explain racial, ethnic and gender differences in reported incomes described earlier in this report. Clearly, differences in legal education or experience may play a role in explaining, for example, why women attorneys may report lower incomes

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[9]This part of the analysis was based on 1980 estimates of the minority populations of each county in Washington State and 1988 estimates of the number of minority attorneys in each county. The county population data were the only available sources of information on the population and, in all likelihood, underestimate the current proportion of minorities in many counties. Between 1980 and 1988, the proportion of minorities in the general populations of some counties may have increased significantly. As a result, this part of the analysis may seriously understate any problem of "underrepresentation" of minority attorneys.

See also Notes 3 and 5. Hispanics were omitted from this part of the analysis because the survey and census definitions of "Hispanics" were not comparable. Further, it is anticipated that the number of attorneys from other racial groups may underrepresent the true number of attorneys from these groups because attorneys of Spanish origin may have identified themselves as "Hispanics" rather than as African Americans, Whites or some other racial group.

than men--particularly white men. If women are less likely to have attended the better law schools or have, on the average, fewer years of experience practicing law, then it may be understandable why they report incomes lower than men. In this circumstance, disparities in income between men and women would be explained by differences in education and experience. Conversely, if women with experience and education equal to men and who practice law in positions similar to those held by men receive substantially lower incomes, then the income disparities would be less understandable. If no other factors related to competence in the practice of law could explain these differences, then the differences might be attributed to gender bias in the legal profession and viewed as unwarranted or unjust.

In order to ascertain whether racial, ethnic and gender differences in income are directly attributable to race, ethnicity, gender or perhaps other factors (e.g., length of time in practice, legal education, or type of practice), a multivariate analysis of the distribution of reported incomes was undertaken. The analysis was designed to identify the effects of each separate factor on reported income levels when other factors were included in the analysis simultaneously. For example, one can determine whether differences in income levels are attributable to race or ethnicity, once differences between attorneys on other factors such as education, law practice, professional experience and gender are taken into account.[10]

Type of Law Practice

Of the many factors included in the income analysis, type of law practice was extremely important in explaining differences among attorneys' reported incomes. Attorneys working in private law firms or as corporate counsel--even after years of experience, type of legal education, race, ethnicity and gender were taken into account--reported substantially higher incomes than all others in the sample.

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[10]Multiple regression analyses were performed. This type of analysis identifies the direct effects of such factors as race or ethnicity on reported incomes taking into account the effects of other factors such as years of experience practicing law, type of law practice, law school attended and so forth. Multiple regression analysis allows the researcher to determine the effects of some factors, "holding constant" the effects of others.

The following factors were included in the analyses: gender; race--a series of dichotomized variables corresponding to whether the respondent was African American, Hispanic, Asian and Pacific Islander, White, Native American, or a member of some other racial or ethnic minority group; minority women--a dichotomized variable measuring whether the respondent was a minority woman; law school attended--a series of dichotomized variables corresponding to the University of Washington, Gonzaga University, University of Puget Sound, an out-of-state ranked law school, or an out-of-state unranked law school; years practicing law in Washington; type of practice--a series of dichotomized variables corresponding to whether the respondent practices law in private practice, as a government lawyer, as a public defender, or in some other position; and whether the attorneys worked in a private law firm.

All statistical tables supporting this analysis are available upon request from the author.

Experience in Law

Similarly, years of professional experience contribute to income disparities. Not surprisingly, attorneys who had practiced law for many years–regardless of other factors such as race or ethnicity–reported higher income levels than attorneys with limited experience.

Legal Education

Legal education had an almost equally strong effect on income levels. Attorneys who attended out-of-state ranked law schools receive substantially higher incomes than others, even after differences in law practice and years of professional experience are taken into account. Attorneys educated in Washington State–regardless of the law school–tend, on the average, to report lower incomes.

Gender

Women attorneys–even those with experience and qualifications equivalent to their men counterparts–reported substantially lower incomes than men.

It is important to note that this finding alone does not demonstrate gender bias or sexism in the legal profession with respect to the salaries of women attorneys. The finding reveals substantial and important differences in incomes between men and women which are not explained by factors–objective characteristics such as type of law practice and years of experience practicing law–which typically explain most other types of income disparities.[11]

Race and Ethnicity

The direct effects of race and ethnicity on income levels, except in the case of Native Americans, are explained by other factors. This means that racial and ethnic differences in income diminish once differences in legal education, years of experience, and the type of law practice are taken into account. However, Native American attorneys–regardless of their experiences and qualifications–report substantially lower incomes than all other racial and ethnic groups.

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[11] It is possible that women attorneys are more likely to work on a part-time basis than men and thus, report lower incomes than men for the same type of work. Although it is impossible to test this hypothesis with the Bar survey information–no data were collected on hours worked per week–it is unlikely that the part-time/full-time distinction would explain dramatic differences between the income distributions of women and men at the highest salary levels. We would expect that women attorneys working part-time represent a mix of persons who, if they worked full-time, could command salaries ranging from very low to very high. It is unlikely, however, that even if all of the women attorneys who could command the highest salaries were to work full-time their addition to the labor force would diminish significantly the differences in income distributions between men and women at this level.

Additional analyses were conducted in an effort to explain these findings, particularly in light of the major differences reported in income levels between white and minority attorneys at earlier points in this report. The analyses examined whether race or ethnicity have any significant influence on the factors directly affecting income levels. It is possible that racial and ethnic differences in income occur as the result of other factors. For example, if minority attorneys are less likely than whites to be employed in the highest salaried positions within the legal profession, they will, as a result, receive lower salaries.

The additional analyses yielded two noteworthy findings. First, income differences are partly the result of differences in years of experience practicing law. Minority attorneys in the sample, on the average, had practiced law for fewer years than whites. Second, income differences also occur due to differences in occupations. Minority attorneys--particularly Asians and Pacific Islanders, African Americans, and Native Americans--were much less likely to be employed in private law firms than whites, even though they may have been educated at law schools of equal standing and practiced law for similar periods of time. This contributes directly to income disparities between minority and white attorneys, even though it has no apparent basis in meaningful differences between the qualifications--such as educational attainment--of minority and white attorneys.

In summary, many factors contribute to disparities in attorneys' incomes. Among the most important of these--once other factors are taken into account--are the type of legal practice, years of experience in law, and legal education. Generally, attorneys working in private law firms, those educated at out-of-state ranked law schools, and men attorneys report higher incomes than all other groups.

With respect to women attorneys, the gender differences are unexplained by any aspect of education, experience or factors logically related to competence in law introduced into the analysis. Thus, one's gender does appear to affect one's income level.

Racial and ethnic differences in incomes also remain an issue. Many of the racial and ethnic differences in incomes discussed earlier in this report appear to be attributable to certain factors. The analysis shows that these income differences are associated with differences in relative years of experience and the types of legal practice. For instance, few minority attorneys have either the years of experience or the positions in private law firms that command the highest incomes. That minorities are less likely to hold positions in law firms is a real concern because their apparent levels of educational attainment are, on the average, equivalent to or higher than those of whites.

CONCLUSION

The analyses described in this chapter show substantial differences between minority and white men attorneys in occupations and incomes. Despite similar levels of educational attainment--as measured by law schools attended--minority attorneys are more likely than whites to be employed as government lawyers and public defenders. These legal positions provide valuable public service, but pay substantially less than positions in private

law firms. Further, women attorneys report incomes substantially lower than men, even when they work in private law firms and have qualifications equivalent to men. With respect to minority women attorneys, they are least likely to be in private practice. They are much more likely than any other group to be employed as a government lawyer or public defender. Finally, the survey also shows that in many areas of Washington, there may be few or no minority attorneys serving the need for legal representation of minorities in the general population.

With respect to incomes and occupations, however, there do exist unexplained disparities. There are pronounced differences between minority and white attorneys which are not necessarily attributable to objective qualifications of competence in the practice of law such as educational attainment. That the differences remain unexplained following multivariate analyses of many factors which should adequately explain income and occupational differences is particularly troublesome. The results of these analyses clearly imply that other factors--some unrelated to competence in the practice of law--may contribute to the disparities. However, it would be erroneous to conclude on the basis of these results alone that pervasive racial, ethnic and gender biases exist in the legal profession, since other studies would be required to substantiate further the existence and prevalence of such bias.[12] It would be equally erroneous to conclude that minorities in areas with few minority attorneys receive inadequate legal representation.

[12]Some persons might be led to conclude from these results that racial and ethnic minorities are more likely than whites to hold positions as government lawyers and public defenders because private law firms selectively recruit white attorneys. Private law firms, according to this line of reasoning, may be discriminating against racial and ethnic minorities in hiring. Such a conclusion would be seriously mistaken if based solely on the results of this Bar survey.

CHAPTER SEVEN

COMPOSITION AND SELECTION OF THE WASHINGTON STATE JUDICIARY[1]

Prepared by
Charles H. Sheldon, Ph.D.

[1]Sources: Interviews with one state Appellate Court Judge; three King County Superior Court Judges; one King County District Court Judge; one Seattle Municipal Court Judge; two unsuccessful candidates for Seattle Municipal Court; and three Spokane County Superior Court Judges. Four of the eleven interviewees were minorities. The eleven interviewees had experienced appointments as well as elections. Some had served on all levels of the state bench except the Supreme Court, and had been candidates for all levels, including the Supreme Court. Officials from the following organizations or offices were contacted by telephone: Seattle-King County Bar Association (SKCBA); Spokane County Bar Association; Washington State Bar Association (WSBA); the Governor's and Seattle Mayor's offices; King County Council; Young Lawyers Division (YLD) of SKCBA; Seattle-King County Municipal League; Washington Women Lawyers; Women's Political Caucus; Asian Bar Association of Washington; and Loren Miller Bar Association. Various state Court Administrators were also interviewed by telephone. The reports published by the following organizations were reviewed: Commission on Washington Courts; the Task Force on Judicial Selection of SKCBA; Washington Women Lawyers; and the YLD of the WSBA. Several reports of the Minority and Justice Task Force were also consulted and some of the information comes from previous research on the Washington judicial selection process. Seventeen active and retired minority judges from Washington State and a comparable group of seventeen non-minority state judges were also surveyed by means of a mail questionnaire. All unattributed quotes are from those surveyed or interviewed for this Chapter. Interviewees and respondents were promised anonymity. Interviews were conducted by the author with the assistance of the following Task Force Members: Ruperta Alexis-Caldwell, Attorney; Mary Alice Theiler, Attorney; and Patricia Lee, Executive Director, Commission on Asian American Affairs. Interviews were conducted during 1989 and the first half of 1990.

INTRODUCTION

The Minority and Justice Task Force was charged with studying the problems of racial and ethnic biases in the Washington State court system and with recommending remedies. Of course, a crucial part of that charge necessitates a review of the status of minorities in the Washington judiciary.

The Subcommittee on "Underrepresentation and Treatment of Minority Judges, Court Officials and Other Court Personnel," was, among other tasks, charged with the responsibility of determining the representativeness of the judiciary; reporting on how the present selection of judges functions; isolating aspects of the selection processes which may work against a fair representation of minorities; and recommending corrective measures.

GENERAL REPRESENTATIVENESS OF THE WASHINGTON JUDICIARY

Democracy and representativeness are inextricably intertwined. If they exist in harmony, it means that public officials remain servants of the public. Recognizing that judges are public servants, how can their representativeness be ensured?[2]

Judges can, of course, represent the character of their constituents without being a microcosm of the social, political, economic, racial or ethnic make-up of the community. However, the most common means of ensuring adequate representation is for the composition of the judiciary to constitute a cross-section of the community. This should mean that the racial and ethnic make-up of a culturally diverse society is reflected in this judicial cross-section. Any concept of justice requires that the law, and those who apply it, protect minorities from the possible dominance by the majority. Sensitivity to the often misunderstood or ignored values of minorities is, of course, a requisite for adequate legal protection. This sensitivity is not limited to nor can it be unquestionably assured by the presence of minorities in the judiciary. However, it is more likely to appear with their presence than with their absence.

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[2]In an earlier Task Force report on racial, ethnic and gender differences in the Bar, Dr. George S. Bridges discussed the complexities of the term representation: "The term has many definitions and uses. One definition views "representation" in terms of the simple proportion of minority attorneys in the state and whether the proportion is less than or equal to the proportion of minorities in the state general population. An alternative definition views "representation" in terms of the relative social standing of minority and non-minority attorneys. According to this latter definition, minorities may be underrepresented if minority attorneys have lower incomes and less prestige or years of experience." See George S. Bridges, Ph.D., Racial, Ethnic and Gender Differences in the Washington State Bar, (Olympia: Washington State Minority and Justice Task Force, Office of the Administrator for the Courts, February 1990), p. 5. For the purposes of this chapter, the author adopts the former alternative even though the data shows that both definitions are applicable to minorities in the profession and on the bench in Washington.

Minorities in the judiciary perform important symbolic functions that cannot be performed by non-minorities no matter how sensitive or understanding they may be. When members of the minority communities become judges, they are seen by others as contributing members of the larger diverse social system and as being members of a professional group which is highly regarded by society. Also, the more minorities represented on state benches, the greater the pride of those they represent. According to one study:

> Minorities are accorded more respect in proportion to the accomplishments of their own people; judicial office is such an accomplishment which raises the pride of all . . .people of a particular race/ethnicity.[3]

How well do the Washington State benches mirror the presence of minorities in the general state population and in the legal profession?

In 1988, the Washington population was 4,565,000 of which 10.6% were minorities (African Americans/Blacks; Hispanics/Latinos; Native Americans; and Asians and Pacific Islanders).[4] Out of the approximately 15,000 active attorneys in Washington in 1988, it is estimated that 5% were minorities.[5] Clearly, the legal profession fails to reflect the numbers of minorities in the general state population. With respect to judicial positions, minorities constituted about four percent (4%) of the state judges in 1988. As of April 1990, 371 judges constituted the Washington judiciary (Supreme, Appeals, Superior, District and Municipal Courts), and, of these, 16 (4.3%) were identified as racial and ethnic minorities.[6] Except for

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[3]N. Lovrich, C. Sheldon, and E. Wasmann, "The Racial Factor in Nonpartisan Judicial Elections: A Research Note," 41 Western Political Quarterly 815 (1988).

[4]Office of Financial Management, "1988 Population Trends for Washington State," 1989.

[5]Washington State Minority and Justice Task Force, Progress Report (Olympia: Washington State Minority and Justice Task Force, Office of the Administrator for the Courts, January 1990), p. iii. Also, among the approximately 1,800 students matriculating in 1989 at Washington's three law schools (University of Washington, University of Puget Sound and Gonzaga University) are found 178 (10%) minority students. Approximately 12% of University of Washington Law School students are minorities, about 10% are among the University of Puget Sound student body and 9% of those attending Gonzaga are minorities. No reliable figures were readily available concerning retention and Bar exam pass rates.

[6]As of April 1990, 371 state judges includes those newly authorized positions which had been filled by appointment. The total of 371 judges is a changing number because of the newly authorized positions which are constantly increasing the total number of judges appointed or elected. As of November 7, the breakdown of minority judges according to levels of the state benches is: one among nine members of the state's court of last resort; none among the seventeen judges on the court of appeals; eleven from among the 144 superior court jurists; one among the 106 district judges; and five out of the 95 municipal judges. This breakdown does not include the Office of Administrative Hearings, which reported three

the Supreme Court judge and one superior court judge, all of the state's minority judges are reportedly in King County.

In sum, in 1988 the percentage of minorities on the bench (about 4%) was slightly less than the percentage of minority lawyers (5%) as estimated by a 1988 bar survey. However, in 1988 the percentage of minorities on the bench (about 4%) was substantially less than the estimated percentages of minorities in the general population (about 11%).[7] Also, despite the recent election of two new minority judges–one to a King County district court and one to the Seattle Municipal Court–the percentage of minority judges may still fail to correspond with the percentage of minorities in the state population. This issue can be examined further once 1990 census data is available. Regardless, it is clear from the available 1988 data that minorities are underrepresented among the state judges and are, unfortunately, heavily concentrated in one of the thirty-nine counties in this state.

What is encouraging, however, is that there is some recognition that there is a need for more racial and ethnic representation on the state benches. For example, a 1986 survey of attorneys asked respondents, "To what extent do you agree that more ethnic and racial minorities ought to be selected to Washington courts." Thirty-one percent (31%) responded favorably; twenty-two percent (22%) were unfavorable; and forty percent (40%) remained neutral, neither agreeing or disagreeing with the statement.[8]

Also, at most of the public forums held by the Task Force during September and October of 1988, numerous speakers highlighted the problem. One attorney testifying before the Task Force noted that:

> a [minority] litigant casts his or her eye about the courtroom realizing that . . .the court reporter, the bailiff, the court clerk, the judge, the other lawyer and frequently their own lawyer are all white. . . .[T]hat . . .litigant can not help but feel at least uneasy [about] whether that forum will be capable of understanding and evaluating his or her life experiences and the value of his [or her] loss."[9]

It was also contended that because of this underrepresentation minorities held a strong feeling of distrust toward the judiciary.

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minority administrative law judges out of fifty-six as of June 30, 1989.

[7]C. Sheldon, "Representativeness of the Washington Judiciary: Ethnic and Gender Consideration," 43 Washington State Bar News 31 (1989).

[8]For additional information about similar perceptions, see Chapters 4 and 5 of this report.

[9]Julie R. Hunt, Ph.C., 1988 Public Forums on Racial/Ethnic Bias in the State Court System (Olympia: Washington State Minority and Justice Task Force, Office of the Administrator for the Courts, January 1990), p. 54.

> Because the credibility of our system is so insidiously undermined by these concerns, it is imperative that everything possible be done to assure . . .that minority judges are elected or appointed and that minority court persons are hired.[10]

Recognizing that the underrepresentation of minorities on the state benches is an important problem, the questions become: How does the present judicial selection process function? To what might the above results be attributed? What changes are needed in order to correct the underrepresentation of minorities in the Washington judiciary?

THE SCREENING PROCESS AND ITS PREREQUISITES

Judicial selection is a winnowing process. Many attorneys are eligible, several are considered, but only one is chosen. To understand judicial selection is to understand that this screening eliminates all but the one. Why is this one most often not a minority?

Experience as a *Pro Tempore* Judge

Experience as a *pro tempore* judge is often a precursor to a permanent judgeship. The judicial aspirant can gain valuable experience to add to his or her credentials, and increased exposure to practicing attorneys. The screening and selection process for *pro tempore* judges is different at each court level. Placement on the *pro tempore* judge approved list does not guarantee you will be chosen to serve. For example, in King County Superior Court only fifty or so attorneys, from a list of 300 names, cover most of the need through repeated appearances.[11]

Professional and Partisan Affiliation

Professional activities help to nurture support from legal colleagues for those attorneys considering a future in the judiciary. One judge admitted that his efforts in the Young Lawyers' Division and other professional assignments on behalf of the Bar brought him recognition from older, influential lawyers who, subsequently, were willing to give their endorsements. The value of political party affiliation and partisan activities may be more crucial in some counties than in others, and might be considered by the Governor in the absence of formal input from the Bar.

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[10] Id.

[11] At the time of the Task Force's survey of court personnel in June 1989, five of the eighty-five attorneys listed by court administrators as *pro tempore* judges were identified as minorities.

Bar and Other Screening Processes[12]

The Washington State Bar Association (WSBA) assumes the responsibility for evaluating potential Supreme Court and Court of Appeals applicants. The Board of Governors of the WSBA delegates evaluation responsibilities to the twenty-one member Judicial Recommendation Committee (JRC) which produces one list of names for the Supreme Court and another for the three divisions of the Court of Appeals. The lists are fashioned by the JRC largely from persons who apply to the Committee, but occasionally names are submitted by the Governor's Office and by Committee members. The Committee recommends only those who are "well qualified." The Committee attempts to measure demonstrated legal ability, mental and physical health, fairness, integrity, and courage.[13]

The Judicial Recommendation Committee's lists are submitted to the WSBA Board of Governors for approval. Board members on rare occasions have added names to the lists. The Board then sends the names of the "well qualified" candidates to the Governor. The lists are periodically updated in order to keep the names current. This allows the Governor to make an appointment to an unanticipated or sudden vacancy without waiting for another Bar evaluation. One Bar official reported that "[t]he Governor in recent years has always chosen from the approved list, the list is broad enough that the Governor retains significant discretion." However, only one minority has ever been appointed to the Supreme Court through this process.

The Seattle-King County Bar Association (SKCBA) has also formalized its screening process. Two committees on judicial selection (Judicial Screening Committee (JSC I and II) have designed a thorough process which involves a detailed questionnaire to be filled out by each applicant, an investigation by committee members involving contacting the applicants' references, and candidate interviews. The committees have twenty-five members each, including three non-lawyers. Care is taken to assure that the screening committees' membership represents the broad spectrum of the legal practice and includes racial and ethnic minority representation.[14] JSC I rates candidates for King County Superior Court and the

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[12]The writer was unable to consult with all county bar associations. Two were selected in order to provide an overview of the process, especially in counties with a diverse racial and ethnic population.

[13]WSBA, "Judicial Recommendation Committee Guidelines," 1985. For a historical account and analysis of the contemporary state bar committee, see C. Sheldon, "The Recruitment of Judges to the Washington Supreme Court: Past and Present," 22 Willamette Law Review 85 (1986).

[14]On the 1986-87 Judicial Screening Committee, there was one minority member; on the 1987-88 Committee, there were two minorities. The current Committees, JSC I and II, have a total of five minorities. Over the past five years, the Committee members have been broadly based with minority representation increasing slightly almost every year and now constituting 10% of the total Committee membership. See also, R. Prentke and J. Fantel, "The Merit Selection of King County Superior Court Judges," 43 Washington State Bar News 35 (1989).

Court of Appeals, Division I. JSC II, which was formed in the Fall of 1989, is now responsible for rating candidates for election and applicants for appointment to King County District Court, as well as rating applicants for King County Court Commissioner positions. JSC II rates candidates for election to the Municipal Court and when requested, it also rates the applicants being considered for an appointment at this court level. Through questionnaires, interviews and contacts with references, the committees attempt to contact everyone on the reference list in an effort to determine the legal competency, integrity, diligence and judicial temperament of the applicant.

Each of the two screening committees uses a slightly different version of the same questionnaire. However, both contain inquiries about the applicant's current position, practice and court appearances; educational and employment history; judging experience; bar and judicial discipline and malpractice matters; status of health; professional and civic activities; honors; names of references from bench, bar and community; and a concluding question: "Why should you be appointed or elected to this judicial position?"

Applicants for appointments are rated "exceptionally well qualified," "well qualified" or, if not enough positive votes are received (it requires at least 3/4 vote of approval from a quorum), the candidate's name is left off the approved list. After approval by the Board of Trustees, the Governor is sent a list which is arranged alphabetically under the two ratings. No comments are provided. A person remains on the list for two years before a reapplication is required. Those failing to be rated favorably by the committees can reapply after waiting two years and the screening begins anew.[15] Those receiving "well qualified" often try again for "exceptionally well qualified."

Outside King County, the screening process to vacancies on all levels of the bench is much more informal. Even in Spokane County, the bar does not have a selection committee conducting interviews, and ratings are not issued. They have a very informal structure, according to one Spokane jurist.

In Spokane, the Bar provides the appointing authority with the only professional appraisal of the candidate's competence and potential for the bench. The tendency to rely on informal contacts has permitted an "old boy" network to dominate, although the recent influx of new and young attorneys has now and then intervened.

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[15]Recently, the list contained thirty-seven names including some minorities who were "exceptionally well qualified" or "well qualified." Around seventy persons were interviewed to compile the approved list of thirty-seven. Washington Supreme Court, "Report of Washington Commission on the Courts," p. 184. According to SKCBA, over the past five years, the Committees' lists of "highest rated applicants reflected a much higher percentage [of women and minorities] than represented in the Bar. Our list and the Governor's appointments reflected substantial amounts of experience in district and municipal courts, overwhelmingly favored small firm practioners. . .and included substantial numbers [from] government jobs." Letter from R.O. Prentke dated September 4, 1990.

There are a number of other bar-related and political associations which screen judicial candidates for both appointments and elections and which have developed their own process and procedures. They include, for instance, the Washington Women Lawyers (WWL); Washington Women's Political Caucus; the Loren Miller Bar Association; and the Asian Bar Association of Washington (ABAW) to name just a few. Some of the issues considered by these organizations include, but are not limited to, pro bono work, issues confronting women and people of color, and community-related activities. For additional information on these organizations' procedures regarding the screening and appointment process, please refer to Appendix J.

THE APPOINTMENT PROCESS

Although all judges in Washington are elected on nonpartisan ballots, vacancies due to resignations, deaths or incapacities are filled by gubernatorial appointments to supreme, appellate and superior benches. District and municipal appointments are by county commissioners (councils) and mayors, respectively. Actually, throughout the state's history, nearly two-thirds of all judges have been initially appointed to their positions.[16] Therefore, given the importance of the appointment process in shaping composition of the state judiciary, this section of the chapter highlights a few of the factors to be considered in the appointment process.

For permanent appointments to all levels of the bench the formal process begins with the submission of a letter of application with a résumé and letters of support to the appointing authority for an announced vacancy. Commonly, considerable groundwork needs to be laid before one makes a formal letter of application to the appointing authority and a request for evaluation by the bar. The letter of application to the Governor (or County Council, Commissioners or Mayor) is accompanied or followed by letters of endorsements from non-lawyer groups such as the State and County Labor Councils, Teamsters, Women's Political Caucus, Washington Education Association, law enforcement and police groups, some of which interview the candidates. The consensus is that from six to twelve letters are ordinarily sufficient, although twenty or thirty letters are not uncommon. A few telephone calls of support from legal, community or political notables to the appointing authority make a difference. Knowing the Governor or Mayor or having worked in their campaigns is helpful. Also, County Commissioners, Mayors and Governors generally consider political party affiliation in making judicial appointments. For example, of the last dozen appointments to the Supreme Court (since 1970), only two did not share the Governor's political party identification. Interestingly, these two were the first woman (Carolyn R. Dimmick) and the first minority (Charles Z. Smith) appointed to the state's high court.

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[16]Young Lawyers Division, Washington State Bar Association, "Report on Judicial Selection," 1989, pp. 9-10, and Washington Women Lawyers, "Washington Women Lawyers Examines Judicial Selection," 8 SKCBA Bar Bulletin 13, 1989. Also note that all appointees, with the exception of some municipal judges, must stand for election at the next general election in order to finish the term of those they replace. Of course, after that, they must be elected to their own regular four- and six-year terms.

Although the Governor and other appointers are not obligated to make their appointments from the lists provided by the bar associations,[17] recently all appointments have come from those approved by the bar associations. The Governor's Office (under the supervision of the Governor's counsel) asks for access to the questionnaires filled out by King County applicants or sends a similar questionnaire to applicants in other counties. The Governor's Office also requests signed consent forms to check on disciplinary actions taken by WSBA, and contacts county bar presidents. The State Patrol is contacted concerning any criminal records. Letters and phone calls are reviewed. County, civic, business and political leaders are contacted concerning the candidates, along with sitting judges. After an initial screening, personal interviews are scheduled with promising candidates.

The interviews are informal, non-political and consistent with Canon 7 of the Code of Judicial Conduct.[18] Questions in the thirty minute interview on the candidate's position regarding specific legal issues are avoided.

> Sometimes the Governor asks them a variety of questions and some of the questions will sometimes be in the areas of something that might be of community interest and which will be a more general question, perhaps asking them what they know and get their feelings on things of that nature. . . .Some of the things [he is looking for] is the role that judges are not the policy makers in the big "P" of the political sense like the Legislature in terms of deciding these policies. But I think their role is to interpret the law and I guess we all have some reality for what type of leeway [is allowed].[19]

The Governor attempts to:

> emphasize, not only when he gets the Bar list [but] In talking with people who work for those groups in other counties [that] we would like them [to] encourage candidates, women and minorities, to be part of the process.[20]

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[17]One exception is a King County ordinance which obligates the Council to seek bar recommendations. Chapter 270, King County Code, 1987.

[18]Canon 7 of the Judicial Code of Conduct admonishes that "Judges Should Refrain From Political Activity Inappropriate to their Judicial Office. . . .[and] should not make pledges or promises of conduct in office other than faithful and impartial performance of the duties of the office; [or] announce their views on disputed legal and political issues; . . ."

[19]Washington Supreme Court, "Report of Washington Commission on the Courts," 82 (1989).

[20]Id., at 72.

The King County Council considers for appointment to district benches only those candidates whose qualifications have been reviewed by bar associations that have been conducting candidate evaluations for at least two years. Thus, in addition to the SKCBA's recommendations, input is received from other local bar associations such as the Loren Miller Bar Association, the Washington Women Lawyers, and now the Asian Bar Association. This new (1987) process was designed to remove much of the patronage politics involved in some of the earlier appointments. It has attracted more applicants and permitted more open screening.

In Seattle, Mayor Norm Rice, who took office in January 1990, relied on an ad hoc screening committee for his first two appointments to the Seattle Municipal bench. The Committee membership included lawyers and non-lawyers. The positions were widely advertised "in order to generate a diverse field of candidates."[21] More than twenty aspirants applied to the Mayor's screening committee and eight finalists were interviewed. The two finally chosen were minorities. The Mayor said the new judges brought "strong legal experience, diverse backgrounds and proven administration abilities to the job."[22]

THE ELECTORAL PROCESS

Although most jurists in Washington are initially appointed to fill a vacancy, with the exception of a few municipal jurists, all appointees must face the voters in a nonpartisan race at the next general election. Most will not face opposition. In the vast majority of judicial election campaigns, the September primary is the crucial race. Except for district court races, gaining over 50% of the vote in the nonpartisan race means the candidates are duly elected and their names appear on the November ballot unopposed. For most candidates the campaign must peak the first week of September. Thus, fundraising, organization and campaigning begin and often end sooner for the nonpartisan judiciary than for partisan political races. Planning for an election campaign must begin immediately after appointment or long before the July filing date.

Although nonpartisan, the organization of judicial campaigns seems not altogether different from partisan political contests.[23] The difference, of course, is in the content of the campaign which is dictated by provisions of the judicial canons. However, nonpartisan judicial candidates are often invited to candidate "fairs" and "nights" along with the other partisan office seekers. Sharing the platforms with aspirants to the State Legislature or U.S. Congress is often

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[21] Seattle Post-Intelligencer, March 29, 1990.

[22] Id.

[23] "Judicial races are nonpartisan, but they can be as political as any other race in today's terms. Many candidates were not prepared for the financial hardship and the emotional drain. Their campaigns were demanding personally, professionally and without question, exceeded their cost estimates." Linda D. McQuaid, "Fear and Loathing on the Campaign Trail," 4 SKCBA Bar Bulletin 19 (March 1988).

a convenient means of gaining voter recognition, and Canon 7 often gives the judicial candidate an excuse for not confronting the tough political or legal questions.

Both the Seattle-King County and Spokane County Bars, like most of the county bars, are involved in the evaluation of candidates for the electoral process. In contested elections for all levels of the bench the two SKCBA committees follow the same questionnaire, investigation and interview process that they use for appointments. The final ratings released to the media include an additional category of "not qualified." If not enough information is provided (usually the candidate refuses to submit to the committee evaluation) an "insufficient information" rating results. The Spokane Bar polls its membership in each contested race making public the preferences of the profession before the September primary and, if need be, before the general election.

SKCBA also conducts an evaluation study of superior, district and municipal court judges and superior court commissioners. Superior court incumbents are evaluated by the Judicial Evaluation Committee (JEC) which is separate from the screening committees. SKCBA's Young Lawyers Division Judicial Information and Evaluation Committee evaluates district and municipal jurists. Every two years the JEC and SKCBA's YLD survey attorneys familiar with judges' performances. The judges and commissioners are rated from "excellent" to "very poor" on diligence, courtroom conduct, legal ability, decision quality, impartiality, and courtroom administration. The results of the evaluations are released to the judges in non-election years and to both judges and the public prior to the September primary in election years.

As noted in the appointment process, other organizations, such as Washington Women Lawyers, the Loren Miller Bar Association, and the Asian Bar Association have a evaluation process for judicial elections. See Appendix J for more details.

Of course, most judicial incumbents are not challenged at the polls. Even when facing an opponent, most incumbents win. It is considered by many in the legal profession to be bad form to challenge an incumbent, unless obvious questions have arisen regarding his or her competency. But when a contested race materializes, endorsements are encouraged. As with the appointment process, groups are contacted and candidates are often interviewed. Members of interest groups receive newsletters that discuss judicial ratings, and the public is informed of endorsements through news releases or other campaign literature.

Newspaper endorsements play crucial roles in all elections.[24] For instance, judicial candidates in contested races might be interviewed by a group of newspaper editors. These interviews tend to be more political and some judicial candidates have suggested that the questions asked, if answered, might lead to violations of Canon 7 of the Code of Judicial Conduct. Throughout any campaign, judicial candidates must exercise care in observing the code. At the same time, the voter and special groups deserve an honest account of the judicial candidates' views if they are not forbidden by the Canons.

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[24]Orman Vertress, "Politics and the Mass News Media," Masters Thesis, Political Science Department, Washington State University, 1983.

Washington voters often ignore the nonpartisan judicial races on election day. In the November balloting, sometimes 40% of those voting for president or senator neglect to move down the ballot to vote for judicial positions. In primary elections in September, fewer of the registered voters participate and, as in the general election, the "roll-off" for judicial races is considerable.[25] Nonetheless, those remaining voters who cast their ballots for judicial offices in both primary and general elections are not as ignorant of candidates and issues as often portrayed in the literature.[26] For example, one judge observed that he had "been amazed at the insights of people who know no more than what they read in the newspapers." He thought that "the public are perfectly capable of making good valid judgments without being led around by their nose." Survey research confirms this judge's observation. In 1986 a survey of a sample of Washington attorneys (N=299) showed that 45% of them thought the judicial voter possessed "Enough" or "More than enough" information to vote on the qualifications of judicial candidates, a not altogether discouraging number.[27] A study of Spokane County voters in 1983 and 1984 concluded that:

> Popular elections should not be seen as infrequent gatherings of the great unwashed, wherein rational outcomes are a matter largely of chance occurrence. Rather the judicial electorates involve a rather self-selected group of voting participants. These participants are likely to be atypical of the general public with regard to their uncommon interest in public affairs, their years of experience following local affairs in their own area and their level of knowledge about local government.[28]

But what sources do the judicial voters draw upon in choosing one candidate over another? When asked about the importance of various sources of information, the 31% that supported a more representative bench responded as indicated in Table 7-1 on page 89.

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[25]WSBA, Young Lawyers Division, "Report on Judicial Selection," June 1, 1989), Appendix D.

[26]For example, McKnight, Schaefer and Johnson, "Choosing Judges: Do the Voters Know What They are Doing?" 62 Judicature 94 (1978).

[27]See note 7, supra, for other results of the survey.

[28]N. Lovrich, J. Pierce and C. Sheldon, "Citizen Knowledge and Voting in Judicial Elections," 73 Judicature 33 (1989).

TABLE 7-1
SOURCES OF VOTER INFORMATION

Source of Voter Information	Percent*
Newspaper editorials	57%
Newspaper ads	57%
Results of law enforcement surveys	56%
Endorsements of special groups	54%
Results of bar preferential polls	52%
Recommendations from attorneys	51%
Door-to-door contacts with voters	50%
Voters' meetings with candidates	44%
Discussions with friends and family	42%

*Percent = Very Important to Important.

Other sources such as lawn signs and billboards (34%), mailings from candidates (29%), radio ads (22%), telephone canvassing (9%), and TV ads (8%) were not regarded as important voter sources.[29]

The costs of campaigning for judicial office, although not prohibitive when compared with the costs of running for other political offices, have increased over the years. It is a rare case where a relatively inexpensive campaign succeeds. For superior and district court races in King County, direct mailings costs often constitute a large item in the campaign budget. For example, two successful candidates for the superior court in 1986 spent a total of $42,000 and $49,000, respectively. A winning district court candidate spent $15,000. This list of campaign expenses shows that direct mailing expenditures figured large in all three budgets. Their major expenses are broken down in Table 7-2 on page 90.[30]

[29]Note 27, supra.

[30]Supra note 23 at 2.

TABLE 7-2
CAMPAIGN EXPENSES-KING COUNTY

Advertisements	Superior Court		District Court
	Candidate #1	Candidate #2	
Newspaper Ads	$ 1,000	$ 2,600	$ 2,300
Yard Signs	1,100	800	1,400
Brochures	5,100	9,600	1,500
Direct Mailing	18,000	13,600	7,600
Radio	7,100	4,500	0
Bus Signs	6,600	6,700	0
Billboards	4,000	0	0
Television	0	0	0

PERCEPTIONS ABOUT THE SCREENING, APPOINTMENT AND ELECTORAL PROCESSES

All the successful white judges interviewed felt that minorities were at no great disadvantage in the appointment process, a view not held by the minority interviewees. White judges advanced several reasons to explain the lack of better minority representation on Washington courts. First, they believed that many of the bright young minority attorneys who might be interested in an appointment lacked the varied legal experience to receive the bar's endorsement. It was also their impression that young minority attorneys were often without the social and political activity that brought them to the attention of the Governor, Mayor or County Commission/Council members. Also, it appeared to them that many minorities were not familiar with the process and are consequently reluctant to pursue appointments. It was their perception that those older minority attorneys, who were well established and who would likely receive the bar committees' approval, seemed unwilling to relinquish a lucrative and stable practice for a judgeship.

Another reason given by some of the white interviewees for the underrepresentation of minority judges is the seemingly unintentional bias built into the bars' screening process. Consequently, some judges felt that in King County a minority candidate has a better chance of succeeding in a well organized election campaign. Because of fewer minorities among Spokane's population, the Spokane interviewees believed that the appointment process, rather than the electoral process, provides a better opportunity.

From the perspective of the minority interviewees, two of whom were judges, the process is a deterrent. Perhaps the overriding obstacle, referred to as "playing the game," is unique to minority candidates. On the one hand, minority candidates, like all candidates, must acquire broad experience, make the relevant acquaintances, and cater to those in the "establishment" to be successful. On the other hand, they must continue to remain close and

sensitive to their minority constituencies. Hence, a "Catch 22" situation arises. Paying attention to the one side of the equation exacerbates difficulties on the other side. It is a delicate balancing act; to succeed one must be, as one interviewee phrased it, a "consummate politician:"

> You have to integrate yourself into that network if you want to make sure that you get a decent rating and decent consideration. And that's why minorities who advance to these higher levels are isolated and perhaps feel isolated from their own . . .ethnic constituency. The time they have to spend [to play the game] the less time they can spend with their own natural constituency.

For some minority aspirants to the bench, "playing the game" means a loss of identity. They feel the effort needed to get elected or appointed is a great compromise which white aspirants do not have to make. Whites are able to maintain their cultural affiliations without being suspect by their community or by the legal profession.

The need for a sense of identity is, of course, not limited to minorities. However, too often the images of people of color have been defined by others. Consequently, unlike their white counterparts, minority judicial aspirants are compelled to become the "consummate politician" in order to reconcile the conflicting constituent and establishment roles. The majority needs to recognize this possible role conflict.

Although the screening process can be a difficult experience for all judicial aspirants, minorities feel acutely sensitive to the problem. As expressed by one minority interviewee: "It is a demeaning process if you have any sense of privacy. You have to answer their [screening committees] questions." Often those questions are directed toward whether the minority candidate "can grin and bear it." For example, questions may be posed concerning how the candidate would respond to a racist slur. If an attorney, a court staff member or a litigant made racist references, what would the candidate say or do? Are these types of questions also directed toward white candidates? Minority aspirants "in most instances will be reminded in ever so subtle ways [by the committees] that they . . .are outsiders." Consequently, the screening process remains suspect to some minorities wishing to seek a judicial position.

Too often the composition of the screening committees puts minority candidates at a perceived or real disadvantage. It becomes increasingly discouraging:

> A lot of minorities by conditioning experience are skeptical of what decision-makers and people in positions of authority tell them. . . .They have seen time and time again themselves, their friends and associates stymied or misled. . . .This goes to the fact that minorities are not sufficiently a part of the decision making process. And until they are it is always going to be a suspect process in their mind.

Some minorities perceive the various screening committees of the bars as having a poor representation of or appreciation for members with criminal law experience which has been gained by working at a public agency or in the municipal court.[31] According to some minorities interviewed, practice with public agencies apparently is not held in high regard by the screening groups and consequently, some minorities become discouraged. If this is true, it may be extremely difficult for minorities "to impress" the bar screening committees, especially since a larger share of minority attorneys are employed in government service, particularly as public defenders. To successfully survive the screening process, minorities, therefore, believe that they must be better than the serious white candidates.

Some minority candidates contend that a quota system seems to be at work. To them, there seems to be a policy of replacing one minority with another, thus keeping the percentage of minority judges somewhat constant. There appears little hope that the representation of minorities on the bench will ever reach (and never exceed) their percentage in the population or in the legal profession.

Ideally, an objective value-free appointment process should not distinguish candidates on the basis of race or ethnicity. To generate some clues as to the objectivity of the process, seventeen (including one retired judge) minority judges in Washington were surveyed for this report by means of a mailed questionnaire. The survey attempted to measure the level of anxiety each suffered in the interviews with and in their efforts to gain approval from the various screening groups. In order to isolate which aspects of the appointment process appear to impact minority candidates, seventeen white judges with as near as possible comparable judicial backgrounds (e.g., age, years on the bench, gender, level of court, appointed or elected) were also surveyed. By comparing the responses of the two comparable groups, some insight can be gained into the difference that the race/ethnicity factor makes in the appointment process.[32] Table 7-3 on page 93 reports the results.

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[31]"In contrast to white attorneys, a larger share of minorities are employed as government lawyers and public defenders [in the state]. For example, blacks are roughly three times more likely than whites to work as public defenders . . . and almost twice as likely to work as government lawyers." George S. Bridges, Ph.D., Racial, Ethnic and Gender Differences in the Washington Bar: Results from the 1988 Washington State Bar Survey, (Olympia: Washington State Minority and Justice Task Force, Office of the Administrator for the Courts, February 1990), p. 10.

[32]The two groups were asked identical questions about the appointment process. Each of the thirty-four was instructed as follows: "A number of experiences which ultimately lead to appointment or election to the bench are especially stressful. That is, as you experience the various situations and steps in the selection process, you felt different degrees of pressure, strain, difficulty or embarrassment. For want of a better word, these various reactions can be called anxiety. Some were stressful experiences and left you anxious while others even might have been enjoyable. On a scale of 10 to 1 (10 = highest level of anxiety and 1 = lowest level) rate the following situations involved in working for a seat on the state benches." A total of twenty-six of the thirty-four judges responded to the survey (76%). Eleven were minorities and fifteen were whites.

TABLE 7-3
ANXIETY AND THE APPOINTMENT PROCESS

Appointment Factors	Mean Anxiety Level* Non-minority	Minority
Gaining knowledge of appointment process	4.0	4.3
Soliciting letters of support	5.2	4.1
Interviews with SKCBA[1] screening committee	6.9**	8.4
Interviews with WSBA[2] screening committee	7.2**	5.4
Screening by Washington Women Lawyers	5.6	5.0
Governor's interview	6.8	6.2
Mayor's interview	6.5	6.5
Interview with Loren Miller Bar Association	5.4	4.7
Interview with Asian Bar Association	5.3	4.3
Gaining Endorsements From		
Leading members of the bar	4.9	5.5
Women's Political Caucus	4.6	***
Local bar associations	4.5**	7.2
County Republicans	5.0	***
County Democrats	5.7	***
Political leaders	6.2**	4.3
Police guild	5.2	5.5
Labor organizations	5.6	6.0

* =Anxiety levels range from 10 to 1, with 10 being the highest. The mean reflects the average for the identified group.

** =Anxiety levels over 6.0 and differences of 1.0 between minority and non-minority judges are regarded as significant.

*** =Insufficient number of responses to item.

[1]SKCBA is the acronym for Seattle-King County Bar Association.

[2]WSBA is the acronym for Washington State Bar Association.

The significant differences in minority and white reactions to various steps in the appointment process would make it appear that the process is not as value free and objective as it could be. Although the sample, of necessity, is small and the match between the two groupings may not be perfect, the data are suggestive. An overview of Table 7-3 indicates that minorities have more difficulty with those obstacles in the process erected by the legal profession, while the worries of the white judges hint at a concern for the political aspects of the process.

It seems clear that the experiences with the SKCBA's appointment process, culminating in the interview, weigh heavily on minority applicants. According to one respondent:

> The only description that one can attach to the process of meeting 20 plus faces around a table in a conference room that you do not ordinarily have access to is stressful. . . .Until the Bar Committees become more integrated this process probably will not [be] any less stressful for minorities.

Gaining support from the "local bar association" also appears to be a more anxiety ridden experience for minorities than for their non-minority counterparts. Again, the explanation may lie with a comment given by one respondent:

> The concern that I have about Bar evaluations is that if you are not active and known in downtown Seattle in or around Superior Court your value as a candidate is not held in high regard by the Bar. Many minorities have gotten good endorsements from the community and because the "white bar" does not know them, they are rated low.

The non-minority judges worry, on the one hand, about the legal profession's WSBA activities and, on the other hand, about the role of political leaders in the appointment process. Clearly, most of the white judges were more critical of the political aspects of the appointment procedures. For example, one respondent wrote:

> Coming from an extensive criminal law background . . .I had little anxiety related to my credentials and was quite comfortable with the law related organizations. The farther I got away from law groups, the higher the anxiety. . . .Keep politics out!

And another added that the "more 'political' aspects" of the process "were particularly difficult." For him/her, those "qualities that make someone a good judge are not necessarily the same qualities that make a good politician."

One possible explanation for the higher concern for the WSBA's process on the part of whites might simply be that they had a better chance of gaining an appointment and, therefore, they experienced greater stress. Given the history of appointments to the supreme and especially appeals benches, minority applicants may harbor little hope for final appointment to the Court of Appeals.

Are the reactions of minority and non-minority judges to the election process similar? Again, the survey of the minority judges and the comparable group of white judges provides some comparisons as reported in Table 7-4 on page 95.[33]

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[33] Id.

TABLE 7-4
ANXIETY AND THE ELECTION PROCESS

Election Situations	Mean Anxiety Level* Non-minority	Minority
Gaining knowledge of election campaign	5.8	2.8
Organizing a campaign committee	6.8**	5.8
Gaining campaign funds	8.0	8.7
Gaining endorsements from:		
SKCBA[1]	5.4**	8.0
Newspapers	6.8	6.0
Local bar associations	6.0	6.2
Political party leaders	5.8	6.0
Labor councils	5.9	5.0
Municipal League	7.3	***
Loren Miller Bar Association	5.3	3.0
Asian Bar Association	5.5	2.4
La Raza Bar Association	***	2.6
SKCBA[1] Evaluation Committee	6.5**	8.2
Community leaders	6.0**	4.2
Women's Political Caucus	4.8	4.2

* =Anxiety levels range from 10 to 1, with 10 being the highest. The mean reflects the average for the identified group.

** =Anxiety levels over 6.0 and differences of 1.0 between minority and non-minority judges are regarded as significant.

*** =Insufficient number of responses to item.

[1]SKCBA is the acronym for Seattle-King County Bar Association.

Although both white and minority judges regarded "raising campaign funds" as the most onerous task in the electoral process, it tends to place minorities at a greater disadvantage. Funds for elections come primarily from two sources: other attorneys and the candidates' own funds. Minority candidates frequently make less income than their white counterparts and, consequently, have fewer personal funds available.[34]

Gaining community leader's endorsements and organizing a campaign committee constituted more stressful experiences for the non-minorities. Again, gaining the SKCBA's election endorsement and evaluation support were more anxious experiences for minority judges. One explanation for the contrasting views was offered by a minority respondent:

[34]Supra note 31 at 6.

> Persons who are involved in the elective process themselves are easier to approach as are others who are closely associated with political issues and are frequently approached. Lawyers are the most difficult because they impart a feeling of superiority of intellect. Minorities are presumed incompetent unless proven otherwise by persons in the law. . . .In the [S]KCBA and the other Bar Associations–it would be helpful to have more minorities in the screening process.

CONCLUSION

It is evident that minorities are underrepresented on the state benches leaving an image of a judiciary falling short of the ideal of justice. The methods by which judges are selected vary among the various court levels, by jurisdictions, for appointments and for elections. The appeals and district benches are poorly representative of minorities; although in King County, the municipal and superior courts are beginning to reflect the communities they serve. Jurisdictions outside of King County have an especially poor record of minorities among the judiciary.

Judicial selection in King County is what has been referred to as a system of high articulation, i.e., highly competitive, involvement of a number of interested parties–legal and otherwise–and a predictable or structured process.[35] Aspirants to the bench can plan strategies and focus their efforts. The appointing authorities and the electorate are provided with the means to guide their choices. Perhaps all of the structural or procedural requisites for a more representative bench are in place. However, the burden falls upon the screening actors and the appointing authorities to ensure an open competitive process.

Despite recent efforts toward creating a "fairer" judicial selection system, there remains some aspects of the process which appear to or tend to exclude minority judicial aspirants and thus, contribute or perpetuate the problem of underrepresentation or poor representation. First, an "informal" patronage system may still exist in the selection of *pro tempore* judges in some courts. This problem exacerbates the perception of unfairness in the process. Equally important, it closes off a vital opportunity for many qualified minority attorneys needing the "judicial experience" to add to their legal experience.

Also, we found little evidence outside of King County of a formal system of selection. Rather, most judicial selection processes involve a low articulated process which is informal, non-competitive, and with narrow involvement from a few interested parties. An informal process is unpredictable and it often leads to an imbalance between accountability to the law and accountability to the people.

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[35]N. Lovrich and C. Sheldon, "Assessing Judicial Elections: Effects upon the Electorate of High and Low Articulation Systems," 38 Western Political Quarterly 276 (1985).

The appointing authorities, on occasion, may also succumb to the informal process and the political pressures brought to bear from outside the normal selection process. Also, those outside the political or legal mainstream tend not to be given serious consideration for the bench by the appointing authority. For instance, even though the procedures permit names of qualified minorities for appointments to be laid before the County Council/Commissioners and the Governor, they have failed to result in any recent appointment of minorities to the Court of Appeals and to the District Court.

This seems difficult to explain away, if the "formal" process is at work. While some organizations are obviously making strides in correcting the long-standing problem of poor or no minority representation on their screening committees, all organizations need to consciously work at ensuring that a cross-section of the minority community serves on these committees. Moreover, the various organizations which screen judicial candidates may need to review their methods for recruiting and selecting a cross-section of the minority community which serves on the screening committees. The screeners need to show a greater appreciation for the conflicting or dual roles of minority aspirants. Affiliations with the minority community should not be viewed as suspect or as if the candidate is not capable of being unbiased.

Some bright spots bode well in the future for a more representative bench, as some organizations, such as SKCBA, continue to review and revise their screening and selection process. Yet, in general, despite recent efforts toward fairness, the organized Bar has an image problem with minorities. On their part, non-minorities, however, are uneasy with the politics involved in selection. Likely this is reflective of the view held by lawyers that judges are accountable only to the law, which conflicts with the view held by many others that judges are public servants and accountable to the people. A balance between the two views is what is needed.

The media also has a vital role in making sure the judiciary is representative. Through its efforts to educate the voter about the candidates, it should be also educating them about the judicial selection process and the need for a more representative judiciary. Also, the attentive voter continues to desire more information from the media and the candidate to help them elect or re-elect a judicial candidate.

There is little support for changing the formal process by which judges are elected in the state. The 1986 survey indicated that 58% of those Washington lawyers who expressed a need for more ethnic and racial representation on state benches preferred the non-partisan popular election system. These who felt no need for more minorities gave slightly less support (51%) for non-partisan elections.[36] Nonetheless, implementation of a number

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[36] Supra note 7. However, it is not the formal selection structures but rather the informal methods that are played out within the formal structures that explain minority representation on state benches. See B.L. Graham, "Do Judicial Selection Systems Matter? A Study of Black Representation on State Courts," 18 American Politics Quarterly 316 (1990); B.L. Graham, "Judicial Recruitment and Racial Diversity on State Courts: An Overview," 74 Judicature 28 (1990); and N. Alozie, "Distribution of Women and Minority Judges: The Effects of Judicial

of other recommendations may hopefully help to remedy the poor representation of minorities among members of the state judiciary.

First, interested minority attorneys should begin to map out a long range plan to gain a judgeship. They should accumulate considerable trial experience. For example, a position with the county prosecutor's or public defender's offices has the advantage of offering trial as well as political experience. Although access to practice with the large law firms for minorities appears to be restricted, private practice experience is to be encouraged.[37] Community, charitable and professional activities are also important to gain public and professional exposure. Political activity is helpful but likely not as crucial as often thought. In Spokane and outside King County minority candidates will have to rely on "outside" help from supporters. *Pro tempore* judging should be pursued although the opportunities for actually serving are few. Appointments as mediators, arbitrators, masters and other adjunct, but temporary court positions, can bring recognition and experience. In election campaigns, the focus should be on those important sources used by voters who are concerned for a more representative bench. All candidates must be patient but persistent. A mentor system might also be worked out between minority judges and young minority aspirants to the bench.

Second, because of the pivotal role of the organized bar in the recruitment of judges to the Washington benches, the legal profession needs to take the lead in making the bench more representative. It is recognized that recently the bar has taken some steps in the right direction (e.g., a separate screening committee for appointments to courts of limited jurisdiction), but a number of recommendations seem in order. Minority bar groups (e.g., Loren Miller Bar Association, Asian Bar Association of Washington, and the Hispanic Bar Association) should consider ways to provide more financial assistance and campaign workers for their approved candidates. All bar screening committees must include more minorities. Members of screening committees should be culturally aware or cross-culturally competent to rate all candidates. Advice from minority consultants could improve the content of the screening processes. The various bar associations should also consider different criteria for evaluating a judicial candidate. Serving as a municipal court judge is different from serving on superior or appellate benches.

Third, law schools and private sources must provide more scholarship money for minority students. Law schools should increase their minority support group efforts from the first day of class to graduation. Hopefully, an increase in the number of minorities graduating from law school would lead to an eventual increase in the number of minority attorneys and, in turn, an increase in the number and percentage of minority judges.

Fourth, the legislature and judiciary should investigate the possibility of public financing of nonpartisan judicial races. In the meantime, the Bar, in cooperation with the judiciary, should establish voluntary limits on campaign expenditures. Although some consideration has already been given to revising Canon 7 of the Code of Judicial Conduct, it

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Selection Methods," 71 Social Science Quarterly 315 (1990).

[37] R. Abel, American Lawyers 99 (1990) and supra note 31 at 10, 32.

should be changed or interpreted to allow candidates to provide the judicial voter with more meaningful information. Of course, some restrictions should remain to prevent such campaigns from deteriorating into what seems common today in other political races. In conjunction with the reform of Canon 7, a voters' pamphlet for primary elections which, of course, would include the judicial races should be instituted.

Fifth, with respect to the *pro tempore* judicial positions, public agencies should establish leave policies that would encourage their lawyers to serve as *pro tempore* judges and to campaign for judicial office. It is often discouraging to take hard-earned vacation time or unpaid leave to run for public office. *Pro tempore* judgeship opportunities should be made a reality for minorities. Presiding judges need to encourage more minority *pro tempore* judges in their cases.

Finally, the newly-established Minority and Justice Commission and the various minority bar associations should organize workshops and seminars to inform potential minority candidates about the laws and practices concerning fund raising, appointment and election procedures and strategies, dictates of the Code of Judicial Conduct, and campaign organization. Of course, the public should be made aware of the underrepresentation of minorities on the state benches and the need to correct the situation.

Thus, the major objective of the above tasks was to document the representation of minorities in court employment and to ascertain the existence of adequate EEO and Affirmative Action policies or procedures.

BACKGROUND

To determine the extent to which minorities are employed, a workforce analysis of the various full-time job categories for nonjudicial court positions was conducted. That analysis included a comparison of the current utilization of minorities in those job categories to their availability in the labor force. The analysis examined the representation of various racial and ethnic groups –

- African American/Black
- Asian and Pacific Islander
- Hispanic/Latino
- Native American

as full-time employees in the following Equal Employment Opportunity ("EEO") job categories:[1]

- **Administrator:** Occupations in which employees set broad policies, exercise overall responsibility for execution of these operations, or provide specialized consultation on a regional, district, or area basis.

  Includes: Court Administrators, County Clerks, Deputy Administrators.

- **Selected Professionals:** Selected occupations which require specialized and theoretical knowledge, that is usually acquired through college, graduate, post-graduate, or legal education or through work experience and other training that provides comparable knowledge.

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[1]The assignment of occupations to the EEO job categories was conducted by Dr. Jésus A. Dizon, the Task Force's Research Specialist, taking into consideration the unique and specialized nature of nonjudicial positions within the court system. The Research Specialist categorized job titles into job groups based upon similar job skill requirements and job content. However, it should also be noted that the availability data used for the analysis do not correlate exactly to the specific nonjudicial court positions which have been assigned to EEO job categories. Therefore, comparisons have been made between court positions and comparable types of EEO occupations in the external labor force that are as closely related as possible in terms of skills and education required.

Includes: Staff Attorneys, Legal Analysts, Law Clerks, Court Reporters, Accountants, Managers, Bailiffs.

- Paraprofessional: Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training or experience than is normally required for professional or technical status.

  Includes: Administrative Assistants, Judicial Assistants, Legal Process Servers, Paralegals.

- Technician: Occupations which require a combination of basic scientific or technical knowledge and manual skill, that can be obtained through specialized post-secondary school education or through equivalent on-the-job training.

  Includes: Interpreters, Systems Analyst/ Programmers.

- Protective Service Worker: Occupations in which workers are entrusted with public safety, security, and protection from destructive forces.

  Includes: Juvenile Court Detention Officers, District Court Probation Officers, Juvenile Court Probation Officers, Case Workers, Warrant Servers.

- Office and Clerical: Occupations in which workers are responsible for internal and external communication, recording and retrieval of data or information, and other paper work required in an office.

  Includes: Court Clerks, Records Clerks, Secretaries, File Clerks, Data Entry Staff.

To ensure that local demographics were taken into consideration, specific counties were studied. The workforces of twenty-one (21) of Washington's thirty-nine (39) counties were

analyzed. The selected counties are as follow:

Adams	Lincoln
Benton	Mason
Chelan	Okanogan
Douglas	Pierce
Ferry	Skagit
Franklin	Snohomish
Grant	Spokane
Grays Harbor	Stevens
King	Walla Walla
Kitsap	Whatcom
	Yakima

The criteria for selection was the composition of the county's minority population and the extent to which one would expect to find minorities available in the local labor pool to fill nonjudicial court positions.

FINDINGS

According to the 1989 demographic data, minorities represent about 12% of the nonjudicial court employees. However, minorities are not employed in a variety of nonjudicial court positions throughout the various court levels in the state of Washington. To the extent that minorities are represented in nonjudicial positions, they are heavily concentrated in the office/clerical category. A detailed analysis of the hiring and practices of each state court level and the Supreme Court agencies would be appropriate to determine how to increase minority representation throughout the various job categories.

For an overview of the demographic representation of various racial and ethnic groups in full-time court positions, by EEO job category, for the various courts and Supreme Court agencies, see Tables 8-3 through 8-8 at the end of this chapter on pages 110 through 115.

As noted in the Introduction of this chapter, the workforce analysis was conducted to determine the extent to which minorities are represented in nonjudicial court positions. The first step of our analysis was to examine the demographic survey data provided by selected county courts to the Task Force. That data consisted of the numbers of employees in the EEO job categories by race and ethnicity. For this study, the number of employees, within categories, for all courts, within a county, were combined to provide a composite for the county. This approach was taken because many of the courts within counties have very few employees making it virtually impossible to derive a statistically significant sample for a comparative analysis. Furthermore, the United States census data regarding the availability of minorities within job categories is statistically meaningful for each county overall, rather than for municipalities or districts within counties.

After examining the demographics of the various courts' employees (i.e., whether minorities were employed and in which job categories), our second step was to determine whether minorities were available in the various job categories.[2] Based upon the comparison of actual employment or utilization to availability, we found the following problems in the selected counties listed on page 103:

- **Counties with no minority employees where minorities are available:**

  Adams
  Douglas
  Ferry
  Mason

  Note: Lincoln County has no minority employees but the Census data does not identify any available minorities in the job categories under consideration.

- **Counties where minorities are employed but are underrepresented in comparison to their availability:**

Benton	Skagit
Franklin	Snohomish
Grant	Spokane
King	Walla Walla
Kitsap	Whatcom
Okanogan	Yakima
Pierce	

- There are numerous positions where minorities are underrepresented and many counties where specific minority groups are particularly underutilized. These findings are highlighted in Tables 8-1 and 8-2 on pages 105 and 106.

[2] It is important to point out that the occupational data used to determine the availability of minorities in the labor force were derived from 1980 Census data and therefore, there may actually be more minorities available in the labor pool. This can be determined once the 1990 Census data is available for future analysis.

TABLE 8-1
JOB CATEGORIES WHERE MINORITIES ARE UNDERREPRESENTED IN COMPARISON TO THEIR AVAILABILITY BY COUNTY AS OF JUNE 30, 1989

County	Administrator	Professional	Para-Professional	Technical	Protective Services	Office & Clerical
ADAMS	X					X
BENTON	X	X				X
CHELAN	X					X
DOUGLAS						X
FERRY						X
FRANKLIN			X			X
GRANT	X	X	X	X		X
GRAYS HARBOR						
KING	X					
KITSAP	X		X			
LINCOLN						
MASON		X				X
OKANOGAN	X	X				X
PIERCE		X	X			
SKAGIT		X	X		X	
SNOHOMISH	X		X		X	
SPOKANE	X		X	X		
STEVENS	X					
WALLA WALLA	X					
WHATCOM		X				X
YAKIMA		X				

TABLE 8-2
RACIAL AND ETHNIC GROUPS THAT ARE UNDERREPRESENTED
IN COMPARISON TO THEIR AVAILABILITY BY COUNTY AS OF JUNE 30, 1989

County	African-American/ Black	Asian and Pacific Islander	Hispanic/ Latino	Native American
ADAMS			X	
BENTON		X		
CHELAN				
DOUGLAS			X	
FERRY				X
FRANKLIN	X			
GRANT	X	X		X
GRAYS HARBOR				
KING				
KITSAP		X		X
LINCOLN				
MASON			X	
OKANOGAN			X	
PIERCE				
SKAGIT				X
SNOHOMISH	X			
SPOKANE				
STEVENS				
WALLA WALLA	X			
WHATCOM			X	X
YAKIMA	X			

As part of this EEO and Affirmative Action Policy and Program Review study, we reviewed information compiled by the Task Force regarding the EEO and Affirmative Action policies and programs of the selected counties. The Task Force conducted a survey of the superior courts, district courts, and municipal courts within the various counties to determine whether EEO and Affirmative Action policies and programs were in effect. There are many instances where no responses were provided by the designated court. However, based on the limited number of responses provided, we found that the following counties report that affirmative action programs (as distinct from an affirmative action statement) are in place:

- Chelan (the District Court has adopted the general county program);
- Grays Harbor (the Superior Court has adopted the general county program);
- King (the Superior Court has adopted a specific program for the court; the Municipal Court of Algona has adopted the general city program);
- Kitsap (the Superior and District Courts have adopted the general county program);
- Okanogan (the Superior Court has adopted the general county program);
- Pierce (the Superior and District Courts have adopted the general county program; the Municipal Court of Tacoma has adopted the general city program);
- Snohomish (the District Court has adopted the general county program; the Municipal Court of Everett has adopted the general city program);
- Spokane (the District Court has adopted the general county program);
- Whatcom (the Municipal Court of Bellingham has adopted the general city program); and
- Yakima (the District Court has adopted the general county program and the Municipal Court of Grandview has adopted the general city program).

Despite widespread problems of underrepresentation of minorities, only one of the responding courts -- King County Superior Court -- reports having a specific affirmative action program for its employees.[3]

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[3]Since the initial data collection period, it has been brought to our attention that King County District Court has a specific affirmative action program for its court in place. The Washington State Supreme Court adopted an equal opportunity policy statement on October 4, 1990. See Appendix K for the text.

CONCLUSION

Using the workforce analysis, our findings indicate that several problems exist regarding the underrepresentation of minorities in nonjudicial court positions for the various counties. However, the findings are based upon limited data and suggest the need for additional study which would document the specific nature and severity of the various problems. For example, an analysis of applicant flow data would be appropriate to determine whether minorities are applying for positions. Tracking such data would help clarify whether recruiting for underrepresented groups is necessary or an evaluation of the selection process is required.

Another major limitation of the data used for this study is the fact that the availability statistics from the U. S. Census are ten years old. In addition, the availability data are based upon groups of jobs which do not directly correlate to the specific nonjudicial court positions which have been assigned to EEO job categories.

In order to obtain a more accurate and complete picture of the representation of minorities in nonjudicial court positions, the following would be necessary:

- the collection and analysis of applicant flow data for minorities by EEO job category and for each county;
- the collection and analysis of data regarding specific positions and pay levels of minorities who are employed in nonjudicial court positions;
- the compilation of 1990 Census data regarding the availability of minorities by EEO job category and by county;
- the conducting of an updated workforce analysis for nonjudicial positions using the 1990 Census data; and
- the analysis of specific elements of court EEO and Affirmative Action programs which were reported to the Task Force to determine strengths and weaknesses of the programs.

To address the specific problems outlined in the Findings section of this chapter, a Courtwide Workforce Diversity Program needs to be developed and implemented immediately. Such a program would set forth minimum elements that each state court would adopt. Depending upon the specific problem areas of the court, additional program elements would be added and tailored to remedy those problems. The court-wide program would include, at a minimum, the following:

- clearly established roles and responsibilities for an EEO/Affirmative Action Officer, managers and other court personnel regarding the implementation of the program;

- written program components for the workforce diversity program and specific procedures for implementing the components;
- an updated workforce analysis for nonjudicial positions using 1990 Census data;
- compilation and analysis of workforce utilization and availability data on an annual basis;
- written procedures for recruitment and selection processes to maximize opportunities for minorities;
- annual analysis of applicant flow data/hiring patterns for minorities by job category and for each county;
- annual analysis of discharges and voluntary resignations to determine the impact on the representation of minorities in the workforce;
- annual review of selection criteria, performance evaluations, disciplinary practices and other human resource procedures to determine whether minorities are adversely impacted;
- specific measures to provide training and employee development opportunities for minorities;
- internal procedures for processing complaints regarding EEO matters;
- internal monitoring and compliance reviews of the overall program; and
- regular communication and training for employees on the program.

In sum, minorities are underrepresented in certain nonjudicial positions in certain counties. Addressing this problem would require a comprehensive courtwide program. Otherwise, minority underrepresentation will continue to be an unfortunate reality in this state's court system.

TABLE 8-3
DEMOGRAPHIC REPRESENTATION: SUPREME COURT SUMMARY DATA*
AS OF JUNE 30, 1989

Position	Asian & Pacific Islander		African-American/ Black		Hispanic/ Latino		Native American		White	
	F	M	F	M	F	M	F	M	F	M
Judicial Officers	0	0	0	1	0	0	0	0	1	7
Administrators	0	0	0	0	0	0	0	0	0	0
Professionals	0	0	1	0	1	0	0	0	5	9
Protective Service Professionals	0	0	0	0	0	0	0	0	0	0
Paraprofessionals	0	0	0	0	0	0	1	0	7	1
Interpreters	0	0	0	0	0	0	0	0	0	0
Technicians	0	0	0	0	0	0	0	0	0	0
Protective Service Worker	0	0	0	0	0	0	0	0	0	0
Office and Clerical	0	0	0	0	0	0	0	0	0	0

* Summary Data for Full-Time Positions.

TABLE 8-4
DEMOGRAPHIC REPRESENTATION: SUPREME COURT AGENCIES SUMMARY DATA*
AS OF JUNE 30, 1989

Position	Asian & Pacific Islander		African-American/ Black		Hispanic/ Latino		Native American		White	
	F	M	F	M	F	M	F	M	F	M
Judicial Officers	0	0	0	0	0	0	0	0	0	1
Administrators	0	0	0	0	1	0	0	0	3	3
Professionals	0	3	1	0	0	0	0	0	29	21
Protective Service Professionals	0	0	0	0	0	0	0	0	0	0
Paraprofessionals	0	1	0	0	0	0	0	0	18	1
Interpreters	0	0	0	0	0	0	0	0	0	0
Technicians	1	1	0	1	1	2	1	1	27	28
Protective Service Worker	0	0	0	0	0	0	0	0	0	0
Office and Clerical	0	0	0	0	0	0	0	0	22	3

* Summary Data for Full-Time Positions.

TABLE 8-5
DEMOGRAPHIC REPRESENTATION: COURT OF APPEALS SUMMARY DATA*
AS OF JUNE 30, 1989

Position	Asian & Pacific Islander		African-American/ Black		Hispanic/ Latino		Native American		White	
	F	M	F	M	F	M	F	M	F	M
Judicial Officers	0	1	0	0	0	0	0	0	2	21
Administrators	0	0	0	0	0	0	0	0	1	1
Professionals	0	0	0	0	0	0	0	0	17	10
Protective Service Professionals	0	0	0	0	0	0	0	0	0	0
Paraprofessionals	0	0	0	0	0	0	0	0	5	0
Interpreters	0	0	0	0	0	0	0	0	0	0
Technicians	0	0	0	0	0	0	0	0	0	0
Protective Service Worker	0	0	0	0	0	0	0	0	0	0
Office and Clerical	2	0	2	0	0	0	0	0	32	3

* Summary Data for Full-Time Positions.

TABLE 8-6
DEMOGRAPHIC REPRESENTATION: SUPERIOR COURTS SUMMARY DATA*
AS OF JUNE 30, 1989

Position	Asian & Pacific Islander		African-American/ Black		Hispanic/ Latino		Native American		White	
	F	M	F	M	F	M	F	M	F	M
Judicial Officers	0	3	1	3	1	1	1	1	30	241
Administrators	0	0	0	0	0	1	3	0	73	14
Professionals	3	0	2	2	4	3	1	1	167	107
Protective Service Professionals	1	2	4	15	3	7	4	4	112	124
Paraprofessionals	1	0	4	0	0	0	1	0	38	12
Interpreters	0	0	0	0	3	1	0	0	0	1
Technicians	0	0	0	0	0	0	0	0	4	0
Protective Service Worker	3	1	1	6	3	5	0	1	63	84
Office and Clerical	16	12	11	4	7	1	4	0	349	54

* Summary Data for Full-Time Positions.

TABLE 8-7
DEMOGRAPHIC REPRESENTATION: COURTS OF LIMITED JURISDICTION SUMMARY DATA*
AS OF JUNE 30, 1989

Position	Asian & Pacific Islander		African-American/ Black		Hispanic/ Latino		Native American		White	
	F	M	F	M	F	M	F	M	F	M
Judicial Officers	1	1	0	3	0	1	0	0	31	190
Administrators	4	0	0	0	0	0	1	0	94	19
Professionals	2	1	7	2	0	2	0	0	35	27
Protective Service Professionals	0	0	0	0	1	0	0	0	15	9
Paraprofessionals	0	0	0	0	2	0	0	0	56	2
Interpreters	0	0	0	0	5	2	0	0	0	0
Technicians	0	0	0	1	0	0	0	0	0	3
Protective Service Worker	1	1	1	4	0	2	2	0	11	15
Office and Clerical	23	5	49	4	30	2	15	1	527	46

* Summary Data for Full-Time Positions.

TABLE 8-8
DEMOGRAPHIC REPRESENTATION: ADMINISTRATIVE HEARINGS SUMMARY DATA*
AS OF JUNE 30, 1989

Position	Asian & Pacific Islander		African-American/ Black		Hispanic/ Latino		Native American		White	
	F	M	F	M	F	M	F	M	F	M
Judicial Officers	0	0	3	0	0	0	0	0	13	40
Administrators	0	0	0	0	0	0	0	0	1	2
Professionals	0	0	0	0	0	0	0	0	4	0
Protective Service Professionals	0	0	0	0	0	0	0	0	0	0
Paraprofessionals	0	0	0	0	0	0	0	0	4	1
Interpreters	0	0	0	0	0	0	0	0	0	0
Technicians	0	0	0	0	0	0	0	0	0	0
Protective Service Worker	0	0	0	0	0	0	0	0	0	0
Office and Clerical	1	0	0	0	1	0	4	0	33	0

* Summary Data for Full-Time Positions.

SECTION V

OVERVIEW

SECTION V: CIVIL MATTERS

Given the limited funding and resources of the Task Force, Subcommittee III on "The Adjudication of Civil Cases: Minority Litigants" undertook two studies designed to examine specific areas of civil law: landlord-tenant disputes and personal injury cases. In order to study personal injury cases, the Subcommittee had to select a particular type of personal injury case which would allow it to examine the impact of one's minority and non-minority status, while keeping other factors (e.g., medical condition, age, occupation) constant. Consequently, it undertook to sample asbestos cases to determine if similarly-situated minority and non-minority plaintiffs receive comparable settlement amounts.

Finally, it should also be noted that Subcommittee III had initially hoped to conduct a juvenile dependency study to examine possible differences in the practices and procedures used to place minority and non-minority juveniles. The Subcommittee, therefore, strongly recommends that the proposed "Juvenile Disposition and Placement Study" (recommendation 13 on page 19) be expanded to include this area of study.

This section's chapters were prepared under the direction and guidance of Subcommittee III.

Subcommittee III: The Adjudication of Civil Cases: Minority Litigants.

Honorable Philip J. Thompson
Chairperson

Grace Y. Chien

Honorable LeRoy McCullough

CHAPTER NINE

A REVIEW OF DIFFERENCES IN SETTLEMENT AMOUNTS: RESULTS OF ASBESTOS STUDY

Prepared by
Jésus A. Dizon, Ph.D.

INTRODUCTION

This chapter reflects the results of the Minority and Justice Task Force's examination of tort cases involving minority plaintiffs. The purpose was to determine if there are biased or disparate results. A survey was developed that specifically examined the possible treatment of minorities involved in asbestos litigation. To measure one aspect of bias, the study compares minority and non-minority plaintiffs in terms of settlement amounts by types of disease and by general occupations.

Since state court records do not identify the plaintiffs' race or ethnicity, the survey was directed to lawyers who represent plaintiffs in asbestos litigation. Several law firms which have a significant asbestos litigation practice were singled out as possible survey participants. Among these law firms, eleven (11) attorneys active in asbestos litigation were mailed survey forms. Attorney respondents were asked to provide data on cases resolved between 1985 and 1989.

Out of the eleven (11) attorneys who received survey forms, four (4) responded with data from 432 cases (36% response rate). The overwhelming majority (89%) of the reported cases were submitted by the Seattle law firm of Schroeter, Goldmark and Bender. Since many of the initial cases did not have all of the requested data, information was requested from Kitsap and King County Superior Courts. Kitsap County Superior Court provided supplemental information on 100 cases which matched cases in the existing data base. With this additional information, a total of 224 out of 432 initial cases had the minimum information needed to analyze the cases by minority or non-minority status, age, gender, type of work, type of disease, county, and total settlement received.

Additionally, two attorneys were interviewed about individual asbestos cases involving eighteen (18) minority clients from the sample cases obtained. These interviews were conducted to supplement the quantitative data collected in the study.[1] The primary questions asked were: (1) if the verdict/settlement was considered low, high, or adequate; (2) if the minority status of the client may have affected the settlement amount; (3) if life expectancy charts were used in calculating the verdict/settlement; and (4) what other factors may have affected the outcome of the case. Anecdotal material was extracted from the interviews and included in the discussion of the survey data.

A copy of the data collection instrument is in Appendix L. For more information or details on the methodology and survey response rate, refer to Appendix M.

Before presenting the cases and settlement data analysis, it might be helpful to provide a sample scenario describing the steps involved in the processing of asbestos cases.

ASBESTOS LITIGATION SCENARIO

Persons who are exposed to asbestos and who have developed asbestos-related diseases are often faced with incurable, progressive diseases and a high risk of contracting cancer. Initially, the person suffers from shortness of breath, chest pain, abdominal pain or some other ailment and seeks medical advice. Physicians who determine that a patient suffers from an asbestos-related disease normally suggests that the patient consult a lawyer. Patients may have the right to obtain Worker's Compensation or federal benefits. They may also decide to bring a lawsuit against asbestos manufacturing companies. Like most other tort cases in Washington, a person has three years to file a lawsuit from the time he or she learns of the asbestos-related disease. Failure to file a lawsuit within that time period results in being permanently barred from bringing the lawsuit.

In Western Washington, most asbestos cases are filed in King and Kitsap Counties, depending on the plaintiff's residence and occupational exposure to asbestos. Some cases are filed in Federal District Court, when a plaintiff's exposure occurred in different states. In general, four to five years may elapse from the time an asbestos case is filed to the time the trial begins. In Federal District Court, trials are normally set approximately one year after a complaint is filed.

After filing, some cases are accelerated because the plaintiff suffers from a terminal asbestos related disease. The purpose of accelerating a case is to allow a terminally ill patient his or her day in court as soon as possible. At the same time, some asbestos cases are decelerated. The purpose of decelerating a case is to preserve a cause of action for a plaintiff who currently suffers from minimal to no impairment, but whose condition could conceivably deteriorate. If the plaintiff were to settle, he or she could waive the right to full compensation

[1] All unattributed quotes are from those interviewed for this study. Interviewees were promised anonymity.

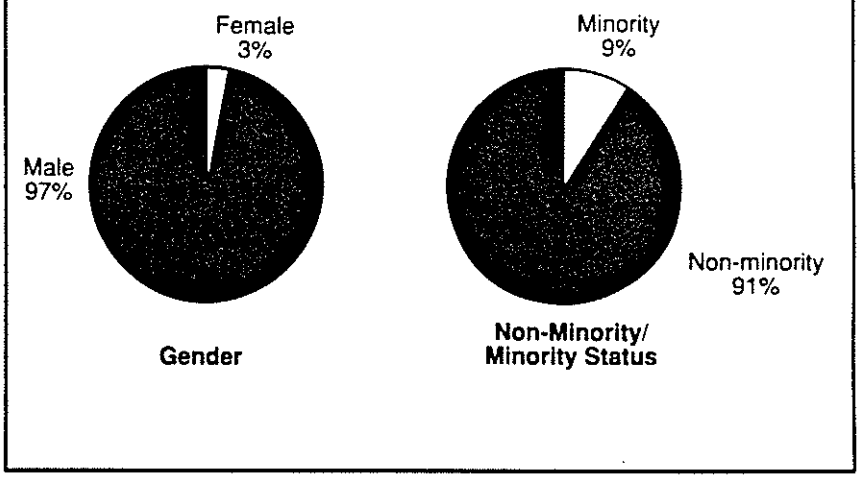
for damages as a result of exposure to asbestos.

If an asbestos case is not settled and goes to trial, the plaintiff must provide evidence of damages suffered and liability on the part of the defendant(s). If a verdict is rendered in the plaintiff's favor, the defendant normally files an appeal, which places the case on hold for an additional year or two.

CASE CHARACTERISTICS

As shown in Figure 9-1, a majority of the cases in the sample involved non-minority plaintiffs (91%). There were only 21 minority cases in the sample. Figure 9-1 also shows that ninety-seven percent (97%) of the plaintiffs in the sample involved were male. By age, a majority of the plaintiffs were in the 51 to 70 year age group (67%). (See Table 9-1 on page 121.)

FIGURE 9-1
ASBESTOS CASES BY NON-MINORITY/
MINORITY STATUS AND GENDER



There are a limited number of cases available involving older minorities who currently suffer from asbestos-related diseases because the shipyards and construction companies were traditionally "closed shops." Strong labor unions often resulted in the exclusion of minorities from certain jobs. Thus, minorities are relative newcomers to these types of occupations. The insulator's union is one example. In one of the interviews, an attorney noted that:

> "Because the insulators' union is a closed shop there are not many black insulators. These were considered among the best jobs in the shipyard; therefore, the jobs were handed down among family members and blacks were excluded. It is not unusual to see three generations of insulators who have all worked in the shipyards."

TABLE 9-1
AGE BY NON-MINORITY AND MINORITY STATUS

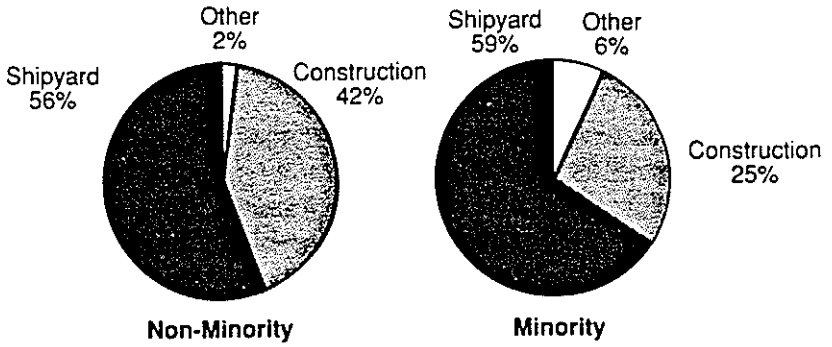
Age		Non-Minority	Minority	Total
31-40	N	1	0	1
	%	0.51	0.00	0.46
41-50	N	9	0	9
	%	4.57	0.00	4.13
51-60	N	44	2	46
	%	22.34	9.52	21.10
61-70	N	89	11	100
	%	45.18	52.38	45.87
71+	N	54	8	62
	%	27.41	38.10	28.44
TOTAL		197	21	218
				100.00%

No Answer = 6

Most of the cases reported were from Kitsap (54.1%) and King (43.7%) counties. The rest were from Pierce (0.9%), Spokane (0.9%), and Whatcom (0.4%) counties.

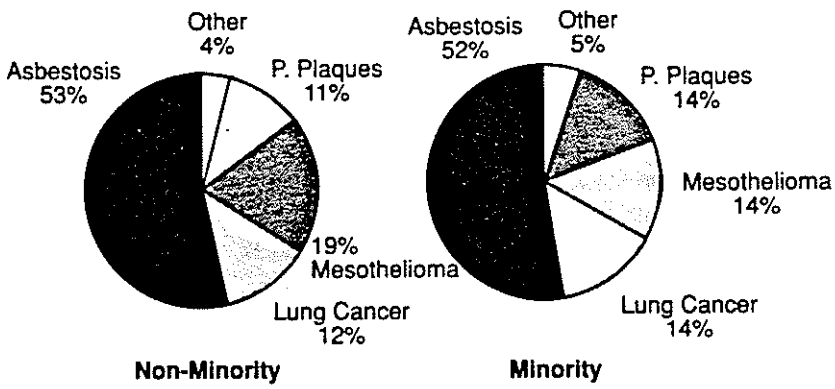
The distribution of the plaintiffs by work location (Figure 9-2) shows that most of the non-minority plaintiffs worked either in shipyards or in construction. Other work locations included, for example, longshore and friction-related work. Among minority plaintiffs, the majority also worked in the shipyards (59%).

FIGURE 9-2
WORK LOCATION AND NON-MINORITY/ MINORITY STATUS



Asbestos-related diseases found in the sample of cases include asbestosis, lung cancer, mesothelioma, and pleural plaques. Other diseases were also reported for these workers, (e.g., pulmonary disease). Mesothelioma is considered the most serious asbestos-related disease because it is incurable and debilitating; once diagnosed, the patient often dies in a matter of months. Pleural plaques is considered the least severe. Most of the non-minority plaintiffs suffered from asbestosis (53%); a few suffered from mesothelioma (19%); lung cancer (12%); pleural plaques (11%); and other diseases (4%). Almost equal proportions of minority (52%) and non-minority (53%) plaintiffs suffered from asbestosis. (See Figure 9-3.)

FIGURE 9-3
TYPE OF DISEASE AND NON-MINORITY/ MINORITY STATUS



ANALYSIS OF SETTLEMENT DATA

The analysis of the settlement data consists of comparing the settlement for minorities and non-minorities, controlling for type of disease, work and age. A majority of the

cases were disposed of by settlement with only five cases reaching the bench or a jury trial.[2] The t-test statistic examines whether there is a significant difference between settlements awarded to minority and non-minority plaintiffs for each type of disease and work.

The average settlement for the 224 cases in the sample was $115,322, with a median settlement of $67,875. Among the cases, minorities had a statistically significant lower average settlement than non-minorities.[3] The average settlement for minorities was about $74,350 and the median was $57,375; for non-minorities the average settlement was $119,560 and the median was $69,475.

By type of disease, mesothelioma cases had the highest average settlement ($255,892) among all the cases, followed by lung cancer cases ($131,000), asbestosis cases ($87,044), pleural plaques cases ($46,896), and other asbestos related disease cases ($45,337). By type of work, construction workers had the highest average settlement ($139,919), followed by shipyard workers ($95,189), and other workers ($63,799).

Comparison of average settlement by type of work and disease is shown in Table 9-2. Among shipyard and construction workers, mesothelioma cases had the highest average settlement ($265,987 and about $249,017, respectively). Average settlements for lung cancer were the next highest for shipyard and construction workers ($67,688 and $144,901, respectively).

TABLE 9-2
SETTLEMENT DATA BY WORK LOCATION AND TYPE OF DISEASE

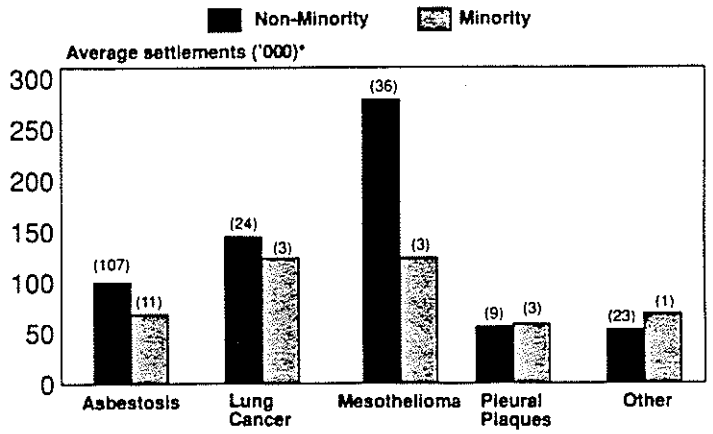
	Shipyard Settlement			Construction Settlement			Other Settlement		
	Average	Minimum	Maximum	Average	Minimum	Maximum	Average	Minimum	Maximum
Disease:									
Asbestosis	60,356.61	3,000.00	325,166.00	106,238.17	4,000.00	309,000.00	83,975.00	27,950.00	140,000.00
Lung Cancer	67,688.00	6,000.00	149,180.00	144,901.29	7,500.00	330,000.00	.	.	.
Meso-Thelioma	165,987.00	47,750.00	552,422.00	249,016.75	4,500.00	573,242.00	.	.	.
Pleural Plaques	40,016.67	5,000.00	76,875.00	32,383.50	7,414.00	95,500.00	43,583.00	37,000.00	50,166.00
Other	79,095.50	53,566.00	104,625.00	28,125.00	28,125.00	28,125.00	.	.	.

[2]A study by the Federal Judicial Center showed that settlement is the predominant mode of disposition in asbestos cases. See Thomas E. Willging, Trends in Asbestos Litigation (Washington, D.C.: Federal Judicial Center), 1987.

[3]A t-test produced a probability value greater than 0.0005 with 10 degrees of freedom.

The comparison of minority and non-minority case settlements for each type of disease and work location is shown in Figures 9-4 and 9-5. Controlling for type of disease, minorities had a lower average settlement amount for mesothelioma and lung cancer. For asbestos cases, minorities had a statistically significant lower average settlement than non-minorities.[4] In cases involving pleural plaques, minorities had a slightly higher average settlement than non-minorities.

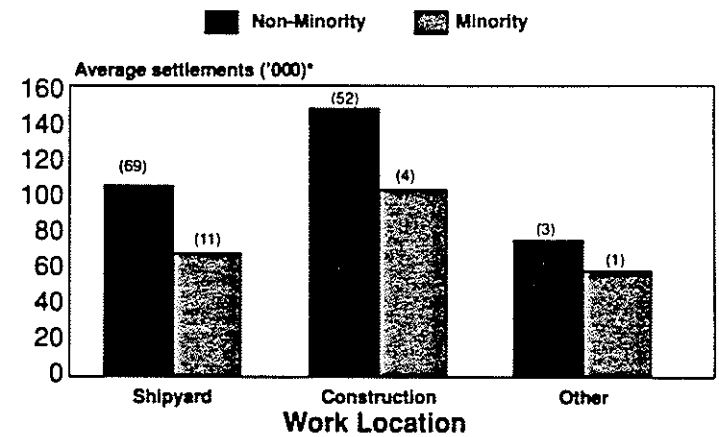
FIGURE 9-4
SETTLEMENTS BY DISEASE TYPE AND NON-MINORITY/MINORITY STATUS



* Number of cases shown on top of bars.

Controlling for work location, minorities also had a lower average settlement amount among shipyard, construction and other types of workers. Minorities had a statistically significant lower average settlement than non-minorities among shipyard workers.[5]

FIGURE 9-5
SETTLEMENTS BY WORK LOCATION AND NON-MINORITY/MINORITY STATUS



* Number of cases shown on top of bars.

The distribution of minority and non-minority case settlements by different types of disease and by age is shown in Table 9-3. Unfortunately, there were not enough minority cases for every age group and disease combination to make a complete comparison. Only the asbestosis cases have more than one case representation for minorities in the 61 to 70 age group. These cases show that minorities have a lower average settlement. In the 71 or more age group, asbestosis, lung cancer, and mesothelioma have more than one case representation for minorities. These cases show lower average settlements in asbestosis and mesothelioma cases for minorities, but not in lung cancer cases.

[4] A t-test produced a probability value greater than 0.0001 with 20 degrees of freedom.

[5] A t-test produced a probability value greater than 0.0001 with 10 degrees of freedom.

TABLE 9-3
SETTLEMENT DATA BY NON-MINORITY/MINORITY STATUS,
TYPE OF DISEASE AND AGE

		Non-Minority Settlement		Minority Settlement	
		Number	Average	Number	Average
Age	Disease				
30-50 Years	Asbestosis	6	100,958.33	.	.
	Lung Cancer	1	249,950.00	.	.
	Pleural Plaques	1	13,838.00	.	.
	Other	2	63,190.50	.	.
51-60 Years	Asbestosis	23	109,459.87	.	.
	Lung Cancer	3	165,101.67	1	167,250.00
	Mesothelioma	8	336,937.61	.	.
	Pleural Plaques	9	64,364.78	1	18,500.00
	Other	.	.	.	.
61-70 Years	Asbestosis	50	73,621.54	8	63,822.25
	Lung Cancer	10	186,725.00	.	.
	Mesothelioma	13	318,500.62	1	141,938.00
	Pleural Plaques	9	43,028.89	1	50,166.00
	Other	5	21,745.00	1	60,075.00
71+ Years	Asbestosis	27	96,637.70	3	48,779.33
	Lung Cancer	9	60,651.22	2	91,342.00
	Mesothelioma	13	193,927.92	2	103,500.00
	Pleural Plaques	3	21,740.67	1	76,875.00
	Other	2	79,095.50	.	.

Wrongful death cases usually have higher settlements than cases where the plaintiff is still alive. Among the 224 cases in the sample, the average settlement for wrongful death cases was about $160,000. For non-wrongful death cases the average was about $78,000. The same pattern is manifested for the different types of diseases and workers (i.e., wrongful death cases had higher settlement amounts for all types of disease and work). Comparing minorities with non-minorities in terms of wrongful death settlements, minorities again had a lower average settlement than non-minorities.

TABLE 9-4
SETTLEMENT DATA BY DECEASED AND NON-MINORITY/MINORITY STATUS, AND BY WORK LOCATION AND DISEASE

	LIVING				DECEASED			
	Non-Minority Settlement		Minority Settlement		Non-Minority Settlement		Minority Settlement	
	N	Average	N	Average	N	Average	N	Average
Work Location:								
Shipyard	36.00	53,254.94	9.00	63,172.56	33.0	152,139.88	2.00	54,369.00
Construc-tion	25.00	88,733.40	2.00	59,625.00	27.0	193,822.85	2.00	132,342.00
Other	2.00	88,500.00	1.00	50,166.00				
Disease:								
Asbestosis	79.00	91,636.37	10.00	62,542.80	27.0	86,926.37	1.00	31,488.00
Lung Cancer	1.00	47,750.00			23.0	136,492.00	3.00	116,644.67
Meso-thelioma	1.00	75,625.00	1.00	47,750.00	35.0	273,006.77	2.00	150,594.00
Pleural Plaques	19.00	50,001.79	3.00	48,513.67	4.0	30,927.25		
Other	3.00	28,654.00	1.00	60,075.00	5.0	49,338.20		

It is said that verdict and settlements tend to be higher in Kitsap County than in King County. To test this observation a comparison of settlements by county and the plaintiff's minority/non-minority status is shown in Table 9-5 on page 127. The data shows the average settlements are higher, although not statistically significant, for Kitsap County cases than King County cases for both minorities and non-minorities. Minorities still received lower average settlements than non-minorities in both King and Kitsap counties.

TABLE 9-5
SETTLEMENT BY COUNTY AND NON-MINORITY/MINORITY STATUS

County	AVERAGE SETTLEMENT Average	Median	Non-Minority	Minority
King	103,751.23	57,500.00	108,032.09	73,438.42
Kitsap	124,261.96	75,187.50	128,208.76	75,584.78
Pierce	222,525.00	22,252.00		
Spokane	92,250.00	92,250.00		
Whatcom	168,000.00	168,000.00		

OTHER POSSIBLE FACTORS AND VARIABLES

Like other asbestos workers, minorities working in the shipyards and in construction suffered from diseases related to exposure from asbestos. However, compared with non-minorities who sued for damages, minorities received lower average settlements. Can this difference in average settlements be attributed to bias in the processing of asbestos cases involving minority plaintiffs? Are there factors other than minority status which may explain the lower average settlements for minorities?

Asbestos litigation is complicated and involves many variables which include special damages, pain and suffering, other medical conditions, wage loss, loss of consortium, emotional distress, survivors, community standing, strength of witnesses, strength of defenses, and numerous liability issues. The comparison between minority and non-minority in the sample cases is based primarily on the analysis of settlement amounts by type of disease, work and age. The survey information, therefore, is limited by not having access to data on these other variables.

Settlements can occur before a trial begins, after trial begins but before a verdict is given, or after a verdict is given. How attorneys and plaintiffs use the above mentioned variables can influence the settlement amount. The judge's or jury's evaluation of these same variables enter into determining the verdict which is then used in discussions of settlement between the defendant and plaintiff.

The interviews with the two attorneys provide supplemental case information on minority cases and are used here to illustrate some of the above mentioned factors. For the eighteen (18) or eighty-six percent (86%) of minority cases that these attorneys discussed, the attorneys rated most of the settlements as "adequate", "fair", or "good"; one case was considered "high;" only two cases were considered "low." Their perceptions are important to

note since they illuminate some of the more subtle variables which can affect case outcomes, but which are difficult to quantify given the budget limitations of the Task Force.

In evaluating the adequacy of the settlements, the attorneys sometimes compared them with previous settlements. One attorney noted that asbestos cases "used to be worth more money." A pleural plaque settlement was noted as follows,

> "This was adequate at the time of settlement for the type of disease; today it would be worth about $20,000."

Another pleural plaque case settlement was evaluated as follows,

> "The settlement was adequate but by today's standards it would be high. In 1986 it was a good settlement."

The case settlements that were considered "low" had certain circumstances which may have influenced the settlement. In some cases the plaintiff's ability to communicate may have influenced the low settlement. This is typified in one case involving a minority shipyard worker who suffered from asbestosis. The attorney noted that,

> "The client had a very difficult time at the deposition; he said yes when he meant no and was confused about dates. There was also a statute of limitation problem. The language problem at the deposition was a definite factor in his settlement. The case could not have been tried because the plaintiff could not have performed at trial."

Also, a settlement conference involving a minority shipyard worker was described by one attorney as follows,

> "The claimant had a limited education and the system was very foreign to him. He felt insulted at the settlement amount offered by the defendants because he has suffered a disease. It was not the most sensitive settlement conference attended. The defendants do not identify with the claimants and the claimants are not able to articulate what is wrong with them. They are surrounded by non-minority attorneys."

Unusual circumstances can also influence the settlement. One minority worker who suffered from asbestosis was represented by his daughter. According to the attorney, "the settlement was adequate but fairly low compared to some others." At the settlement conference an unusual event happened. The attorney described it as follows,

> "The daughter was very strange and was arrested at the settlement conference on an outstanding warrant. She was able to get out of jail and came to the conference. . . . [I]t had an effect on the

settlement. If she had been more normal there would have been a better settlement as the jury could not sympathize with her."

Other variables can also result in high settlements. One example of a "high" settlement involves a minority shipyard worker couple with pleural plaques. The attorney evaluated the settlement as follows,

> "These were excellent settlements. She received more than a lot of people with pleural plaques would get. His award was very good, especially since there was no video deposition. It helped that the case was in Kitsap County because the couple was well known and well liked in the community."

Another example of a "good" settlement involves a minority shipyard worker who suffered from asbestosis. The attorney noted that other medical factors affected the settlement,

> "It was unusual because he had a stroke before the trial. He was also totally disabled because of knee injuries on the job and the stroke. The asbestosis was a minor part of the medical picture."

STANDARD PROCEDURES OR PRACTICES FOR ASBESTOS CASES

Occasionally, certain practices or procedures may indirectly, but adversely, impact the case outcome. Most settlements are based on "standard" court room practices, such as Kitsap County's practice of consolidating cases in groups up to seven; the comparison of medical conditions with similar cases; or the use of Life Expectancy Charts as one factor in determining compensation.[6] These may work for or against the plaintiff.

Because of the large number of asbestosis cases they are often grouped together for processing. When this happens, "standard settlements" are used. One attorney described a case as follows,

> "There was one judge and seven settlement conferences scheduled on the same day. The judge put the clients in categories and did not differentiate for the specific clients."

Certain medical conditions, like pulmonary conditions, exhibit variations depending on the race of the individual. These variations may or may not be taken into consideration by the attorneys. One attorney observed,

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[6]Settlement formulas are sometimes used to litigate large numbers of asbestos cases, although asbestos cases have shown resistance to universal application of formulas. See Thomas E. Willging, Trends in Asbestos Litigation (Washington, D.C.: Federal Judicial Center, 1987), p. 82.

> "In some of these asbestos cases there are questions regarding the accuracy of the measure of the pulmonary functions. Supposedly, the lungs of blacks are of a smaller capacity. Sometimes witnesses need to be cross examined to see if the studies which they refer to have factored this in."

The other attorney, however, commented that

> "generally, it can work to the disadvantage of a minority to do a race correction on a pulmonary function test (PFT). It affects whether a person will be considered normal or abnormal. They do not do a race correction at Harborview but other doctors do it."

Settlements are also guided by the plaintiff's life expectancy. Attorneys consider the standard life expectancy tables in determining a plaintiff's loss when faced with a terminal disease. Although these tables provide guidance they are not absolutely binding. Other factors are considered in determining the life expectancy of an individual (e.g., health, past injuries, and family history).

Attorneys vary in their opinion on the importance of these tables. One attorney evaluated these tables as follows,

> "The use of life expectancy charts is very important when you are talking about older claimants because if you live that long your chances of living longer are improved."

Another attorney gave the following opinion,

> "Generally, I question the value of life expectancy charts. Cases can be settled without the use of those charts. There is no direct correlation between the chart and the settlement amount. They are not being factored in by defendants. Their age is important because of wages and young children, but most clients do not have any lost wages because of the latency period before the onset of the disease. Over 50% are retired. Only one minority client has been able to collect lost wages."

As the examples above show, numerous factors influence the settlements obtained. Combined with, or apart from the minority status of the plaintiff, some of these factors may account for the lower average settlement amounts awarded to minority plaintiffs in the sample cases discussed in this chapter.

CONCLUSION

This study was conducted to determine whether bias or disparate treatment exists in asbestos cases involving minority plaintiffs. The data used in the analysis include sample asbestos cases and material from interviews with two attorneys who specialize in asbestos litigation.

The data obtained from the survey was limited to client characteristics (age, minority status, county, location of work, type of disease) and settlement amounts. Survey data allowed comparison of settlement data through analysis of cases by certain client characteristics. The case settlement data analysis showed that minorities received lower average settlements than non-minorities. Comparisons by disease type showed that minorities had lower average settlement for asbestosis, mesothelioma, and lung cancer. Comparisons by type of work also showed that minorities had a lower average settlement among shipyard and construction workers. Minorities from King and Kitsap counties received lower average settlements than non-minorities.

Asbestos litigation is complicated and involves many variables. In order to attribute the differences in average settlements between minorities and non-minorities primarily to a plaintiff's race or ethnicity, it must also be shown that other factors or variables did not influence the individual settlements. The interview material was used to illustrate what these other factors are: consideration of special damages; the plaintiff's communicative skills; pain and suffering; other medical conditions; wage loss; loss of consortium; survivors; and community standing. It is possible that these factors, together with the plaintiff's racial/ethnic status or minority status, may explain the lower average settlement received by the minority plaintiffs in the sample of asbestos cases. Further study is needed to control for these other factors.

CHAPTER TEN

LANDLORD-TENANT MATTERS

Prepared by
Jésus A. Dizon, Ph.D.

INTRODUCTION

Subcommittee III of the Task Force studied landlord-tenant cases to determine whether bias or disparate treatment exists in cases involving minorities. A data collection instrument was drafted with the advice of attorneys from Evergreen Legal Services, one of the largest legal aid services in Washington State. The instrument served to gather information about recently resolved cases so that there could be a comparison of minority and non-minority tenants in terms of types of disputes, types of resolutions and final case outcomes.[1]

In addition, Subcommittee III, assisted by Evergreen Legal Services, selected a pool of thirty-eight (38) attorneys who practice in the landlord-tenant area to participate in the survey. Ten (10) frequently represented landlords and twenty-eight (28) frequently appeared on behalf of tenants. The Subcommittee asked the landlords' attorneys to provide information on their 30 most recent cases, and asked the tenants' attorneys to provide information on their 10 most recent cases. Total participation by all attorneys would have produced a maximum of 580 cases, with an almost equal number of cases from landlord attorneys and tenant attorneys.

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[1] Court records were not helpful since Washington courts do not identify the client or landlord by their racial or ethnic status. A study of landlord-tenant cases by the Washington Public Interest Research Group encountered a similar data collection problem in 1980. See Francis Fischer, Statistical Analysis of R.C.W. 59.18, The Residential Landlord-Tenant Act (Seattle, Washington: Washington Public Interest Research Group), 1980.

Nineteen of the thirty-eight (38) attorneys responded. One of the nineteen represented landlords and reported fourteen (14) cases. Eighteen (18) of the responding attorneys represented tenants. They reported one hundred (100) cases. The attorneys' data provided adequate representation of cases involving minority and non-minority tenants.

A copy of the data collection instrument is in Appendix N of this report. More information on the methodology and survey responses can be found in Appendix O.

CASE CHARACTERISTICS AND PROCESS

This section of the chapter profiles the tenants in the sample and highlights jurisdictional information, the locale of the case and the standard legal process for landlord-tenant cases. The total number of respondents varied depending on the number of those attorneys indicating "no answer" for a specific tenant characteristic.

Table 10-1 shows slightly more than one half of the survey cases contained minority status information involving minority clients. In the cases in which the landlord was the attorney's client, one-half of the tenants were minority (7) and one-half were non-minority (7). By age, a majority of the tenants reported in the cases were in the 18-to-40 year age group (65.3%). By gender, more than one-half (59.5%) of the tenants were female. The rest were males (28.8%) or couples (11.7%). (See Tables 10-2 and 10-3 on page 134.)

TABLE 10-1
TENANT CHARACTERISTIC: NON-MINORITY AND MINORITY STATUS

Non-Minority/Minority Status	Number	Percent
Minority	56	53.3%
Non-minority	49	46.7%
Total	105	100.0%
No Answer	5	

TABLE 10-2 GROUP OF TENANTS		
Age Group	Number	Percent
18-30 years	33	33.7%
31-40 years	31	31.6%
41-50 years	14	14.3%
51-60 years	9	9.2%
61-70 years	10	10.2%
70+ years	1	1.0%
Total	98	100.0%
No answer	16	

TABLE 10-3 GENDER OF TENANTS		
Gender	Number	Percent
Female	66	59.5%
Male	32	28.8%
Couple	13	11.7%
Total	111	100.0%
No answer	3	

As shown in Table 10-4 on page 135, most of the cases reported were from King (68 or 60.7%), Snohomish (10 or 8.9%), Pierce (9 or 8.0%), and Whatcom (8 or 7.15%) counties. A majority of the cases were processed in Superior Courts (92 or 86.8%). Some cases were processed in other courts, such as Small Claims Court or Federal Court.

TABLE 10-4
TENANT'S COUNTY OF RESIDENCE

County	Number	Percent
Chelan	1	0.9%
Cowlitz	6	5.4%
Douglas	2	1.8%
Grant	2	1.8%
King	68	60.7%
Lewis	1	0.9%
Okanogan	3	2.7%
Pierce	9	8.0%
Skagit	2	1.8%
Snohomish	10	8.9%
Whatcom	8	7.1%
Total	112	100.0%
No answer	2	

The processing of landlord-tenant cases involves several steps. A case begins when a landlord serves the tenant with a notice to terminate tenancy. The most common notice is the 20-day notice to terminate a month-to-month tenancy. Except in the City of Seattle, the landlord does not have to state any reason or "good cause" for the termination.

Another common notice is the notice to vacate because of tenant misconduct or violation of a lease covenant. The landlord gives the tenant a specified time within which to leave. If the tenant corrects the misconduct or violation within the time period, then the tenant can stay. If not, the tenant is obligated to leave. If the tenant does not leave, the landlord may commence an unlawful detainer action by serving the tenant with a summons and complaint.

The landlord does not have to file the notice of termination of tenancy in court before serving it on the tenant. Landlords often use this option in the hope that the tenant will leave after receiving the notice.

A tenant who receives a summons commencing an unlawful detainer action and wishes to contest it must serve an answer to the summons on the landlord or the landlord's attorney within 6-12 days. If the tenant fails to answer or files a notice of appearance, the landlord can file the action and obtain a default judgment and writ of restitution from the court without further notice.

If the tenant responds, the landlord can obtain a Superior Court order obligating the tenant to appear at a hearing to show cause why the court should not issue a writ of restitution requiring the tenant's eviction. The hearing is scheduled for 6-12 days after the

tenant receives a copy of the order.

At the show cause hearing, the court examines the parties and witnesses to determine the merits of the case. The court disposes of the case in one of three ways: (1) if there are material issues of fact, the court declines to grant the writ of restitution and orders the parties to proceed to trial; (2) if a trial is not necessary because there are no material issues of fact, the court may rule against the tenant and issue the writ of restitution, ordering the sheriff to evict the tenant; or (3) the court may rule against the landlord and dismiss the complaint.

If the tenant fails to appear at the hearing, the court generally issues the writ, ordering eviction of the tenant. If a trial is ordered by the court, the outcome of the case is usually determined at trial. Settlement between the landlord and tenant is sometimes reached before trial.

CASES AND OUTCOME DATA ANALYSIS

Types of Disputes

One-half (50%) of the disputes between landlords and tenants in the reported cases concerned evictions for non-payment of rent. Next came evictions for misconduct (30%). Examples of misconduct were drug use, unauthorized guests, noisy children, nuisance, fighting, and organizing tenants. Other eviction disputes (12.5%) included damages of various kinds (i.e., lock-out, waste, trespassing, mobile home transfer, and refusal to accept rent from government subsidy). The remaining disputes did not involve eviction. They were for raising rent, claims for damages to property, and tenant property seizure.

FIGURE 10-1
TYPE OF DISPUTE BY
NON-MINORITY/MINORITY STATUS

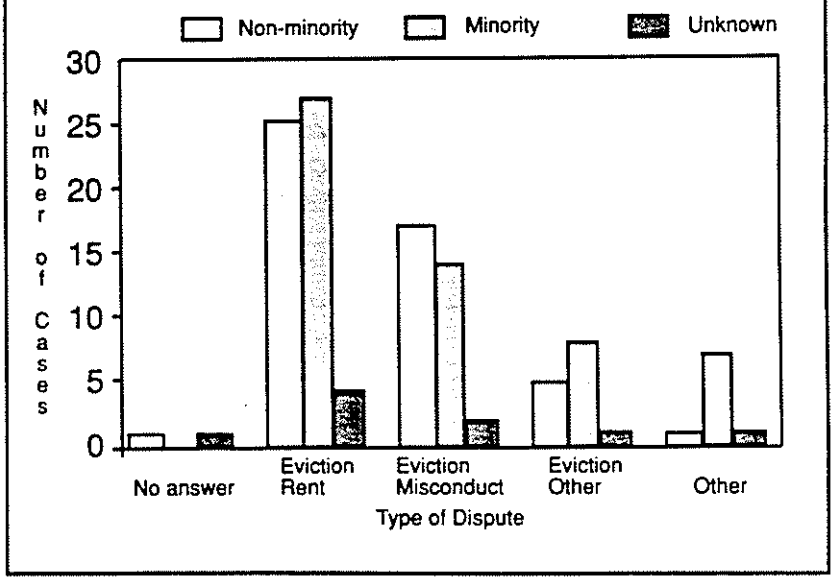


Figure 10-1 compares minority tenants with non-minority tenants. An almost equal number of minority tenants (27 or 48% of minorities) and non-minority tenants (25 or 51% of non-minorities) reportedly had disputes regarding eviction for non-payment of rent. There were more evictions for misconduct disputes for non-minorities (17 or 34.6%) than for minorities (14 or 25%).

Types of Case Resolutions

Some cases are resolved through settlement. Some are decided at a show cause hearing. Others are negotiated either with or without litigation, while others are decided by trial in court. The case resolution types are defined as follows:

- Settlement--Case resolved at any stage, including situations in which party abandons its claim.
- Show cause--Judge's decision to issue writ of restitution or dismiss case at show cause hearing resolves the dispute.
- Trial--Decision of court after trial resolves dispute.
- Negotiated without litigation--Resolution achieved between landlord and tenant prior to filing in court.
- Negotiated with litigation--Case resolved through negotiations between the parties after documents filed in court.

In twenty-eight of the cases, the attorneys reported a combination type resolution. These combinations included: (1) cases resolved from a combination of "settlement," "negotiated with litigation," and "show cause"; and (2) cases resolved from a combination of "settlement," "negotiated without litigation," and "show cause." For analytical purposes, Table 10-5 categorizes cases of the first type with those that were "negotiated with litigation." The table categorizes combination cases of the second type with those that were "negotiated without litigation."

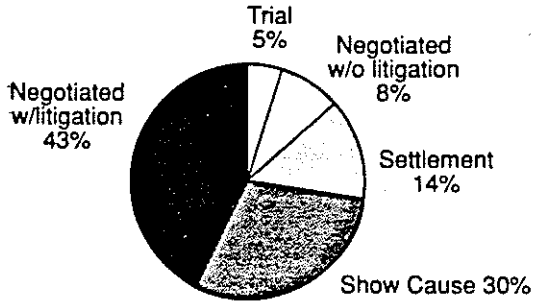
Table 10-5 on page 138 compares types of resolution of cases involving minority tenants and cases involving non-minority tenants. Almost equal proportions of cases were resolved in show cause hearings - 30.6% for non-minority tenants and 30.3% for minority tenants. A higher proportion of cases were resolved through negotiations with litigation for non-minority tenants (46.9%) than for minority tenants (33.9%). More cases were resolved through settlement for minority tenants (16%) than for non-minority tenants (12.2%). Five (or 8.9%) minority cases were resolved by a trial only. No non-minority cases were resolved by trial only.

TABLE 10-5
TENANT MINORITY AND NON-MINORITY STATUS AND CASE RESOLUTION

Resolution:	Status Not Given N	Status Not Given Percent	Non-Minority N	Non-Minority Percent	Minority N	Minority Percent	Total N
No Answer	1	11.1%	2	4.1%	3	5.3%	6
Show Cause	0	0	15	30.6%	17	30.3%	32
Settlement	0	0	6	12.3%	9	16.0%	15
Negotiated-w/Litigation	3	33.3%	10	20.4%	7	12.5%	20
Negotiated-wo/Litigation	4	44.4%	1	2.0%	2	3.5%	7
Trial	0	0	0	0	5	8.9%	5
S,Nego-No Litigation	0	0	1	2.0%	1	1.7%	1
S,Nego-No Litig,Showcause	0	0	1	2.0%	0	0	1
S,Nego-Litigation	1	11.1%	13	26.5%	11	19.6%	25
S,Nego-Litig,Showcause	0	0	0	0	1	1.7%	1
Total	9	100.0%	49	100.0%	56	100.0%	114

As shown in Figure 10-2, most of the reported cases were "negotiated with litigation" (43%). Next were cases that were decided at show cause hearings (30%), and cases that were settled (14%). Other cases were "negotiated without litigation" (8%), or were decided by a court trial (5%).

FIGURE 10-2
CASE RESOLUTION



Case Outcome

The data on the outcome of the cases showed a wide range of results, including: unlawful detainer dismissed; ruling for tenant; case dismissed; repayment plan agreed upon and tenancy reinstated; eviction suit dropped; damages awarded to client; landlord accepted rent and tenant continued in possession; tenant prevailed; default judgment for landlord; landlord prevailed; writ and judgment for rent and attorney fees against tenant; and payment of rent due.

To interpret the meaning of the various outcomes in terms of "Who won the case?," Figure 10-3 uses three categories: "tenant's favor," "landlord's favor," and "neither landlord's nor tenant's favor."[2] The data shows that a majority of the cases resulted in the tenant's favor (54%), with the landlords "winning" only 31% of the cases. About 14.6% of the cases were resolved in "neither the landlord's nor tenant's favor."

FIGURE 10-3
CASE RESULTS AND NON-MINORITY/ MINORITY STATUS

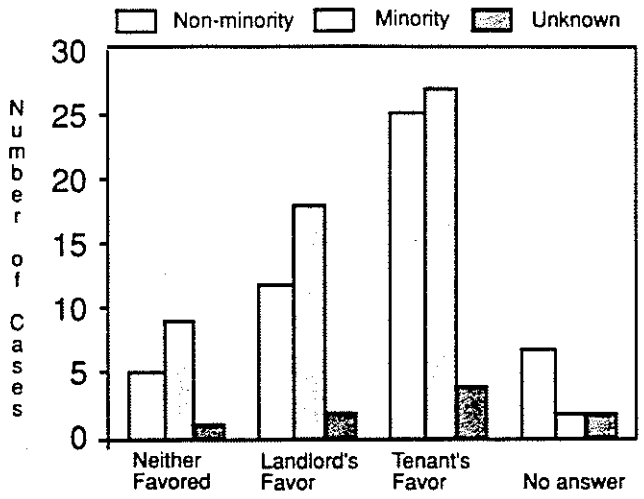


Figure 10-3 shows a slightly higher proportion of outcomes which favored the tenant were in the minority tenant's favor–27 out of 56 or 48% for minority tenants, while 25 out of 56 or 45% were for non-minority tenants. A higher proportion of case outcomes that favored the landlord was also in cases in which the tenant was a minority (18 out of 32 or 56% for minorities and 12 out of 32 or 38% for non-minorities).

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[2]"Tenant's favor" was used for an outcome which was in the tenant's favor; for example, unlawful detainer dismissed or tenancy reinstated.

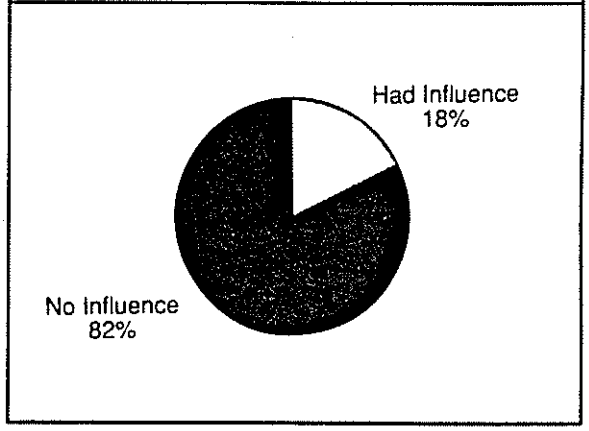
"Landlord's favor" was used for an outcome that was in the landlord's favor; for example, writ and judgment for rent and attorney fees against tenant, or landlord prevailed.

"Neither landlord's nor tenant's favor" was used for an outcome in which the tenant and the landlord both gained or both lost something in the settlement; for example, tenant agreed to vacate with rent arrearage waived, tenant moved but landlord paid moving expenses, or tenant got back prepaid rental but did not want to repossess the premises.

INFLUENCE OF RACE AND ETHNICITY

The survey asked attorneys their opinion as to whether the tenant's race/ethnicity had an influence on the outcome of the reported case. As indicated in Figure 10-4, in most of the cases (82%), attorneys said that neither the race or ethnicity of the tenant had any influence on the outcome of the case. In only about 18% of the cases did the attorney say that race or ethnicity influenced the outcome.

FIGURE 10-4
RACE/ETHNICITY INFLUENCE
IN CASE OUTCOME



A few examples further illustrate the attorneys' views regarding the influence of race or ethnicity on the case outcome:

Case A. A minority tenant was issued an eviction notice for non-payment of rent. The outcome of the ensuing case was that a "judgement and writ was issued despite the fact that (the) tenant alleged racial discrimination." The tenant lost. In his comments, the attorney noted that,

"Judge wouldn't even consider racial discrimination as a defense - (the judge said) 'that's not the issue here, use other channels.' The judge did not even read tenant's answer or look at tenant's letter of complaint which she had written to manager's boss within 90 days prior to receiving 20 day termination of tenancy notice."

Case B. A minority tenant was issued an eviction notice for misconduct. The tenant had to pay damages. In his comments, the attorney noted that

"Judge appeared not to believe the tenant, and I believe it was due to language barrier and race."

Case C. Minority tenant was issued an eviction notice for misconduct. The tenant vacated the premises, but other charges were dismissed. In his comments, the attorney noted that

"Client vacated voluntarily; she believed she would continue to be harassed by white resident manager. She believed manager's actions were racially motivated."

Case D. A minority tenant was issued an eviction notice for non-payment of rent. The outcome of the case was that a "re-payment plan was agreed upon and tenancy was re-instated." In his comments, the attorney noted that,

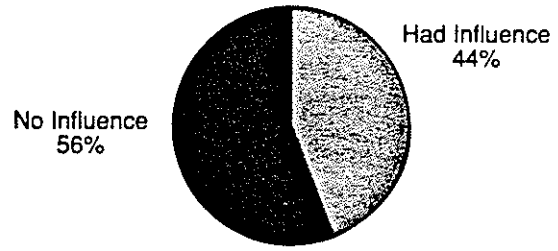
"Eviction for non-payment of rent believed to be pretext. Life style, cultural differences between the defendant, white resident manager, and white tenants believed to be real motive."

In a few instances where the tenant was a minority, the attorneys noted that race or ethnicity did not influence the outcome. The attorneys commented that race or ethnicity was an important factor in the initiation of the dispute but not in the outcome of the case.

INFLUENCE OF ECONOMIC STATUS

The survey also asked the attorneys' opinion as to whether the economic status of the tenant had any influence on the outcome of the reported case. In slightly less than one half of the cases (44%) the attorney said that the economic status of the tenant did influence the outcome of the case. Also, it is important to note that slightly more attorneys said that economic status of the tenant influenced the case outcome when the tenant was a minority (about 56% of the cases) than when the tenant was not a minority (about 44% of the cases), as indicated in Figure 10-5.

FIGURE 10-5
ECONOMIC STATUS INFLUENCE
ON CASE OUTCOMES



Again, a few cases illustrate the attorneys' perceptions.

Case E. A minority tenant was issued an eviction notice for misconduct. The case was "settled with agreement to repair damages." In his comments, the attorney noted that, "I believe tenant's race and poverty led to incidents underlying suit, but didn't affect outcome."

Case F. A minority tenant had a dispute with the landlord regarding injunctive relief for rebate of rent. The tenant "obtained injunction to remedy some conditions." In his comments, the attorney noted that, "I believe court was more sympathetic and saved injunction because of tenant's poverty and inability to move to better housing."

Case G. A non-minority tenant was issued an eviction notice for misconduct. The "unlawful detainer (was) dismissed." In his comments, the attorney noted that, "Low income tenant (was) retaliated against for organizing protest of apartment conditions."

CONCLUSION

In general, the data on the types of disputes, case resolutions and case outcomes did not show significant differences in the treatment of minorities and non-minorities in landlord-tenant cases. The data on types of disputes showed no significant difference between minorities and non-minorities and no significant disparity between minorities and non-minorities was evidenced in the case outcome data. The only differences found were in the case resolution data. More non-minority cases than minority cases were resolved through negotiation with litigation.

In general, the majority of attorneys did not see a connection between tenant's race/ethnicity and case outcome, and slightly less than half of the attorneys believed that the tenant's economic status had any influence on case outcome. Also, among attorneys who saw a connection between race, ethnicity, economic status, and case outcome, there were more attorneys who saw a connection between the tenant's economic status and case outcome than attorneys who saw a connection between race/ethnicity and case outcome.

Although the sample of cases analyzed in this study do not show significant disparate treatment of minorities in the courts, one should not conclude solely on the basis of these findings that minorities do not experience bias in landlord-tenant matters. For instance, racial or ethnic status, combined with low economic status, appear to result in a greater participation by minorities in landlord-tenant disputes. More than half of the cases in this study involved minority tenants. Therefore, while minority status appears not to be a significant factor in the processing or adjudication of landlord-tenant cases in Washington State courts, racial and ethnic status appears to be an important factor in the incidence or occurrence of landlord-tenant disputes.

SECTION VI

OVERVIEW

SECTION VI: CRIMINAL MATTERS

In 1988, Subcommittee II on "The Prosecution and Adjudication of Criminal Cases: Minority Defendants" was in a dilemma. Its members wanted to examine whether differences existed in the offenses with which minorities were charged and in the sentences which minorities received. But, with only $317,000.00 for the Task Force to conduct about ten empirical studies and a comprehensive cultural awareness education program, this examination was not possible. Fortunately, the Sentencing Guidelines Commission was able to provide data on the state's sentencing practices. It determined that while little disparity existed between the sentences received by minorities and non-minorities under determinate sentencing, there was significant disparity between minorities and non-minorities in certain exceptional sentencing cases–the first offender waiver and special sexual offender sentencing alternative.

Why, then, do minorities perceive that they are receiving harsher criminal sentences? Some researchers and others, including the Sentencing Guidelines Commission, contend that the disparate treatment may occur at different points along the criminal justice continuum. For instance, minorities may be arrested more often than non-minorities who are similarly situated, leaving minority persons with the perception that the entire criminal justice system is unfair and biased. Therefore, given the findings of the Sentencing Guidelines Commission and the persistent perception held by many minorities that they receive harsher sentences, Subcommittee II surveyed prosecutors, public defenders and community corrections officers to determine if their current practices and guidelines are consistent. These survey results are reported in Chapters Eleven and Twelve of this section.

In addition, the Task Force is still seeking funding for a prosecutorial discretion pilot study designed to examine the charging decisions and case outcomes in four to six counties. Subcommittee II Members contend that if the perception that minorities receive disparate treatment at some point in the processing of their criminal cases is incorrect, it should be dismissed as a misperception. However, if the perception is a valid one, the problem should be corrected by the responsible institutions or agents within the criminal justice system. This, however, can only be done once the Minority and Justice Task Force or its successor, the Minority and Justice Commission, receives sufficient funding for the necessary research.

This section's chapters were prepared under the direction and guidance of Subcommittee II.

Subcommittee II: The Prosecution and Adjudication of Criminal Cases: Minority Defendants.

Honorable Ricardo S. Martinez
Co-Chairperson

Honorable Carmen Otero
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Professor David Boerner
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CHAPTER ELEVEN

REVIEW OF PROSECUTORIAL AND PUBLIC DEFENDER STANDARDS AND GUIDELINES[1]

Prepared by
Gina R. Beretta, Ph.C.

INTRODUCTION

The perception that minorities receive harsher sentences than non-minorities was a key issue raised at the public forums. (See Chapter Four.) Another area of concern was the broad prosecutorial discretion that exists, and the perceived racial and ethnic bias that may emanate from this discretion. The gravity of these concerns prompted the Task Force's Subcommittee on "The Prosecution and Adjudication of Criminal Cases: Minority Defendants" to collect additional information on prosecutors' and public defenders' perceptions of possible racial and ethnic bias. Also, the Task Force decided to ascertain information on whether office standards or guidelines regarding race and ethnicity are maintained by counties in Washington State. Therefore, in May 1989, with the assistance of the Washington Association of Prosecuting Attorneys (WAPA), the Task Force surveyed county prosecutors and public defense attorneys regarding prosecutorial and public defense guidelines and their perception of racial and ethnic bias.

The purpose of this chapter is to report the results of the questionnaire and provide a discussion and review of the standards and guidelines used by prosecuting attorneys and public defense attorneys in Washington State. Three sections are included: (1) a discussion of prosecutorial standards and guidelines; (2) a discussion of public defense standards and guidelines; and (3) a section reporting on questionnaire results. Standards or

[1]Standards are a set of criteria used to determine a specific policy. Guidelines are suggested or recommended procedures by which to determine a course of action.

guidelines were requested from county prosecutors to determine whether such standards or guidelines exist, and if so, to see to what extent, if any, these standards or guidelines address or recognize the existence or the issue of race or ethnicity. Similarly, the Task Force decided to examine public defense standards or guidelines for these same reasons.

PROSECUTORIAL STANDARDS AND GUIDELINES

The topic of racial and ethnic bias or discrimination in the criminal justice system has been discussed and studied for several years. Much of the focus, however, has been on judicial actors and law enforcement personnel, rather than on the role of the prosecutor. The potentially broad discretion held by the prosecutor makes his/her role pivotal in the adjudication process–through the decision of whether to charge the defendant, the severity of the charge, and the type of plea bargain offered and agreed upon.

The issue of prosecutorial discretion has gained greater importance in Washington State with the passage of the Sentencing Reform Act of 1981 (SRA).[2] This legislation created determinate sentencing or a presumptive determinate sentencing structure in Washington State courts, removing much of the discretion previously afforded judges and putting it into the hands of the prosecutors.[3] A manual prepared by the Sentencing Guidelines Commission which recommended sentencing ranges did include a section on recommended standards for prosecutors, which includes guidelines for decisions to decline prosecution; evidence of sufficiency for prosecution and the selection of charges and degree of charges; plea dispositions; and sentence recommendations. Under the SRA, the treatment of minorities in the courts is specifically addressed in two sections:

Under RCW 9.94A.340 the equal application of guidelines is addressed as follows:

> "The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant."

Additionally, under RCW 9.94A.390 it is written,

> "...the following facts shall never be considered in determining the recommendation to be made: (i) the sex or marital status of the defendant; (ii) the race or color of the defendant; (iii) the creed or religion of the defendant; (iv) the economic or social class of the

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[2]See RCW 9.94A for the complete text of the Sentencing Reform Act.

[3]Also refer to footnote 2 on page 35.

defendant..."[4]

Clearly, then, the intent is to avoid any consideration of race, ethnicity, or other social characteristics of defendants. However, the SRA in and of itself may not be sufficient for use as a procedures manual to ensure consistency in guiding prosecutorial decision-making.

County prosecutors in Washington were asked whether or not their offices maintain standards or guidelines for the filing and disposition of criminal charges. Of the thirty-five prosecutors who responded to the questionnaire, twenty-five initially reported that their offices did, in fact, have such guidelines. Follow-up communication, however, indicated that the majority of these county prosecutors (18 out of 25) were referring to their use of the standards set forth in the Sentencing Reform Act and the Revised Code of Washington, rather than standards or guidelines specific to their county. Seven prosecutors did apparently have additional standards or guidelines. They were asked to forward a copy of their documents to the Task Force for review. One had still not submitted a copy of guidelines by the end of the data collection period. Therefore, this review of county prosecutorial guidelines will focus on those six counties which did submit their standards for review, highlighting those guidelines which are unique to each county and which are separate from the guidelines covered in state law.[5]

A REVIEW OF SIX COUNTIES' GUIDELINES

Purpose of Guidelines

Because of concerns for confidentiality, counties have been assigned alphabetical pseudonyms. Counties A and C reiterated the purpose of sentencing and prosecutorial guidelines as set forth in the Sentencing Reform Act of 1981, which includes the importance of the degree of punishment fitting the crime and the importance of making the criminal justice system accountable to the public by developing a system for the sentencing of offenders.

County B stresses the issue of responsibility to the public by comments indicating extensive public input was incorporated during the development of the guidelines. Yet, it appears, to a large extent, that County B also generally follows the SRA. A desire to represent the interests of the local community is also expressed, as is the continued importance of prosecutorial discretion. Counties D, E, and F did not include a statement of purpose with the information sent to the Task Force. The question which remains is whether the standards or guidelines are enhanced by other policies consistent with the goals and purpose of the SRA.

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[4]Sentencing Reform Act of 1981.

[5]Washington State counties which submitted county prosecutorial standards or guidelines were Benton, Grays Harbor, King, Pierce, Snohomish and Thurston. Two of the five counties sent only samples of their guidelines which were incomplete.

Charging Decisions

Counties A, B, C, and F rely on the SRA recommendations for guidelines, following the prohibition against taking race or ethnicity into account when making charging decisions. County E stresses the importance of filing charges when there is sufficient evidence, the need to consider every possible defense that may be offered, and the importance of considering the wishes of the victim(s) in the charging decision.

Other Standards or Guidelines

Counties A, B and C have extensive written procedures for implementing the SRA guidelines for plea negotiations, filing locations and sentencing recommendations. Their guidelines include details on specific offenses--what the requirements are to file a charge of first degree murder, for example, and other felonies. The element of these crimes are defined within the Revised Code of Washington. Counties D and E also submitted examples of specific offense charging guidelines utilized (also taken from the RCWs), as well as more general rules for certain types of cases--County D sent in guidelines for charging serious traffic offenses (DWI, reckless driving, negligent driving), domestic violence cases and child abuse cases, while County E forwarded information on domestic violence and child abuse cases.

General Comments

It is somewhat disturbing that so few counties in Washington (seven out of thirty-nine) have documents to aid in the interpretation and implementation of the recommended standards set forth in the Sentencing Reform Act. Moreover, of the six counties submitting prosecutorial guidelines to the Task Force, three appear to have fairly detailed procedures for complying with the standards set forth in the Sentencing Reform Act. However, a key issue that cannot be covered by examining the guidelines submitted by each county is that of implementation. While counties A, B, and C maintain extensive written procedures for the implementation of the Sentencing Reform Act, there is no effective way of measuring actual compliance with the guidelines in individual cases.

PUBLIC DEFENSE ATTORNEY STANDARDS AND GUIDELINES

The presence or absence of standards or guidelines for public defense attorneys has not generated the same degree of public interest or concern as has that for prosecuting attorneys. In fact, this alone may be significant. That is, less is known about what public defenders do, or what guidelines exist concerning the race and ethnicity of clients and potential clients. In general, it appears that a defendant's race or ethnicity may not impact the selection or treatment of public defender's clients. Public defenders generally have no choice regarding the acceptance or rejection of clients or cases. The exceptions are in instances of conflict of interest or if they already have full caseloads. Cases are accepted on the basis of economic criteria which is based on the defendants' indigence.

Slightly less than fifty percent (50%) of the responding public defenders (14 out of 32) indicated that their office had written standards for their defense services. However, none of the respondents forwarded copies of their standards to the Task Force, with the exception of a copy of the Washington Defense Association's Standards for Public Defense Services (1984).[6] These standards address many of the practical issues encountered by public defense attorneys, including: maximum allowable caseloads; appropriate compensation (based on training and experience); minimum qualifications for public defenders; and recommendations for the size of office support staff and supervisory positions. In January 1990, a revised version of these standards was endorsed by the Washington State Bar Association's Board of Governors.[7] These revised standards include a section on non-discrimination which states, "...Neither the Contracting Authority, in its selection of an attorney, firm or agency to provide public defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation or handicap."[8] While these guidelines offer a great deal of structure and guidance in the operation of a public defense office, the county programs in Washington are not required to adhere to these standards.[9] Additionally, Washington State processes a very high volume of indigence cases compared to the rest of the nation, and minorities are statistically over-represented in the state's poor population.[10] Therefore, while the indications are that a defendant's race or

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[6]For complete text, see Standards of Public Defense Services: Objectives and Minimum Requirements for Providing Legal Representation to Poor Persons Accused of Crimes in Washington State (Seattle, Washington: Washington Defender Association), 1984.

[7]Washington State Bar Association Board of Governors Meeting, held January 11-13, 1990 in Olympia, Washington.

[8]Standards of Public Defense Services: Objectives and Minimum Requirements for Providing Legal Representation to Poor Persons Accused of Crimes in Washington State (Seattle, Washington: Washington Defender Association), 1989.

[9]In 1989, SSB 5960 (Section 4) was adopted, which instructed all counties in Washington State to adopt standards for the delivery of public defense services. These standards could be based on those endorsed by the Washington State Bar Association, but this was not mandatory. Source: Second Substitute Senate Bill 5960, Section 4. 51st Legislature, 1989 Regular Session.

[10]The Spangenberg Group Indigent Defense Services in Washington: Final Report (Olympia, Washington: Washington Indigent Defense Task Force, Office of the Administrator for the Courts, February 1989), p. 92. Also note that in 1980, 8.9% of the white population in Washington State lived below the poverty line, compared to 20.9% of the Black population, 22.4% of the Hispanic population, 24.8% of the Native Americans, and 15.1% of Asians in Washington State. See A Report on the Need for Civil Legal Services for Poor Persons in the State of Washington (Seattle, Washington: Legal Aid Committee, Washington State Bar Association, November 1988).

ethnicity may not directly play a factor in the quality or quantity of legal representation they receive, minority defendants may suffer indirectly via their over-representation among the state's poor. Overloaded and undercompensated public defenders may be unable to give the same level of representation that private attorneys may provide to their clients.

It is important to realize that the absence of written guidelines may not indicate a lack of informal standards that are imparted, learned and followed on the job (the same can be said of prosecutorial guidelines).[11]

RESPONSES OF PROSECUTORS AND PUBLIC DEFENDERS

In May and July of 1989, the Task Force sent out questionnaires concerning perceptions of racial and ethnic bias in Washington courts and inquired into the presence or absence of county standards/guidelines for both the charging of criminal defendants by prosecutors and their defense by public defenders. The two questionnaires were similar in content, though not identical.

Questionnaires were originally mailed out to all county prosecutors in May of 1989 with a cover letter by Mike Redman, the Executive Director of Washington Association of Prosecuting Attorneys (WAPA). A follow-up letter was mailed to non-respondents in mid-July, and follow-up calls were then made in late-July. Prosecutors who had not responded received a minimum of two follow-up calls. As of October 5, 1989, 35 of the original 39 questionnaires (90%) had been completed and returned (one was anonymous).

A similar procedure was followed for the public defender questionnaires. The original questionnaire was mailed to 47 public defenders throughout the state in July of 1989 with a cover letter from Desiree Leigh, Project Director of the Minority and Justice Task Force. A follow-up letter was sent, and follow-up calls were made during the month of August. As of October 5, 1989, 32 of the original 47 questionnaires (68%) had been completed and returned (three were completed anonymously). This section reports the results of these questionnaires, and summarizes the relevant comments made by the respondents.

A large proportion of those questioned expressed a clear concern over the treatment of ethnic and racial minorities in the legal system. More than one-half (61%) of the attorneys (both prosecutors and public defenders) agreed that a defendant's lack of resources can adversely affect his or her experience in the criminal justice system, as can the lack of competent and impartial interpreters for non-English speaking and limited English speaking defendants. This is perceived to be more of a problem in the eastern half of the state. Very little support was expressed for statewide or uniform standards to guide prosecuting attorneys

[11]The American Bar Association also has several publications on providing defense services and standards for criminal defense, including "Providing Defense Services," "The Prosecution Function and the Defense Function," and "To Assure an Adequate Defense," ABA Standards for Criminal Justice, ABA Circulation Department, Chicago, Illinois.

or public defenders–respondents generally felt that the counties are too distinct for uniform standards to be of much use, given the diverse minority populations and available resources. More were amenable to the development of standards or guidelines at the county level. However, some resisted this too, wanting to maintain the ability to exercise discretion for each individual case. Listed below, then, are the responses to the questionnaires. Non-responses are excluded from the calculation of percentages.[12]

TABLE 11-1
QUESTION: DO YOU PERCEIVE THERE TO BE A PROBLEM WITH ETHNIC AND RACIAL BIAS IN WASHINGTON STATE COURTS?

	Yes	No	No Answer
Prosecuting Attorneys	4 (13%)	28 (88%)	3
Public Defenders	14 (44%)	18 (56%)	–

While the majority of both prosecutors and public defenders (88% and 56%, respectively) indicated that they did not perceive any racial or ethnic prejudice in their county courts, nearly half of the responding public defenders express the belief that there is a problem with bias in Washington courts. Five attorneys pointed out that the biases which are observed reflect the underlying prejudices of the community as a whole, rather than being unique to the criminal justice system. As one prosecutor commented,

> "..I believe there is ethnic and racial bias in our society that is necessarily reflected in the judicial system..."

A few prosecutors also responded that there were more problems with bias of jury members than court officials. Several public defenders, however, simply stated that minorities were not treated the same as whites:

> "Minorities don't get equal treatment, they are less likely to be believed, (they) get longer sentences, and higher fines."

[12]Some respondents did not answer all questions and some answered both "yes" and "no" to some questions.

"Hispanics are treated differently–the court is less willing to explore alternatives to incarceration; harsher penalties are given."

TABLE 11-2
QUESTION: DOES THIS PROBLEM (RACIAL AND ETHNIC BIAS) OCCUR IN CRIMINAL PROSECUTION?

	Yes	No	No Answer
Prosecuting Attorneys	5 (16%)	26 (84%)	4
Public Defenders	14 (45%)	17 (55%)	1

As with the general question regarding bias in the courts the statistical majority on both sides said racial or ethnic prejudice was not a problem in criminal prosecution. But, nearly half of the public defenders stressed that bias does occur in criminal prosecution:

"Blacks and other minorities are often prosecuted more harshly, and get lesser plea bargains."

"Blacks/ethnics are perceived as more dangerous, get more severe sentencing–sometimes the court is paternalistic."

"Cases are more likely to be filed against minorities than non-minorities."

Some comments from the prosecutors reflected their view that their counties are not adversely affected by bias:

"My experience is that most everyone involved–police, prosecutors, defense lawyers, judges, and court personnel–are sensitive to the issue and act fairly."

"I have seen no evidence of such bias in twelve+ years of criminal prosecution."

However, one prosecutor disagreed slightly:

"It (racial or ethnic bias) occasionally occurs in sentencing, particularly where the court has discretion to sentence based upon perceptions of treatment needs and rehabilitation possibilities...it occasionally occurs with jury decisions depending on the ethnicity or race of the defendant or victim."

TABLE 11-3
QUESTION: DO YOU BELIEVE THAT MINORITIES MAY ENCOUNTER BIAS OR PREJUDICE FOR REASONS (e.g., Socio-economic Factors) OTHER THAN THEIR RACIAL/ETHNIC MINORITY STATUS?

	Yes	No	No Answer
Prosecuting Attorneys	16 (53%)	14 (47%)	5
Public Defenders	21 (68%)	10 (32%)	1

Responses to this question clearly indicate that the majority of prosecutors and public defenders surveyed (53% and 68%, respectively) think that prejudice does occur in the legal system through reasons other than the defendants' minority status. The lack of monetary resources is considered a significant barrier to equal treatment of defendants--whether reflected in the inability to hire an attorney, or limiting access to alternatives to incarceration:

"...99% of the prejudice is because of socioeconomic factors rather than minority status."

"Socioeconomic factors result in systematic bias, regardless of racial/ethnic factors."

"(It) seems many minorities prosecuted are poor and get less breaks as a result of this as well as minority status."

Language difficulties are also a potential roadblock for defendants, both to receiving proper representation and to making a "favorable" impression in court. According to some respondents:

> "Where an interpreter has to be used it is always difficult to establish rapport with a jury" (prosecutor's comment).
>
> "Problems with (the) English language tend to result in lower credibility..." (public defender's comment).

However, one prosecutor notes:

> "...I am certain minorities could encounter bias or prejudice for a variety of reasons including economic factors and their status in the community. However, I have not seen instances in which this has been shown in the criminal justice system."

TABLE 11-4
QUESTION: WOULD YOU FAVOR STATEWIDE OR UNIFORM STANDARDS OR GUIDELINES FOR PROSECUTING ATTORNEYS?

	Yes	No	No Answer
Prosecuting Attorneys	6 (19%)	25 (81%)	4
Public Defenders	15 (52%)	14 (48%)	3

Few prosecuting attorneys (19%) favored the idea of uniform guidelines. Most felt that it would be detrimental to attempt to limit discretion and that guidelines would be difficult or impossible to implement. Several relevant comments illustrate the sentiments expressed by the majority of prosecutors:

> "Do not limit prosecutorial discretion to the 'nth' degree. Latitude is needed to address unique circumstances, both individual and countywide."
>
> "Resources and local conditions and problems affect particular types of cases. Uniform standards cannot be set on a statewide basis."

"I think statewide standards are virtually impossible, as is evidenced by the stab at it in the Sentencing Reform Act."

Even those prosecuting attorneys who do not find the proposal of uniform standards objectionable are wary about whether such standards would be practical:

"I would appreciate a standard to assess our standards against, but a mandatory statewide procedure would be difficult due to the variety of counties and their sizes, needs, etc."

"Recommended uniform standards or guidelines would perhaps give some starting point from which uniformity could arise in the treatment of given individual cases from one jurisdiction to another. However, individualized assessment of each case...should be within the sound discretion of an elected prosecutor."

Public defenders are more likely to favor uniform standards for prosecutors than are the prosecutors themselves, although it is interesting that almost as many are against uniform prosecutorial standards as are for them. Those who favored more uniform guidelines for prosecutors were concerned with the latitude that exists in charging decisions:

"individual prosecutors are too often affected by politics and public sentiment in the charging process."

Another public defender adds,

"there is tremendous disparity in how the prosecuting attorneys charge from county to county; i.e. what probably wouldn't be charged in a large county is a major felony in smaller counties."

Among those public defenders who do not support statewide prosecutorial guidelines, two also commented:

"The state consists of such divergent areas, urban/rural with such different population makeup–income, age, race, criminal sophistication–it is hard to imagine prosecutorial or defense standards/guidelines applicable to all."

"Prosecutors and judges are elected by the community and should be affected only by community guidelines, not state guidelines."

TABLE 11-5
QUESTION: WOULD YOU FAVOR EACH COUNTY PROSECUTOR DEVELOPING HIS/HER OWN STANDARDS OR GUIDELINES?

	Yes	No	No Answer
Prosecuting Attorneys	24 (75%)	8 (25%)	3
Public Defenders	12 (40%)	18 (60%)	2

The responses to this and the previous question seem to indicate that while prosecutors are more in favor of countywide standards than statewide ones, public defenders would not prefer guidelines for prosecutors set at the county level. Prosecutors are perhaps confident in their ability to create county standards, while public defenders fear this would allow prosecutors too much discretionary power. One prosecutor from a county in eastern Washington comments:

> "As a practical matter, I am concerned that uniform standards would be set by large, westside counties. Our community would not accept these standards. I also believe that smaller counties can afford to be more flexible; the prosecutor or chief deputy is aware of all felony files and must approve any amendment. That provides a consistency that larger counties may need more formal standards for."

TABLE 11-6
QUESTION: WHEN CASES INVOLVING POSSIBLE RACIAL OR ETHNIC BIAS ARISE, WOULD YOU CONSIDER ESTABLISHING AND USING A STANDING COMMITTEE MANAGED BY THE WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS, WHICH WOULD SERVE AS A SOURCE TO DISCUSS THE PROBLEMS OR ISSUES?
(asked of prosecuting attorneys only)

	Yes	No	No Answer
Prosecuting Attorneys	21 (64%)	12 (36%)	2

The majority of prosecuting attorneys surveyed, or 64%, were amenable to the establishment of a prosecutorial advisory committee. Some of their comments appear below:

> "Should these problems arise in our geographical area, I feel additional input and viewpoints would be helpful."

> "When potentially identifiable racial or ethnic bias arises in a given case, a standing committee would serve a valuable purpose in specifically identifying the problem source, recommending probable solutions, and determining the merit of such claims on an informal basis. Education could also be emphasized by such a committee."

> "I would be happy to have my procedures reviewed by a group of my peers for fairness."

Those who were not in favor of establishing a standing advisory committee (36%) appeared to feel that such a measure was unnecessary due to the absence of racial or ethnic bias in the system. One prosecutor said that there is a "lack of need for the committee because true cases of bias are rare or nonexistent...". One prosecutor felt that a new committee would simply add one more cog to the bureaucratic wheel:

> "This state does not need additional bureaucracies. If a problem arises it should be dealt with in a professional manner within the parameters of existing institutions."

Some prosecutors also felt that an advisory committee, if created, would be best if it included members who were <u>not</u> prosecutors:

> "issues of possible racial or ethnic bias should be resolved at the local level without resort to outside groups since communications among agencies and groups in a county must be encouraged."

TABLE 11-7
QUESTION: WOULD YOU FAVOR STATEWIDE OR UNIFORM STANDARDS OR GUIDELINES FOR PUBLIC DEFENDERS?
(asked of public defenders only)

	Yes	No	No Answer
Public Defenders	9 (30%)	21 (70%)	2

Over two-thirds (70%) of the public defenders questioned were against the adoption of statewide or uniform guidelines. The comments made reflect similar opinions to those made by prosecutors who were not in favor of statewide prosecutorial standards--a concern that statewide standards would not be applicable to all counties due to unique features, and the desire to not be hampered by external restrictions. One public defender comments,

> "...each county in Washington has its own particular ethnic and economic condition which would seem to suggest it's best for the individual county to set their own standards."

Adds another,

> "each case and each defendant is unique. I do not believe that case preparation or management can be based on a set of restrictive standards or guidelines. I base each defense upon providing an ethical, competent job to the client."

However, one public defender who belonged to the minority favoring statewide guidelines stated,

> "standards should be uniform across the state to ensure fair and equal treatment for all people. Allowing each county to develop their own standards could well result in gross disparity and continuing, if not institutionalizing bias and prejudice in various local areas."

TABLE 11-8
QUESTION: WOULD YOU FAVOR EACH COUNTY DEVELOPING ITS OWN STANDARDS OR GUIDELINES FOR PUBLIC DEFENDERS?
(asked of public defenders only)

	Yes	No	No Answer
Public Defenders	11 (37%)	19 (63%)	2

While a slightly higher percentage of public defenders favored the idea of county guidelines versus statewide ones (37% versus 30%), those in favor were still very definitely in the minority. Said one,

> "I do not understand the concept of uniform standards and guidelines as it applies to public defenders...(we) owe a complete duty of zealously advocating on behalf of each and every client."

Prosecutors and public defenders were also asked to identify measures which could guard against possible racial and ethnic bias in the courts in the future. For instance, the majority of prosecutors (80%) and public defenders (53%) responded to this question, revealing a wide variety of recommendations. These responses ranged from stressing the importance of educating people about the potential for racial or ethnic bias in the courts to recommending the monitoring of courts:

> "..more public communication. The better the communication the better the system. If all parties involved are aware of what is going on, the system can work better."

> "...(I recommend) periodic, unannounced in-court monitoring of arraignments, sentencings, suppression hearings, and trials by a watchdog group. Monitoring should occur in a sampling of counties where various ethnic groups are proportionately larger than the general population. The watchdog group (should be) composed of judges, prosecutors, defense lawyers, and citizenry."

Finally, a few public defense attorneys felt that more prosecutorial guidelines would be beneficial (9%), as would the inclusion of more minority actors in the criminal justice system (6%).

In general, then, Washington State prosecutors and public defenders agree that:

1. Statewide standards or guidelines for prosecutors or public defenders are unwanted and impractical, due to too much variability between counties. At most, each county should adopt its own guidelines.

2. Criminal defendants are hampered in the courts by a lack of resources and interpreters and these disadvantages may be disproportionately encountered by minority defendants due to their over-representation in the lower socio-economic classes.

3. Education and awareness of racial and ethnic issues in the community and the criminal justice system is an important step toward lessening the probability of bias against minorities in the courts. In addition, while there is less unanimity of opinion regarding the existence of racial and ethnic bias in the state's courts and the criminal justice system, a large number of those surveyed perceive such bias occurs.

CONCLUSION

This chapter has outlined results of a questionnaire sent to prosecutors and public defense attorneys in Washington State. The questionnaire covered issues of perceptions of racial and ethnic bias in Washington courts, and the presence or absence of county guidelines for charging and defending decisions.

A significant finding of the survey is that the majority of county prosecutors and public defenders in Washington State agree that people who have fewer economic resources experience disadvantages in the criminal justice system–they are less able to make bail, less likely to be able to afford alternatives to incarceration, and less likely to have employment or other such ties to the community. This is especially true for minority defendants, as they are statistically more likely than non-minorities to live in poverty.

It is important to stress that this bias is not necessarily attributed to racial or ethnic prejudices of individual actors in the criminal justice system. Rather, it appears to be a result of a systemic, institutionalized bias which negatively impacts minorities in the courts through their lack of financial resources. This means, of course, that the disparities in the treatment of minorities in Washington courts may be difficult to remedy.

The majority of prosecutors and public defenders say they have no county-wide written procedures for charging and defending, but profess to follow the state's guidelines as set forth in the Sentencing Reform Act of 1981, the Revised Code of Washington, and the Washington Defender Association. Whether these guidelines are sufficient to ensure equal treatment of minorities and non-minorities is uncertain, since there has been little experience with such guidelines. Public opinion (as evidenced by reactions at public forums) suggests they are not. Certainly, the creation of stricter or more specific standards by themselves may not be enough. Whether new guidelines are created, or current ones remain in use, it may be of value to implement a system to monitor and evaluate key decision-making processes during the criminal justice process in order to identify factors which may disproportionately impact minority defendants.

CHAPTER TWELVE

A REVIEW OF SELECTED PRACTICES AND PROCEDURES USED BY THE DEPARTMENT OF CORRECTIONS

Prepared by
Deanna Dahlke with the assistance of P. Diane Schneider and Désirée B. Leigh

INTRODUCTION

At the public forums, community members and legal professionals expressed concerns regarding certain Department of Corrections policies and procedures. Their perceptions of the problem included language barriers and the use of interpreters; procedures for conducting presentence investigations and reports; and underrepresentation of minorities as employees in the Department of Corrections (DOC). The significance of these concerns prompted the Task Force to collect information on the presentence investigation procedures and policies and to request DOC to provide data on the number of minority Community Corrections Officers (CCOs).

In the fall of 1989 at the request of the Task Force, the Department of Corrections distributed questionnaires to Community Corrections Officers in three area offices: Spokane, Seattle, and Tacoma. Seventy-five questionnaires were distributed and 42 responses were returned to the Task Force. Not all of those who returned the questionnaires answered all questions. For the most part, however, the responses were complete and useful. The Department of Corrections also provided information regarding the race and ethnicity of all officers working in these area offices as of October 10, 1989.

Therefore, the purpose of this chapter is to describe the information gathered from these questionnaires which requested information on the presentence investigation procedures. Areas of discussion include: 1) racial and ethnic composition or profile of offenders; 2) profile of Community Corrections Officers; 3) information collected by the CCOs in preparing the

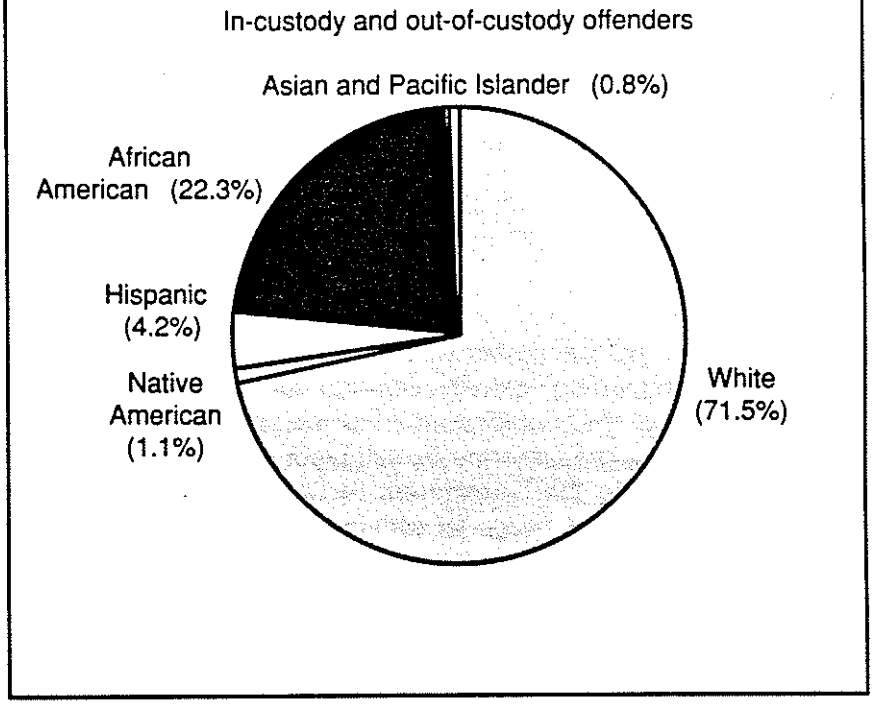
presentence investigation reports (PSIs); and 4) the use of interpreters.

REPRESENTATION OF MINORITIES

Offender Profile

Task Force questionnaires distributed to Community Corrections Officers requested the racial and ethnic background of offenders who were subjects of presentence investigations for the previous three months. Approximately 55% of the respondents included specific information on the racial and ethnic composition of in-custody and out-of-custody offenders. Figure 12-1 illustrates the percentages of in-custody and out-of-custody offenders according to their racial and ethnic background. Minorities constituted about 28% of the total offenders undergoing presentence investigations in the three months prior to data collection.

FIGURE 12-1
RACE AND ETHNICITY OF
IN-CUSTODY AND OUT-OF-CUSTODY
OFFENDERS



When the total number of offenders for whites and minorities are compared, there is a difference in the racial and ethnic composition of in-custody vs. out-of-custody offenders who were undergoing presentence investigations at the time of the data collection. Figures 12-2 and 12-3 on page 164 illustrate the reported proportion of white to minority offenders. In-custody offenders are split: 59 white offenders to 51 minority offenders, or about 54% to about 46%. With out-of-custody offenders, that distribution is 197 white offenders to 49 minority offenders, or about 80% to 20%.

FIGURE 12-2
COMPARISON OF
IN-CUSTODY OFFENDERS

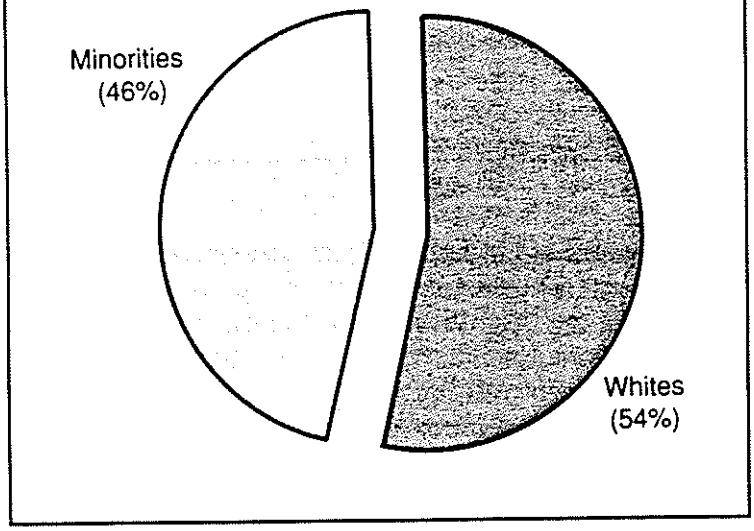
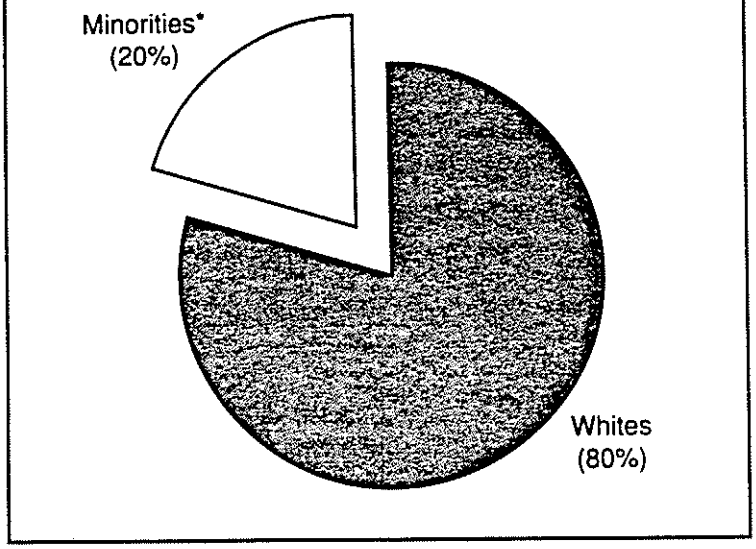


FIGURE 12-3
COMPARISON OF
OUT-OF-CUSTODY OFFENDERS



Recognizing that the seriousness of the crime weighs heavily or impacts the decision to release an offender, there still remains some concern that the criteria for release pending sentencing may be applied disproportionately to racial and ethnic minorities. It is also possible that the court's decision or request for a presentence investigation may be inconsistently requested for minorities and non-minorities. This specific issue would require further investigation since the scope of the Task Force's inquiry did not request this information, nor did it include the criteria for determining the need for a presentence investigation.

Profile of Community Corrections Officers (CCOs)

A concern mentioned at the public forums conducted by the Task Force revealed a perception that minorities are underrepresented as Department of Corrections officials. DOC's figures indicate that for the Community Corrections Officers in the three locations surveyed, this may not be the case. According to the Department's October 1989 figures for these CCOs: in the Seattle area 13% of the CCOs were minorities; in Tacoma 15.5% were minorities; and in Spokane 10.9% were minorities. When compared to 1980 census data for these counties, this seems to be a favorable minority representation. Minority representation in the general population for King County was 11%, for Pierce County it was also 11%, and for Spokane County it was 4%.[1] Bear in mind that the 1990 census data is expected to show increases in the number of minorities in these counties. Until such data is available, one can assume that the number and percentages of CCOs compare favorably with the state's minority population.

At the same time, the other relevant issue is the offender profile compared to the CCO profile. Minorities apparently constitute a larger percentage of the offender population when compared with their numbers in the general population. As was indicated earlier, the composition of the minority offenders being processed by the CCO conducting PSIs was nearly 28%. Therefore, from the perspective of the offenders undergoing presentence investigations, there are few minority CCOs compared with the number of offenders who are minorities. From the sample, over 45% of the in-custody offenders awaiting sentencing are minority persons while less than 20% of the out-of-custody offenders are minority persons.

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[1] Bridges, George S., Racial, Ethnic and Gender Differences in the Washington Bar: Results from the 1988 Washington State Bar Survey (Olympia, Washington: Washington State Minority and Justice Task Force, Office of the Administrator for the Courts, February 1990), p. 29.

FIGURE 12-4
RACE AND ETHNICITY OF
RESPONDING COMMUNITY
CORRECTIONS OFFICERS

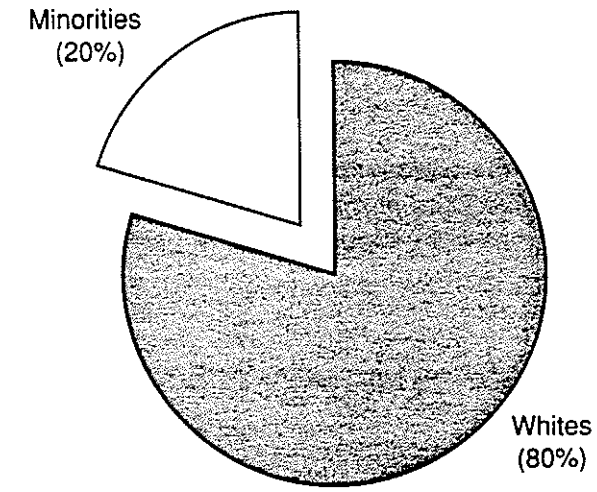
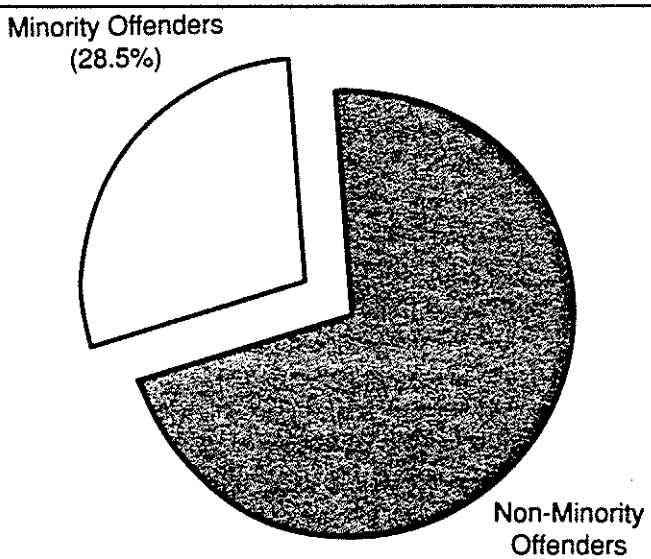


Figure 12-4 illustrates the race and ethnicity of CCOs responding.

Figure 12-5 illustrates the composition of all offenders.

FIGURE 12-5
COMPARISON OF NON-MINORITY/
MINORITY OFFENDERS UNDERGOING
PRESENTENCE INVESTIGATIONS



With respect to education, all responding CCOs indicated that they had at least a four-year college degree. Out of a total of twenty-four white males who responded, seven (29%) hold graduate degrees and three (13%) have completed some post-graduate study. Of the ten white females responding, four (40%) hold graduate degrees and one (10%) has done some post-graduate work. Ten minority males responded. One (10%)

holds a graduate degree and two (20%) have done some post-graduate work. Only 1 of the respondents was a minority female and she has not completed any postgraduate study at the time of the data collection.

Various forms of training were also listed by the CCOs. Specific mention was made of: on-the-job training; Criminal Justice Training Commission (CJTC) seminars; in-service training; and state-sponsored training.[2] Also mentioned were "professional", police academy, military police, and licensed practical nursing training. One respondent mentioned "20 hours per year" which was confirmed by DOC administration as a minimum number of hours to be spent in training each year.

Finally, all of the CCOs responding to the questionnaire listed a significant amount of on-the-job experience. Twenty-seven or 64% listed the number of years they have been in their current or a similar position. The range of years of experience was from 8 to 34. The mean was 15.52.

INFORMATION GATHERED FOR PRESENTENCE INVESTIGATION REPORTS

General Background Information

The presentence investigation process begins when a conviction of a crime is obtained either by plea of guilty or a finding of guilty at trial. At this time, the court may request the investigation or may waive it at the offender's request depending on the severity of the crime and whether the offender has prior criminal history or not. The investigation is assigned to a Community Corrections Officer (CCO), who may be the supervising officer if the offender has been convicted of a previous crime.

The CCO gathers information in accordance with the Sentencing Reform Act (SRA). It includes personal information about the offender; family ties and social relationships; educational background; and employment history. Information is also collected regarding the circumstances of the crime for which the offender has been convicted. Statements may be gathered from the victim of the crime or the victim's family.

This information is assessed by the CCO to determine the seriousness level of the offense and the offender score. The officer writes a report to the court which contains a recommendation for a sentence appropriate for the offender and the crime committed. The CCO has some discretion in deciding which factors will be most influential and how heavily

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[2]The definitions of "in-service" and "seminar" training were beyond the scope of the Task Force questionnaire. If we define in-service training as classes or sessions provided to the employee on specific subjects, it appears that certain subjects are covered as the need presents itself. Some of this training would appear to be academic training. On-the-job training implies that the employee is learning while performing the duties of the position under the supervision of a resource person or supervisor.

each will weigh in determining the offender's score. The court is not legally bound by the recommendation, but it has traditionally followed the recommendations closely as the CCO is viewed as being more "objective" than the other parties involved in the case.

Two categories of factors are considered by Community Correction Officers (CCOs) when preparing presentence investigation reports--standard information and supplemental information. The standard information is called for in the SRA. It is intended to provide a purely objective look at the offense and prior criminal record in order to determine an equitable sentence.[3] The CCO determines the severity level of the offense and using the prior criminal record, the offender score is used to determine the appropriate sentencing range on a grid developed by the Sentencing Reform Act. In general, the CCO collects this standard or necessary information by means of a personal interview with the offender, consulting law enforcement agency records, and by reviewing discovery material from the prosecutor's file. According to Department of Corrections' policy, officers are asked to verify this information whenever possible. In this report this information is referred to as standard information.

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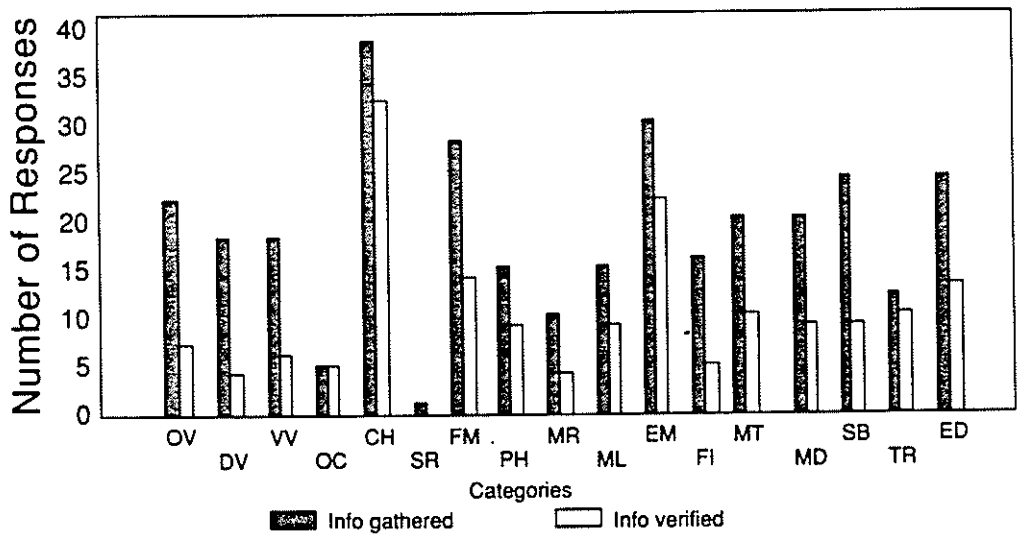
[3]Sentencing guidelines are designed to be objective while insuring that the punishment fits the crime. But they cannot overcome all racial and ethnic disparities. In an earlier report, Joan Petersilia and Susan Turner noted that previous studies supported the claim that seriousness of crimes and prior criminal records explain most of the apparent racial disparity in prison sentencing. See Guideline-Based Justice: The Implications for Racial Minorities (Santa Monica, California: The Rand Corporation, 1985). Therefore, the use of sentencing guidelines does not eliminate racial and ethnic disparities even though it may overcome some discrimination.

Petersilia's latest research included more variables of the crime of conviction in attempting to predict sentence length and incarceration than did her previous study. The findings of this study indicate that the implementation of California's Determinant Sentencing Act appears to have resulted in some racial equity in sentencing. The report concluded that the addition of race as a variable in the prediction equation for specific types of crime did not improve the accuracy of predicting whether the offender was given imprisonment or probation; nor did it increase the accuracy of predicting the length of a prison sentence. There was no indication that other factors masked a relation between race and imprisonment. See Stephen Klein, Joan Petersilia and Susan Turner, "Race and Imprisonment Decisions in California," Science 247 (1990): 812-816.

Standard Information

The Task Force's questionnaire asked CCOs to indicate what information is routinely collected for PSI reports and what information is routinely verified prior to sentencing. Figure 12-6 illustrates the number of responses for the various standard information items. The accompanying legend defines the codes used in the figure.

FIGURE 12-6
STANDARD INFORMATION COLLECTED AND VERIFIED
FOR PRESENTENCE INVESTIGATIONS (PSI)



Legend
Standard Information Codes

OV	-Official version of the offense
DV	-Defendant's version
VV	-Victim's version
OC	-Other charges-convicted or not
CH	-Criminal history of offender
SR	-Standard sentencing range
FM	-Family history of offender
PH	-Personal history
MR	-Marital history
ML	-Military record
EM	-Employment history
FI	-Financial
MT	-Mental health history
MD	-Medical history
SB	-Substance use/abuse
TR	-Treatment history
ED	-Educational history

The most frequently listed information which was collected was the offender's criminal history, employment information and family history. Next were substance use/abuse and educational background. Half of the responses also included the mental and physical health histories.

With respect to verification, the information most often mentioned as not verified was educational history, particularly for offenders who are older than thirty-five years. It was mentioned seven times. Employment history was listed as the next most difficult information to verify--mentioned four times. It was noted that this information may be complicated by inaccurate or misleading addresses or by the type of employment, such as seasonal migrant farm work. Some CCOs mentioned that the information was irrelevant to the SRA guidelines or the sentence. Apparently they were not encouraged to concentrate on rehabilitation needs of the offender since the intent of current sentencing statutes does not generally advance rehabilitation as a goal. Other specific items mentioned as not verified were: medical; personal; financial; military histories; substance use and abuse; and any drug and alcohol treatment information.

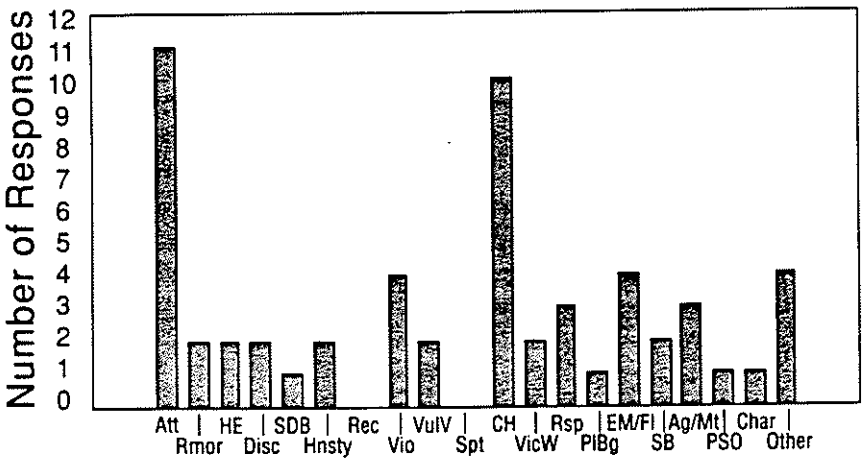
Half of the CCOs stated that time constraints often did not allow them to verify information. At other times the responses were said to be returned too late to be included in the report or were not returned at all. The lack of time was mentioned as often by CCOs with two investigations underway as by CCOs with over 20.

Thus, time constraint may especially affect the in-custody offender in two ways. First, the offender is the person most motivated to personally develop the investigation information. Incarceration, however, makes this more difficult for the in-custody offender than for the out-of-custody offender. Second, the law allows a shorter period of time for investigation for an in-custody offender than it does for an out-of-custody offender. Since minorities are more likely to be held in custody, as demonstrated earlier in this chapter, they may therefore be disproportionately impacted by an institutional bias.

Supplemental Factors Collected for PSI Report

The Task Force's questionnaire asked CCOs to identify which supplemental factors might influence their recommendations to the court. CCOs were asked whether they had identified additional factors which may influence their recommendations and, if so, to identify which factors influence them to modify a recommendation within the standard range or outside of the sentencing guidelines. Figure 12-7 on page 171 illustrates the supplemental factors influencing recommendations. The accompanying legend defines the codes used in the figure.

FIGURE 12-7
SUPPLEMENTAL FACTORS INFLUENCING RECOMMENDATIONS
IN PRESENTENCE INVESTIGATIONS (PSI)



Legend
Supplemental Factor Codes

Att	-Attitude of the offender	PlBg	-Plea Bargain
Rmor	-Remorse	SB	-Substance use/abuse
HE	-Heinousness of the crime	Ag/Mt	-Aggravating/mitigating circumstances
Disc	-Discretion on the part of the CCO	EM/Fl	-Employment/financial history
DSB	-Sexually deviant behavior	Viclm	-Victim impact
Trust	-Offender violated position of trust	Natr	-Nature of the crime
Rec	-Recidivism	Dngr	-Offender's danger to the community
VolV	-Vulnerability of the victim	Plans	-Future plans
Vio	-Violence	Soph	-Sophistication of crime
Spt	-Support	Ser	-Seriousness of the crime
CH	-Criminal history	MT	-Mental condition of offender
VicW	-Victim/family wishes	Char	-Character of the offender
Rsp	-Offender taking responsibility	All	-All factors are considered

The most frequently mentioned supplemental factor was the offender's attitude. It was noted eleven times. For example, the degree of cooperation, apparent remorse and concern for or attitude toward the victim accounted for five supplemental factors related to

attitude. Also, expressed willingness to seek treatment and taking responsibility are each listed under offender taking responsibility (RSP). All of these have to do with the attitude of the offender and the CCOs' perception of that attitude. Attitude, therefore, may be a significant factor which influences CCOs in their recommendations.

It should be noted here that the amount of cooperation an offender exhibits may be related to one's cultural background. Some minorities tend to be less trusting of the legal system and more reluctant to cooperate. For instance, this is demonstrated when minorities enter into plea negotiations after they have been charged with a crime, or agree to undergo drug or alcohol treatment in lieu of incarceration. Whites tend to participate more in this process than minorities.[4] Also, willingness to seek treatment can be dependent on one's ability to afford that treatment. The ability to seek treatment can also depend upon long waiting lists for those with limited income.[5]

The next most frequently mentioned response was criminal history. It was raised ten times by the CCOs responding to the question. Since it is also one of the standard factors listed under sentencing guidelines, it obviously weighs heavily in recommendations, despite the fact that this factor is already accounted for in the sentencing grid.

Minorities may tend to have disproportionately longer criminal records because arrest and crime rates in minority communities may tend to be higher. Or, racial and ethnic minorities may be arrested or detained by police officers more often because they are more "visible" to law enforcement officers and may fit a stereotypical profile. Therefore, this factor may perpetuate an institutional racial and ethnic bias where none may be intended by the individual CCO.

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[4]Robert D. Crutchfield and George S. Bridges, Racial and Ethnic Disparities in Imprisonment: Final Report (Seattle, Washington: Institute for Public Policy and Management, University of Washington, March 1986), p. 26. Also, see Karen R. Lichtenstein, "Extra-Legal Variables Affecting Sentencing Decisions," Psychological Reports 50 (1982): 611-619.

[5]Sometimes multiple counts are filed and the prosecutor may agree to recommend dismissal of the remaining counts at the time of sentencing as part of the plea negotiating process, if the person is seeking treatment.

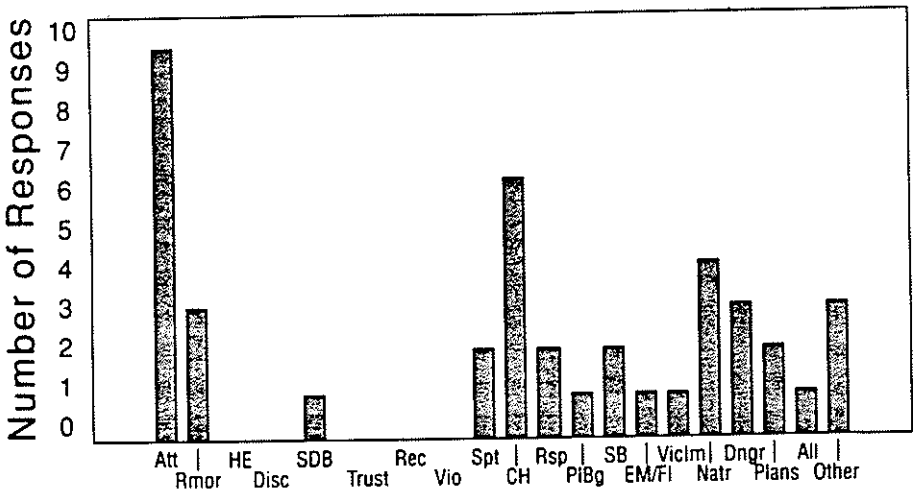
Modification Recommended Within Standard Range

Follow-up questions sought those factors perceived to influence the sentencing recommendation whether within or outside the standard range. The responses given were not limited to those previously mentioned in earlier questions.

Seventeen different items were mentioned as influencing a sentencing recommendation within the standard sentencing range. Again the offender's attitude was most frequently mentioned. Criminal history placed second, followed by the nature of the crime. Remorse on the part of the offender and perceived danger to the community were mentioned by some of the CCOs.

Figure 12-8 on page 174 illustrates supplemental factors influencing recommendations inside the standard range.

FIGURE 12-8
SUPPLEMENTAL FACTORS INFLUENCING PSI RECOMMENDATIONS
INSIDE THE STANDARD RANGE



Legend
Supplemental Factor Codes

Att	-Attitude of the offender	PlBg	-Plea Bargain
Rmor	-Remorse	SB	-Substance use/abuse
HE	-Heinousness of the crime	Ag/Mt	-Aggravating/mitigating circumstances
Disc	-Discretion on the part of the CCO	EM/FI	-Employment/financial history
DSB	-Sexually deviant behavior	Viclm	-Victim impact
Trust	-Offender violated position of trust	Natr	-Nature of the crime
Rec	-Recidivism	Dngr	-Offender's danger to the community
VolV	-Vulnerability of the victim	Plans	-Future plans
Vio	-Violence	Soph	-Sophistication of crime
Spt	-Support	Ser	-Seriousness of the crime
CH	-Criminal history	MT	-Mental condition of offender
VicW	-Victim/family wishes	Char	-Character of the offender
Rsp	-Offender taking responsibility	All	-All factors are considered

The Sentencing Guidelines Commission Implementation Manual suggests the use or consideration of most of these supplemental factors which were listed in the responses to the questionnaire. Many of them have to do with elements of the crime. This is in keeping

with the intent of maintaining objectivity.

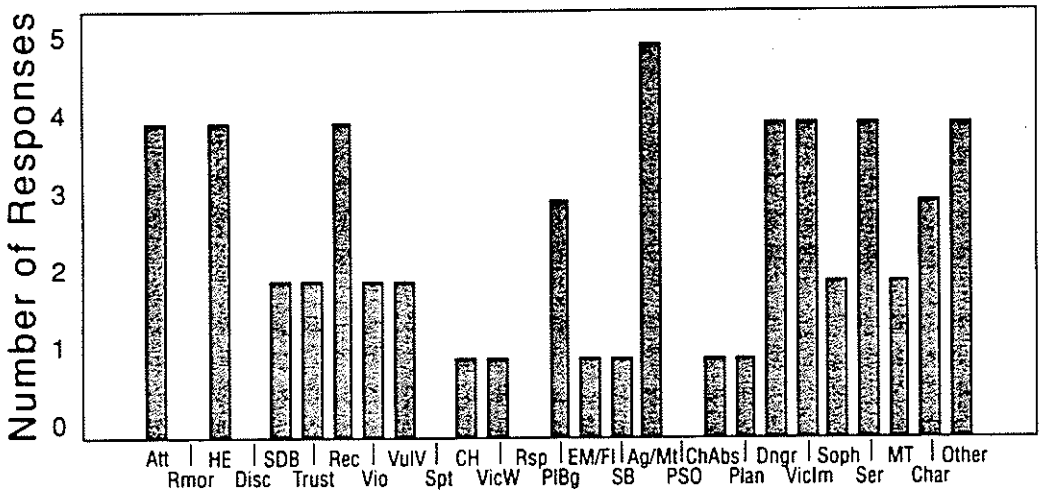
Those factors more closely related to the individual circumstances of the offender may be used at the discretion of the CCO. They include familial or community support for the offender for treatment, honesty in revealing sexually deviant behavior, a physical or mental handicap, and one's immigration status. Perceived danger to the community and future plans accounted for five responses. The influence and weight given to these items may also be discretionary on the part of the CCO.

Recommendations for Sentences Outside Standard Range

The question relating to recommendations for terms outside the sentencing guidelines' standard range generated a greater variety of responses. Instead of focusing on the offender's attitude, responses to this question tended to focus more on the aspects of the crime. None of these factors were mentioned significantly more than the others. The frequency of responses for the various items was more consistent than the responses to the previous question. Fifteen of the twenty-five factors were mentioned two to four times. The response "Aggravating/Mitigating Circumstances" was noted most often. It was mentioned five times. Other aggravating or mitigating circumstances specified by the SRA and listed in the answers to this question included: heinousness; sophistication and seriousness of the crime; violation of a position of trust; victim's vulnerability; criminal history; substance use/abuse; and impact on the victim. Taking the latter responses into account, aggravating and mitigating circumstances as specified in SRA would be the predominant factor with twenty responses.

Figure 12-9 on page 176 illustrates the supplemental factors influencing recommendations outside sentencing guidelines.

FIGURE 12-9
SUPPLEMENTAL FACTORS INFLUENCING PSI RECOMMENDATIONS
OUTSIDE SENTENCING RANGE



Legend
Supplemental Factor Codes

Att	-Attitude of the offender	PlBg	-Plea Bargain
Rmor	-Remorse	SB	-Substance use/abuse
HE	-Heinousness of the crime	Ag/Mt	-Aggravating/mitigating circumstances
Disc	-Discretion on the part of the CCO	EM/FI	-Employment/financial history
DSB	-Sexually deviant behavior	VicIm	-Victim impact
Trust	-Offender violated position of trust	Natr	-Nature of the crime
Rec	-Recidivism	Dngr	-Offender's danger to the community
VolV	-Vulnerability of the victim	Plans	-Future plans
Vio	-Violence	Soph	-Sophistication of crime
Spt	-Support	Ser	-Seriousness of the crime
CH	-Criminal history	MT	-Mental condition of offender
VicW	-Victim/family wishes	Char	-Character of the offender
Rsp	-Offender taking responsibility	All	-All factors are considered

Aggravating and mitigating circumstances were addressed in Question 5 of the Task Force's questionnaire: "In the past three months, approximately how many times have you listed mitigating and aggravating factors for the court's consideration?" About half of the respondents noted that they had included these once or twice. One person responded with

"Never" and others noted that these types of circumstances were listed but not labeled as such. According to one respondent, the Department of Corrections PSI instructions are very specific in that aggravating and mitigating circumstances are not to be labeled. Instead they are to be described in such a way that the court will recognize them and consider them if it so chooses. For example, some CCOs noted that:

> "50-55 times, but they are not labeled 'mitigating' or 'aggravating.'"

Another CCO qualified the answer:

> "No mitigating or aggravating factors for exceptional sentence have been listed[;] information of an aggravating nature not sufficient for exce[p]tional sentence was [sic] listed."

Although the wishes of the victim was listed as influencing recommendations outside the standard range, these factors are closely related to the factors of heinousness, violation of trust, violence, child abuse and seriousness and therefore, are being listed or considered elsewhere. Taken together these factors might significantly influence a recommendation.

Other factors mentioned for this category and not mentioned previously were the sophistication of the crime and the mental condition and character of the offender. The "other" category included the uniqueness of the crime, number of victims involved, other charges against the offender, and whether the offender was provoked into the crime.

Influence of Cultural Differences

The Task Force's questionnaire also asked CCOs about the influence of cultural differences: "Do you believe cultural differences might influence your sentence recommendations?" The responses varied. Twenty-six (26) or 62% of the respondents indicated "No." Eight (8) or 19% indicated "Yes." And a few qualified their answers. The responses are shown in Table 12-1.

TABLE 12-1

	Number	Percentage
No	26	62%
Yes	8	19%
Maybe	3	7%
Qualified	2	5%
Other	1	2%
No answer/N/A	2	5%
	42	100%

Some CCOs who responded "No" to this question said they had processed 15, 21 and 6 PSIs in the past three months. Their PSI cases were about equally split between white and minority offenders, with slightly more African-Americans (Blacks) and a few Hispanics (Latinos) listed. When listing factors which might influence their recommendations they included those related to the crime and those described in the SRA and the Implementation Manual.

Although three other CCOs indicated that they are not influenced by cultural differences, they still described specific examples elsewhere in the questionnaire about how they had taken cultural factors into consideration. For instance, they stated:

> "Mexican--female is subservient to the male--had to do with family/alcohol. Went lower on scale."

> "Family or social support, availability of resources; sometimes amenability to treatment."

While other respondents claimed not to take cultural factors under consideration, they still noted instances where they would consider it. Therefore, for the most part, their answers could be considered as providing an affirmative response regarding the influence of cultural factors. For example, they stated the following:

> "The only instance I can think of is in the recommendations for certain treatment providers which work only or mostly with a certain culture/minority."

> "Sometimes. If a woman has not committed a violent crime and has responsibility for small children, I would probably not recommend jail time. If someone is an illegal alien and according to Dept. of Immigration will likely be deported, I usually don't recommend supervision."

The qualified answers to the question expressed some interest in considering cultural factors but only after SRA guideline factors had been fully explored. Cultural factors might then play a minor role in modification of the sentencing recommendation. Both of these responses came from CCOs who are not currently conducting any PSIs.

> "Occasionally unless the criminal history was such that you are left without choices."

> "All factors pertaining to the individual and his offense have some influence on me--certainly his cultural background, attitudes etc. are and should be considered, but the primary focus has always been the nature of the offense in terms of mitigating or aggravating factors."

Thus, although several CCOs definitely answered "yes" regarding cultural factors, it is important to recognize that some do consider this factor. As one CCO stated:

> "[Y]es, over the years in my treatment and correctional case work I have indeed considered cultural norms as a part of my recommendations to the court."

Plea Bargaining

The topic of plea bargaining was mentioned as influencing recommendations both within the standard range and outside it. Since whites appear to be more likely to negotiate charges than minorities, this seems significant. CCOs expressed concern that an offender might receive a more lenient sentence if he or she pleaded guilty to a less serious crime than the original charge. Plea bargaining was listed once as generally influencing a recommendation and again as influencing a recommendation within the standard range. When it came to influencing a recommendation outside the sentencing guidelines, plea bargaining was mentioned three times. It is possible plea bargaining may play a role in the way minorities are treated and it might be considered a possible institutional bias which indirectly impacts the way minorities are treated compared with whites who have been detained for the same crime.[6]

USE OF INTERPRETERS

The Minority and Justice Task Force public forums revealed that language barriers and the use of competent interpreters are some of the biggest concerns in the minority community. Thus, the Task Force asked CCOs: "Do you retain the services of a language interpreter when the offender has demonstrated an inability to communicate in the English language?"

Some CCOs report they have never needed the use of an interpreter while others expressed dissatisfaction with qualifications and availability of interpreters. CCOs who had not used an interpreter in the past indicated they would "find one" if needed. If a CCO was preparing reports on a large number of offenders, the more aware he or she seemed to be of the availability of interpreters and how to go about locating skilled interpreters. Two CCOs, claiming case loads of sixty and sixty-six offenders, indicated they had an "in-house interpreter" available. One response:

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[6]The Task Force is seeking funds to conduct a prosecutorial discretion pilot study. The main researcher is expected to work with Professor David Boerner, University of Puget Sound Law School and former Chief Criminal Deputy Prosecuting Attorney for King County.

"Yes. We have "in house" qualified interpreters for Spanish. For other languages I get an interpreter whom defense counsel approves of."

On the opposite end of the scale, one CCO who had not yet had occasion to need an interpreter would determine qualifications this way:

"Ask the interpreter their level of skill and whether they feel capable to interpret. Evaluate their performance after the 1st session."

When asked about their sources for locating qualified interpreters, the most frequently mentioned source used for interpreters was coworkers. This included clerical staff and other CCOs. Sixteen CCOs responded that if an interpreter was needed they would depend on other state employees or seek assistance from other state agencies.

Ten CCOs stated they would look for a court-approved or certified interpreter. Five CCOs indicated they would use a friend or family member of the offender. In this case, no mention was made of ascertaining the ability of the person to be objective, to understand legal terminology, or the ability to accurately translate those concepts.

Spanish was the most frequently mentioned language where an interpreter was used and where resources were usually available. Difficulties were noted by CCOs who have worked with clients who spoke uncommon dialects. In these instances accurate communication was perceived to be more difficult to achieve and the officers provided examples of solutions they had used to meet those needs. In a case involving a Cambodian offender, the CCO received a referral from a DSHS refugee program. For a Vietnamese offender, a coworker fluent in the language was used. For Sign, a person certified by the Center for the Deaf was used. For a Filipino offender, the CCO reported to have had to "make do" with a family member.

With respect to the qualifications of interpreters, the majority of CCOs seem content with the interpreters they are using. Few expressed concern for determining the qualifications of those individuals. In some cases the term "interpreter" was used to describe the person used. In other cases they were described as "fluent" in the target language. Eight CCOs mentioned "bilingual" persons that were available and some mentioned persons who were "fluent." These terms were often used interchangeably suggesting that little weight is given to an interpreter's ability to understand legal terminology and to accurately relay its meaning to the offender.

There seems to be some assumption by some CCOs that the State has provided interpreters and determined their qualifications. Six of the CCOs indicated that the "bilingual" staff and interpreters they used had been tested and screened in the hiring process by the State of Washington. Being a state employee or having acted as a court interpreter in the past were assumed to be adequate qualifications. Unfortunately, a few suggested that any person who claims to speak another language is qualified to interpret. The presence of "bilingual" staff, either in clerical positions or as CCOs, is presumed to constitute adequate

qualification for interpreting.

CONCLUSION

Out-of-custody offenders in this sample are predominantly white, and in-custody offenders are nearly equally divided between whites and minorities. This suggests that the criteria for release pending sentencing is applied disproportionally to racial and ethnic minorities. It appears advisable to include this criteria in the scope of further investigation should funding become available.

This sample demonstrates that minorities are more likely to be held in custody pending sentencing than whites. As a result, they are less able to personally develop the PSI information. In addition, the time allowed for PSIs for in-custody offenders is shorter than that allowed for out-of-custody offenders. These factors each suggest an unintentional bias which may contribute to the cumulative effect of an institutional bias on sentencing outcomes for minorities.

Minorities employed as CCOs are well represented in the counties surveyed compared to the 1980 census statistics for the proportion of minorities in the general population of the state. When comparing the racial and ethnic composition of the offender population to the number of CCOs in the sample, a minority offender has a one in nine chance of being assigned to a minority CCO. Final assessment of minority representation in DOC employment should be reserved until 1990 census information is available. Yet, in general, it appears that the Department of Corrections has been somewhat successful in its recruitment of minority CCOs in the three locations noted earlier in the chapter (King, Spokane and Pierce Counties).

CCOs appear to apply SRA guidelines objectively. Even so, race may be indirectly correlated with factors resulting in some disparities. However, any bias which occurs would not appear to be a result of blatant discrimination or individual acts of bias, but a result of institutional practices or procedures which have a cumulative effect which may result in disparate treatment.

CCOs vary in their opinion of the relevancy of cultural issues. Those having direct experiences with offenders of varied racial and ethnic backgrounds appear more aware of the significance of cultural issues. Ethnicity of the CCO appears to contribute to that awareness. As noted by one CCO, cultural awareness has not been a topic of training but is one which might be beneficial.

The issue of language barriers appears to be an area where DOC needs to take responsibility. Implementation of the Washington Administrative Code with regard to interpreters and their qualifications is highly suggested. Responses to the Task Force questionnaire indicate CCOs assume that a state employee is qualified to act as an interpreter if he or she speaks a second language. This does not provide equal service to the limited English speaking. It may impair the outcome or impact the recommendations of a presentence

investigation report, especially considering the importance of interviews conducted by the CCOs and the weight the interviews carry in determining or influencing their recommendations.

SECTION VII

OVERVIEW

SECTION VII: EDUCATION PROGRAM

Shortly after the full Task Force approved the scope of its investigation, it established an education subcommittee (Subcommittee V) which was given the task of designing a cultural awareness education program for the state court system. It was the Task Force's intent to immediately address some of the overt, subtle or unconscious biased behavior or beliefs which may exist among persons working in the court system. Given the findings of current research and the innovative cultural awareness programs being conducted in the private sector, the education subcommittee decided to develop and implement a tailor-made program for the Washington court system.

In August 1989 and throughout the Spring and Summer of 1990, Subcommittee V offered two types of introductory seminars (Phase I and Phase II) to approximately 700 judges, other legal professionals and nonjudicial personnel who work in the court system. (See Appendices P, Q and R for additional information on the cultural awareness education program.) The education subcommittee's proposed cultural awareness education program is the first comprehensive integrated cultural awareness education program specifically developed for a state court system in the nation. Our educational efforts have been recognized by the National Judicial College in Nevada and the National Center for State Courts in Virginia. (See Appendices S and V.)

The members of the Education Subcommittee, along with their fellow Task Force Members, believe that the introductory cultural awareness seminars must be an ongoing activity which are integrated in the educational activities of the state judiciary. Equally important is the apparent need to go beyond an introductory program and to develop various intermediate and advanced seminars on special topics for targeted audiences.

The Members of Subcommittee V: Educational Program Designed to Increase Cultural Awareness and to Prevent Possible Bias are:

Honorable James M. Murphy
Chairperson

S. Nia Cottrell
Chief Ray Fjetland
Gil Hirabayashi
Sheila Kearn
Sharon A. Sakamoto
Myra Wall

Désirée B. Leigh, Project Director of the Task Force, managed the development and implementation of the Task Force's education program. Evelyn Gordon of US West Communications also assisted the Education Subcommittee in designing the program. Gena Gardenhire served as the Content Specialist Advisor for the education program and Ann Sweeney, OAC Education Manager, assisted with Phase II of the program.

CHAPTER THIRTEEN

THE DEVELOPMENT OF A CULTURAL AWARENESS EDUCATION PROGRAM: A MODEL FOR STATE COURTS

Prepared by
Gena L. Gardenhire and Désirée B. Leigh

> "I think an educational program for the judges, for the lawyers, for the whole court system . . . would show them the thinking of minorities . . . I think that they're going to have to learn how a minority thinks and how he reacts . . ."[1]
>
> --A public forum speaker

INTRODUCTION

In accordance with its legislative mandate, and particularly in response to public forum speakers who strongly recommended the development and implementation of a comprehensive cultural awareness program for court staff, the Task Force's Education Subcommittee managed and delivered a series of cultural awareness seminars. Despite the Task Force's initial efforts, the continuing need for cultural awareness education persists. The ever-changing demographics of the United States and the mutual influence of different cultures will inevitably reshape our society and its institutions. Thus, the ongoing need for cultural awareness education does exist.

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[1] Julie R. Hunt, 1988 Public Forums on Racial/Ethnic Bias in the State Court System. (Olympia, Washington: Washington State Minority and Justice Task Force, Office of the Administrator for the Courts, January 1990), p. 58.

WHY IS IT IMPORTANT TO DEVELOP A COMPREHENSIVE CULTURAL AWARENESS EDUCATION PROGRAM?

Many compelling reasons exist for developing a comprehensive cultural awareness education program directed at the judiciary and its staff: (1) the changing national and state population demographics; (2) the increasing demands of present and future litigants; (3) the necessity of improving the efficiency of communication between court personnel and clientele; (4) the importance of addressing and resolving individual acts of bias, many of which may be unintentional or subtle; and (5) the responsibility of the court system to ensure that institutional practices and procedures are applied in a positive manner.

Changing Demographics: National and State Trends

It is well documented that near the end of this decade, the complexion and population of the United States will change dramatically. Census Bureau data compiled between 1980 and 1988 demonstrate that while the white population grew by less than 10%, minority populations significantly increased. The African American population grew at a rate of 12% through 1988, while the Hispanic (Latino) population experienced an increase of about 30% during the same period. Most significant, however, is the dramatic increase in the number of Asians and Pacific Islanders. This population group increased by over 52%.[2]

At a recent conference on the "Future and the Courts" sponsored by the American Judicature Society and the State Justice Institute this past May, Justice Robert F. Utter of the Washington State Supreme Court noted that the ". . .white population growth rates will slow substantially during the 1990's and begin to decline within forty years. Black Americans and other races will see significant growth by 2030 to 2040."[3]

During the 1980's, population growth rates in Washington State mirrored national growth rates. For instance, 1989 census data for the state estimates that the largest ethnic minority group is the Hispanic population, with Asians and Pacific Islanders being the largest racial minority in the state. More specifically, the state's African American population increased by about 25% between 1980 and 1989. The numbers of Native Americans, Eskimos and Aleutians rose by about 17%. The Asian and Pacific Islander population jumped from 110,052 in 1980 to 165,220 in 1989--a 50% increase. These increases in the state's minority population dwarfed the state's white population growth rate, which was about 13% between 1980 and

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[2] Time Magazine, April 9, 1990.

[3] Remarks delivered by Washington State Supreme Court Justice Robert F. Utter at the "Future and the Courts" Conference sponsored by the State Justice Institute and the American Judicature Society at San Antonio, Texas May 18-22, 1990. It is important to note that these projections do not necessarily take into account the possible demographics of immigrants who will enter the United States under the Immigration Act of 1990 which was passed by the United States Congress on October 27, 1990.

1989.[4]

According to Table 13-1 on Page 189, in April 1989, counties in Washington State with the highest concentration of racial and ethnic minorities were King, Pierce, Snohomish and Spokane. According to the Office of Financial Management, the largest racial minority population among these counties is the Asian and Pacific Islander group, with 91,844 in King County. The next largest Asian and Pacific Islander population resides in Pierce County, with its number being approximately 23,600. Therefore, it is important to note that the counties with the largest number of minorities are in Western Washington, except for Spokane County in Eastern Washington.

In sum, changing population statistics in the state and the nation will produce a convergence of new cultural norms and attitudes. This convergence is already beginning to impact the court system. We can, thus, already foresee the benefits of an ongoing and innovative cultural awareness education program.

The Constantly Changing Court Clientele

A comprehensive cultural awareness education program would help court personnel understand and respond effectively to the needs of changing court clientele. For instance, an informal survey conducted by the staff of the Washington State Court Interpreter Advisory Committee between October and December 1989 reveals that most state court administrators have noted a growing and constant demand for foreign language interpreters for litigants who have difficulty in communicating and understanding English. As was noted in a recent Seattle Times news article, "more lawyers say they rely on go-between communicators to explain American concepts and ideas" to many of the non-English speaking United States citizens, legal permanent residents and aliens.[5] The same article also points out that "more than 40 languages other than English are spoken in Washington's municipal and superior courtrooms, the most prevalent being Spanish."[6]

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[4]Washington State Office of Financial Management, "Population by Bureau of the Census Racial Categories," 11/89.

[5]"Courts Shy on Interpreters to Help Immigrants, Jurors," The Seattle Times 30 November 1990, p. C1.

[6]Ibid, p. C2.

TABLE 13-1

POPULATIONS OF RACIAL AND ETHNIC GROUPS
OF SELECTED WASHINGTON STATE COUNTIES

April 1, 1989

	TOTAL	WHITE	BLACK	NATIVE AMERICAN	ASIANS & PACIFIC ISLANDERS	OTHER(1)	SPANISH ORIGIN(2)
WASHINGTON	**4,660,700**	**4,154,543**	**131,570**	**71,453**	**165,220**	**137,864**	**174,583**
•CLARK	220,400	208,406	2,191	1,896	4,004	3,901	5,067
•KING	1,446,000	1,235,579	69,414	14,841	91,844	34,322	42,511
•PIERCE	560,900	473,644	37,837	7,205	23,611	18,603	21,497
•SNOHOMISH	430,400	398,767	3,450	6,078	11,560	10,545	12,519
•SPOKANE	358,000	339,406	4,749	4,549	5,425	3,871	5,925

NOTES:

1. This table represents the top five counties in Washington State with the largest minority populations.

2. The "Other" racial category is a count of persons who marked "Other Race" on the 1980 census questionnaire and wrote in entries such as Cuban, Puerto Rican, Mexican, etc. They represent persons who when given an opportunity to identify themselves in a racial category did not select white (or any other category).

3. Spanish origin is not a racial category, it may be viewed as an ancestry group. This category is a count of persons who selected "Spanish Origin" rather than a racial group.

Source: Office of Financial Management, "Population by Bureau of the Census Racial Categories," 11/89.

The growing demand for linguists, who are also serving as cultural brokers in our courts, means that court staff and others who interface with the court system may lack basic skills for communicating across cultures. Being cross-culturally competent to serve the needs of a diverse state population is a growing concern that future cultural awareness education programs will need to address on a local and regional basis. Until academia incorporates such programs into standard curricula, the court system must train its own employees for skills in communicating with culturally and linguistically diverse litigants.

Another current issue which clearly illustrates the courts' failure to keep pace with the changing litigant is the disproportionate number of minority youth in the juvenile justice system. "Of 53,503 juveniles in public custody facilities, 30,128 (56%) are minority juveniles,"[7] according to a recent report published by the National Council of Juvenile and Family Court Judges. In Washington State, we see a similar pattern. In 1986, according to the Research Department of the Office of the Administrator for the Courts, the percentage of minority juvenile referrals was about 15% and in 1990 the percentage of minority referrals is estimated to be about 21%. In addition, the proportion of minorities in the juvenile justice system is greater than the proportion of minorities in the state population (about 11%).

Court staff and others involved in the administration of juvenile justice will need to understand the competing value systems of children and adolescents raised in one tradition and interacting with another culture. It will therefore be increasingly important for judges, lawyers and court personnel to recognize the difference between defiant or inimical acts displayed by different youth and truly criminal or deviant behavior measured by any cultural norm. Equally important will be the need to recognize the positive and negative forces which coexist in all communities. Thus, "in a great many cases, the juvenile's delinquent behavior may be a symptom of environmental problems that exists in the minority community. To ignore that in an effort to treat/correct the juvenile may be irresponsible. . ."[8] Therefore, juvenile court practitioners need to understand various cultural norms and values in their locale if they wish to be effective.

In addressing the concerns of the changing litigant, many state courts may be overlooking the need to enhance their understanding of and interaction with the Native American community of this state. Most attorneys and judges have little, if any, experience with tribal courts, as noted earlier in Chapter 5. Moreover, there is some indication that the Native American community is redefining its tribal courts and actively pursuing its rights in state and federal courts. Consequently, in a state where there are over thirty tribal nations, we can only assume that an increasing awareness of local tribal courts and their roles will facilitate better relations.

Other Benefits of a Cultural Awareness Education Program

One benefit of a cultural awareness education program is that it allows participants to

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[7]National Council of Juvenile and Family Court Judges, "Minority Youth in the Juvenile Justice System: A Judicial Response," Juvenile and Family Court Journal, Volume 41, No. 3A, 1990, p. xi.

[8]Ibid, p. 41.

discuss and address individual misperceptions and biases. As was noted earlier in Chapter 5, minorities and whites frequently have divergent perceptions about the same court system. Therefore, any cultural awareness education program needs to incorporate all of these perceptions in a constructive manner. This allows for individual misperceptions and biases to be addressed and corrected.

Improved communication between minorities and whites is another by-product of a cultural awareness education program. By developing a better understanding of various groups' values and norms, we eventually improve our interaction and communication with persons from diverse backgrounds. Increased awareness of various racial, ethnic and cultural differences might also reduce the inevitable clashes which may occur when one person's cultural assumptions about another person are based on preconceived biases or stereotypes.

Any cultural awareness program needs to go beyond addressing individual biases. There are institutional practices and procedures which perpetuate or result in biased decisions or acts. Each institution or organization has its own culture which consists of perceptions, norms and customary practices. These norms and practices gradually become de facto.

The underrepresentation of minorities in the court system, for example, illustrate how an institutional practice may indirectly perpetuate an existing bias. As noted earlier in Chapter 8 of this report, most state courts report that their personnel guidelines include equal employment or affirmative action statements. Despite the prevalence of such statements, the courts, however, have not significantly increased the number of minority court employees. This may be due in part to the lack of comprehensive programs specifically designed to recruit a diverse workforce for the court system. This problem may also persist because many court administrators and personnel managers have few, if any, established linkages to the minority community. Consequently, they tend to be unsuccessful at actively recruiting minorities residing in their county and in surrounding counties. Therefore, another benefit of a cultural awareness education program is to discuss with participants recommended methods or approaches for correcting this type of institutional bias, as well as other practices which may indirectly perpetuate biased results.

Another benefit of a cultural awareness education program is to help those in a multicultural court system understand the importance of the "appearance of fairness." At the Future and the Courts Conference, it was noted that "the appearance of justice is essential because it assures the (minority) community (that) they will be treated fairly when and if they should require access to justice. The expectation of fairness is fundamental to building a world which would support a multicultural, multinational world."[9]

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[9]Remarks made at Plenary Session IV: The Adversary System Taken From Manual on "Future and the Courts Conference," sponsored by the State Justice Institute and the American Judicature Society on May 18-22, 1990 in San Antonio, Texas.

AN INTEGRATED SYSTEMIC APPROACH TO CULTURAL AWARENESS EDUCATION: WASHINGTON STATE'S MODEL

A cultural awareness education program was designed by the Washington State Minority and Justice Task Force's Education Subcommittee. It was being offered in three phases with an integrated systemic approach being its primary objective. It was, therefore, designed to include a diverse composition of court employees, such as judges, court clerks, court administrators, bailiffs, court reporters, public defenders, prosecutors, and other criminal justice personnel. It allowed persons serving different functions in the court system an opportunity to share common perceptions and court experiences, while trying to resolve some mutual concerns or problems involving racial and ethnic minorities in the court system.

Brief Description of Task Force's Cultural Awareness Education Program

Phase I, which was offered at the state's 1989 Fall Judicial Conference, included two introductory segments. Segment one was a three-hour presentation on "Fairness in the Courts" by Justice Juanita Kidd Stout, Pennsylvania Supreme Court (retired) and Justice Bruce McM. Wright, New York Supreme Court. Both judges have experience in courts serving persons of varied ethnic, racial and cultural backgrounds. They shared their personal experiences and views on the existence of individual and institutional biases and how such biases can be manifested in the courts and the legal system.

Segment two of Phase I included an hour and one-half choice session on the "Philosophical Aspects of Cultural Differences" by Dr. Edwin H. Nichols, a consultant who was formerly with the National Institute of Mental Health. Dr. Nichols' presentation was a scholarly one. It focused on the historical origins and development of cultural norms and values and the impact such value systems have on judges' behavior and their ability to understand racial, ethnic and cultural differences. In general, this segment was designed to introduce participants to the impact which socialization may have on perpetuating cultural biases, often unconsciously influencing one's judgment. Segment two was repeated at the 1990 Fall Judicial Conference. An additional three hours were added to the program for inclusion of a cross-cultural role-playing exercise. In general, Phase I served as an appropriate beginning for an open dialogue among state judges on issues involving the treatment of minorities in the court system.

Phase II of the Task Force's cultural awareness education program was a two-day seminar offered in five sites throughout the state. The seminars were conducted by Nesby and Associates of Seattle, Washington. During this two-day seminar, participants engaged in experiential exercises, lectures-discussions, and small group discussions. They examined a variety of issues dealing with the treatment of minorities in the courts.

The third phase of the Task Force's education program is being designed for future presentations as a series of one-day special topic seminars to be given in several locations throughout 1991 and 1992. If funded, this phase would be an intermediate and advanced seminars on topics which examine specific court practices, procedures and policies which directly or indirectly impact minorities. (See Appendices P, Q, R, S and V for additional information on the Task Force's education program.)

Recommendations for an Integrated Systemic Cultural Awareness Education Program

Any court system developing an integrated systemic cultural awareness program will need to consider several factors:

- Include as many court personnel in diverse positions as possible.
- Minimize lecture/discussion format.
- Include various modes and methods of group learning activities and experiences. Small and large group discussions perhaps are most valuable as participants are able to exchange and validate personal experiences with others.
- Vary support materials to include a comprehensive manual or workbook, color-integrated slides or charts, tables and graphs to supplement statistics.
- Include videotaped courtroom scenarios which illustrate significant problem areas.
- Invite guest speakers who have expertise on specific legal or court-related issues. Allow ample time for presentations and large group discussion of these issues.
- Include topics such as interpersonal communication skills; conflict resolution; team building; and effective project/program management.

Additionally, development of group and individual action plans targeted towards resolving issues within one's scope of control or influence is highly recommended. In Phase II of Washington State's education program, individual commitment statements were prepared by participants and later planned for follow-up by Task Force staff. The purpose of the follow-up is to determine whether goals and objectives of the cultural awareness program are being met, and if issues identified during the seminar are being addressed and resolved. (See Appendices P and Q for additional information on the Washington State's cultural awareness education program.)

CONCLUSION

Washington State took a proactive and visionary approach in addressing a problem in its court system. Since initiation of the education program in 1989, the clientele of the courts have continued to change. Moreover, some of the issues considered critical then have been overshadowed by current dilemmas, such as increases in drug and gang-related crime rates; an overburdened court system; increased needs for greater law enforcement; and the alarming frequency of malicious harassment crimes.

As minority populations increase, the court system will need to respond swiftly to obtain a clear and effective grasp of positive cultural relationships among court employees and the greater community. A court system in intercultural turmoil will be unlikely to efficiently manage the influx of new

issues pertaining to race and ethnic differences without first examining and attempting to resolve existing multicultural conflicts.

Efforts to study, research and monitor current problems concerning racial or ethnic bias must continue. At the same time, court systems must engage in educational programs that keep pace with major cultural trends shaping our society.

There are a growing number of judicial professionals who recognize the necessity for greater cultural understanding. They are helping to make positive inroads in our society.

> "Courts will be slow in moving away from deep seated traditions, but it will be in their best interest to learn to deal effectively with the legitimate concerns of our multiethnic society."[10]
>
> Honorable Carmen Otero
> King County Superior Court
> Washington State

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[10]Remarks delivered by Honorable Carmen Otero, King County Superior Court, Washington State. Remarks made at the "Future and the Courts" Conference sponsored by the State Justice Institute and the American Judicature Society in San Antonio, Texas on May 18-22, 1990.

SECTION VIII

OVERVIEW

SECTION VIII: SUMMATION AND CONCLUDING REMARKS

This final section of the Task Force's report highlights recommendations and challenges for the state court system in the coming years.

CHAPTER FOURTEEN

THE CHALLENGE FOR THE COURT SYSTEM

During the past two years the Washington State Minority and Justice Task Force has served as a clearinghouse for concerns regarding the treatment of racial and ethnic minorities in our state court system. After conducting public forums throughout the state and several empirical studies to identify the possible existence of bias, the Task Force concludes that minority bias does exist to some extent in this state's court system. Infrequently, it is manifested by the overt and subtle acts or decisions of persons within the court system. It is also occasionally manifested unconsciously by individuals within the court system. While their intent may be to be fair and unbiased, their actions or decisions may still, unfortunately, result in disparate treatment, which may or may not be apparent. It appears that institutionalized bias (resulting from the system's formal and informal practices, policies, and procedures) often goes unchecked.

Our research shows that minorities are not adequately represented among non-judicial court employees and are underutilized in comparison to their availability in the workforce. To address the problem of the poor representation of minorities in non-judicial positions, the Task Force recommends the design and implementation of a Workforce Diversity Program. The program would improve the representation of minorities in the court system by establishing procedures for annual reporting requirements and procedures for the recruitment, selection, retention, and promotion of minority court staff.

By July 1990, the Task Force estimated that only about 700 legal professionals and court employees have been able to take advantage of introductory cultural awareness training. This means that many legal professionals and court employees may still require some form of basic training or education. Many court personnel and legal professionals have also expressed interest in more advanced seminars dealing with bias as it is manifested in specific areas of the law or in the institutional practices, procedures, and policies of the court.

To change the court's image among minorities, many of whom tend to distrust the court system, the Task Force recommends presentation of minority education seminars.

TABLE OF CONTENTS

		Page
A.	Order establishing the Supreme Court Minority and Justice Commission, No. 25700-1 (Wash. October 4, 1990)	202
B.	Proposed Equal Employment Opportunity Mission Statement	205
C.	Methodology and Other Survey Information Regarding the Lawyers' Survey, Judges' Survey, and Court Personnel Survey	215
D.	Lawyers' Survey Responses	223
E.	Judges' Survey Responses	231
F.	Court Personnel Survey Responses	237
G.	Bar Survey Questionnaire	244
H.	Sample and Sample Selection for the Bar Survey Questionnaire	245
I.	List of Ranked Law Schools Included in "Ranking the Law Schools: The Reality of Illusion?"	248
J.	Various Judicial Screening Committees, Their Processes and Procedures	249
K.	October 17, 1990 Memorandum Regarding the Equal Opportunity Program Adopted by the Washington State Supreme Court for the Courts	252
L.	Data Collection Instrument for Asbestos Case Study	256
M.	Methodology, Survey Response and Interview Information for Asbestos Case Study	258
N.	Data Collection Instrument for Landlord-Tenant Case Study	260
O.	Methodology and Response Information for Landlord-Tenant Case Study	263
P.	A Proposed Cultural Awareness Education Program for the Judiciary, Court Officials and Other Court Employees	265

		Page
Q.	Agenda for Cultural Awareness Seminar (Phase II of the Task Force's Education Program)	268
R.	Task Force Project Director's Remarks Before the Board for Trial Court Education	270
S.	October 3, 1990 Letter from the National Judicial College Regarding the Task Force's Educational Efforts	274
T.	October 17, 1990 Letter from the Community Relations Service, U.S. Department of Justice Regarding Activities of the Task Force	275
U.	Chronology of Voter Participation as Compiled by the Secretary of State, Washington State	276
V.	October 30, 1990 Letter from the National Center for State Courts Regarding Task Force's Educational Efforts	277

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ESTABLISHMENT OF A MINORITY AND JUSTICE COMMISSION	NO. 25700-A-

WHEREAS, the Washington Judicial System is founded upon the fundamental principle of the fair and equal treatment for all; and

WHEREAS, the Court recognizes the need of all persons to be treated equally;

WHEREAS, the Court recognizes that for any system of justice to be responsible, it must be examined continuously to ensure that it is meeting the needs of all people governed, to include people of color;

Now, therefore, it is hereby

ORDERED:

That a Minority and Justice Commission be established to identify the concerns and make recommendations regarding the equal treatment of all parties, attorneys, and court employees in the state courts.

It is further ordered that the Minority and Justice Commission here created examine all levels of the State judicial system to ensure that judicial needs of people of color are considered and to make recommendations for judicial improvement.

The Commission shall consist of at least fourteen (14) members appointed by the Chief Justice, including representatives from the following:

Supreme Court (1)
Court of Appeals (1)
Trial Court Judge (3)
Washington State Bar Association (4)
Administrator for the Courts (1)
Trial Court Administrator (1)
College or University Professor (1)
Citizens (2)

In making appointments to the Commission, the Chief Justice shall assure that racial and ethnic minority groups are represented.

Of the members first appointed, six (6) shall be for three (3) years, six (6) shall be for four (4) years, and two shall be for five (5) years; thereafter, appointments shall be for a four-year term except for the chair, who shall serve at the pleasure of the Chief Justice. The Chief Justice shall designate the chair of the Commission.

The chair, with the assent of a majority of the Commission, may augment the Commission by additional task force members when broader representation or specific expertise is required.

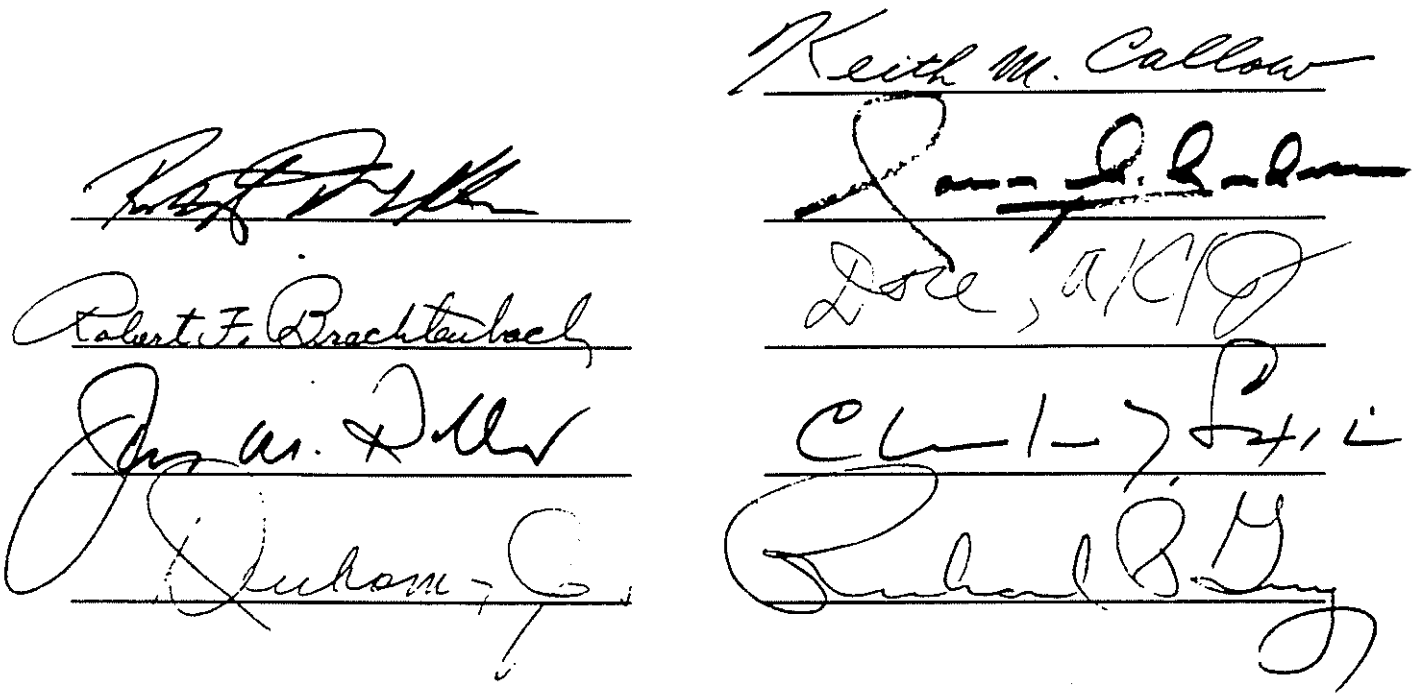
The Administrator for the Courts, with the advise of the Commission and subject to budget considerations, shall provide staff, budget and other resources for the activities of the Commission.

The Commission shall file an annual report with the Governor, Legislature, Supreme Court and Administrator for the Courts recommending appropriate action to promote equal treatment for racial and ethnic minorities in the state judicial system.

The duration of the Commission shall be five (5) years,

subject to renewal of additional years as may be determined by this Court.

DATED at Olympia, Washington this 24th day of October, 1990.



APPENDIX B

PROPOSED EQUAL EMPLOYMENT OPPORTUNITY MISSION STATEMENT[1]

I. OBJECTIVE

The Washington State Minority and Justice Task Force strongly urges each court to adopt the equal employment opportunity guidelines set forth in the Mission Statement in an effort to ensure a diverse work force and to establish parity in the state's judicial system. Each court will promote equal employment opportunity through a program encompassing all facets of personnel management including recruitment, hiring, promotion and advancement of all persons regardless of their race, gender, sexual preference, color, national origin, religion, age or handicap. This program, which will be periodically evaluated, is not intended to modify or reduce the qualifications standards for job categories or employee positions. Rather, its intent, through all hiring, transfers and promotion practices is to reflect, in the composition of court personnel, the increasing diversity of Washington State.

II. SCOPE OF COVERAGE[2]

The Equal Employment Opportunity Guidelines apply to all court personnel, including judicial officers, judges' staff and county clerks' staff (e.g., administrators, professionals, paraprofessionals, technical persons and support staff). Court units are defined as follows:

1. The Washington State Supreme Court;
2. The Court of Appeals (Division I, II and III);
3. Superior Courts/Juvenile Courts;
4. District Courts;
5. Municipal Courts; and
6. The Office of the Administrator for the Courts.

For the purpose of these Guidelines, persons and vendors who contract with and provide services to the court units would be encouraged to adhere to these provisions. This would include but not be limited to temporary and provisional court employees, court reporters, consultants, personnel services, and custodial services. Prosecutors, city attorneys, and offices

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[1]The Equal Employment Opportunity Mission Statement was adopted from similar guidelines adopted by the Ninth Circuit Court of Appeals.

[2]For the Office of Administrative Hearings and other state agencies which employ administrative law judges, please refer to RCW 41.06.150, Governor's Executive Order 85-09.

of public defense would also be encouraged to adhere to these guidelines if their staff is employed by the governmental unit or if the office has contracted with the court unit to provide indigent defense services.

III. ORGANIZATION

A. Implementation

The presiding judge of each court and each court support unit should implement the Equal Employment Opportunity Guidelines. Each head of each court unit and court support unit may submit proposed modifications in the plan to the presiding judge, who may also submit proposed modifications.

B. Judges, Court Administrators and Supervisors

Judges, court administrators and supervisors should apply equal employment guidelines and practices in their work units. This includes each employee demonstrating the capacity to work effectively with a diverse workforce and clientele and, where those abilities exceed general performance standards, to be recommended for personnel actions (e.g., awards, promotions, etc.) recognizing such achievements. It also requires providing training programs which enable employees to develop the skills and abilities to interface and work effectively with persons of various racial, ethnic, cultural, and linguistic backgrounds.

They should also ensure that all vacancies are publicly announced in majority- and minority-owned publications.[3] This is designed to attract candidates who represent the diversity of persons available in the qualified labor market.

All hiring decisions are to be based solely on job-related factors. They must also see that the skills, abilities and potential of each employee are identified and developed to their fullest extent, and that all employees are given equal opportunities for promotions through in-house training, voluntary transfers, job restructuring, special assignments and outside job-related training.

C. Equal Employment Opportunity Guidelines Coordinator and Equal Employment Opportunity Counselor

Each presiding judge with staffs in excess of eight (8) will designate one employee to be the Equal Employment Opportunity Guidelines Coordinator and another

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[3] A list of minority publications in the state of Washington may be obtained from the Public Information Officer, Office of the Administrator for the Courts or the Minority and Justice Commission. The recommended list is not exhaustive and it is recommended that you check with local minority associations for their suggestions.

employee to serve as the Equal Employment Opportunity Counselor. In jurisdictions where the court unit comprises eight (8) or less employees, the presiding judge may designate a single person to serve as both Coordinator and Counselor. Also, these positions are not necessarily envisioned as full-time staff positions. Rather, they should be additional duties assigned to existing staff in order to facilitate a positive equal employment opportunity program. Such determinations shall be made by the presiding judge. Where feasible, the Coordinator and Counselor should be someone other than the Personnel Director.

The Equal Employment Opportunity Guidelines Coordinator will be responsible for collecting, analyzing and consolidating the statistical data and statements prepared by each court unit. The Coordinator will then prepare an annual report for the presiding judge and the Office of the Administrator for the Courts providing demographic information on staff; describing the court's achievements in providing equal employment opportunities; identifying those areas in which improvements are needed; and explaining those factors inhibiting or promoting achievement of equal employment opportunity. Based upon this evaluation and report, the Coordinator will recommend, if needed, modifications in the guidelines to the presiding judge.

As noted earlier, the presiding judge, in consultation with the court officers, will designate for each unit one person to be the Equal Employment Opportunity Counselor. One counselor may be designated to serve all employees and the Counselor should report directly to the presiding judge. These counselors will be responsible for collecting the unit's general statistical and demographic data and statements and submitting reports to the Equal Employment Opportunity Coordinator. The Counselor's other responsibility will be to attempt an informal resolution of discrimination problems before formal complaints are filed.

IV. PERSONNEL PRACTICES

A. Recruitment

To assist the state courts in developing personnel practices, which enhance the representation of minorities, the Office of the Administrator for the Courts will retain an outside consultant to assist with the development of a workforce diversity program designed to increase the number of minority nonjudicial court employees throughout the state. The program will take into account regional and local conditions for recruiting, hiring, and retaining minority court employees. Each court unit will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. Each unit will use adequate means to publicize vacancies to all segments of the relevant labor market, including

announcements in minority-related publications and associations.[4]

B. Hiring

Each court unit will attempt to hire qualified applicants so as to reflect the make-up of all such persons in the relevant labor market. Each court unit will make its hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily. However, no court unit will employ selection criteria that disproportionately exclude minorities and women. Hiring the best qualified person shall be deemed a selection based on job-related criteria. At the same time, the court unit must maintain an affirmative posture in hiring in order to effectuate an equal employment opportunity program. This posture must be extended to temporary and provisional court employees, consultants, and others listed in paragraph three.

C. Promotions

Each court unit will attempt to promote employees so as to reflect the make-up of all such persons in the relevant labor market. Each court unit will promote employees according to their experience, training and demonstrated ability to perform duties at a higher level. However, no court unit will employ promotion criteria that disproportionately exclude minorities and women.

D. Voluntary Transfers

Each court unit will attempt to accommodate voluntary transfers and to encourage training programs which could lead to internal transfers. Not only should the transfers be for the employees benefit but attention should be paid to the minorities and gender make-up of the unit from which the employees transfers and the unit to which they are transferred. No involuntary decrease in salary should be involved.

E. Advancement

Each court unit will seek to improve the skills and abilities of its employees through cross-training, transfers, job restructuring, assignments, details and outside training. Each court unit will attempt to make such opportunities available to interested employees so as to reflect the make-up of all such persons in the relevant labor market.

F. Discrimination-Free Work Place

Each court unit will provide a discrimination-free work place to its employees and

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[4]Please refer to footnote number 3 on page 206.

applicants. No court unit will tolerate verbal, physical or other harassment, or discrimination in hiring or in the terms or conditions of employment, on the basis of race, ethnicity, gender and sexual preference, religion, refusal of sexual favors, sexual harassment, color, national origin, age or handicap.

G. Discrimination Complaints

The court adopts the procedures for resolving discrimination complaints set forth in the attachment to this document. See pages 211 through 214.

V. EVALUATION

Each court's EEO Coordinator will prepare a brief report describing its efforts to provide equal employment opportunities in:

A. Recruitment

Each court will describe briefly efforts made to bring a fair cross-section of the relevant labor pool into its applicant pool, including listing all employment sources used (e.g., state employment offices, schools, organizations, etc.). Each unit will also explain the methods it uses to publicize vacancies.

B. Hiring

Each court will identify where its recruitment efforts resulted in the hiring of a cross-section of the pool available and will, if known, explain those instances where members of the cross-section of the pool did not accept employment with the court when it was offered.

C. Promotions

Each court will briefly describe promotional opportunities which occurred and will provide an analysis of the distribution of promotions, including a description of those persons who were promoted to supervisory positions.

D. Each court unit will describe what efforts were made to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details and outside training.

In addition, this evaluation should include information on factors inhibiting achievement of EEO objectives such as no vacancies, minimal numbers of qualified applicants in the relevant labor market and all persons in the unit having received all relevant training. This report will also include a breakdown according to race, ethnicity, sex, color, national origin, religion, age and handicap of the court's personnel on forms to be provided by the Office of the Administrator for

the Courts. The report will cover personnel actions occurring as of June 30 and will be submitted to the EEO Coordinator by August 1 of each year.

VI. ANNUAL REPORT AND ASSESSMENT

Each court unit will develop annually its own objectives which reflect those improvements needed in recruitment, hiring, promotions and advancement, and will prepare a specific plan for the EEO Coordinator explaining how those objectives will be achieved.

The EEO Coordinators will prepare for the Office of the Administrator for the Courts ending June 30, consolidating the statistical and demographic data and statements received from each court unit. The report will include forms to be provided by the Office of the Administrator for the Courts, consolidating the information provided by each court unit. It will also describe instances where significant achievements were made in providing equal employment opportunities, will identify areas where improvements are needed and will explain factors inhibiting achievement of equal employment opportunity objectives.

The annual report should also indicate:

A. The number of grievances initiated;

B. The types of grievances initiated according to race, sex, color, national origin, religion, age, or handicap;

C. The number of grievances resolved informally;

D. The number of grievances resolved formally without hearing; and

E. The number of grievances resolved formally with a hearing.

(The foregoing information will not identify the names of the parties involved.)

The Office of the Administrator for the Courts will be responsible for analyzing the statistical and demographic data prepared and submitted by the EEO Coordinators. The individual reports will be consolidated and the results shall be published in the annual report prepared by the Office of the Administrator for the Courts. The consolidated report will also be made available to the public upon request.

ATTACHMENT

DISCRIMINATION GRIEVANCE PROCEDURES

I. SCOPE OF COVERAGE

All applicants for court positions and all court personnel may seek timely redress of discrimination grievances through these procedures. These procedures, however, are not intended to be a replacement for the working relationship which must exist between supervisors and employees nor are they intended to interfere in the administrative processes of the court.

II. DEFINITION

A discrimination grievance is any allegation that a person has been denied employment, promotion, or advancement, or has been affected in any other terms or conditions of employment, because of his or her race, sex, color, national origin, religion, age, (at least 40 years of age at the time of the alleged discrimination), or handicap. It also includes allegations of restraint, interference, coercion, discrimination, or reprisal because a person has raised an allegation of discrimination or has served as a representative, a witness, or an EEO Coordinator in connection with a grievance. It does not include grievances regarding other dissatisfactions in one's workplace.

III. RIGHTS OF PERSONNEL

A. Retaliation

Every grievant has the right to be free from retaliation, coercion, or interference because of the good faith exercise of any of the rights under this plan.

B. Representation

Every grievant and every person against whom a grievance has been filed has the right to be represented by a person of his or her choice if such person is available and consents to be a representative. Any representative who is a court employee may accept such responsibilities if it will not interfere with his or her court duties or constitute a conflict of interest.

C. Notice

Every person against whom a grievance has been timely filed has the right to have notice of the charges filed against him or her and the right to reasonable notice of any hearing conducted on a grievance.

D. Preparation Time

All court employees involved in a grievance procedure may use a reasonable amount of official time to prepare their case so long as it does not interfere with the performance of their court duties.

IV. PROCEDURES

A. Initiation of a Grievance

1. Any applicant or court employee, or his or her representative, who feels that he or she has been discriminated against on the basis of race, sex, color, national origin, religion, age, or handicap, must first timely present and discuss the problem with a trained Equal Employment Opportunity (EEO) Counselor, who will attempt to resolve the problem before a formal grievance is made.

2. If the EEO Counselor is unable to resolve an applicant's or court employee's discrimination grievance, he/she or his/her representative may file a timely discrimination grievance with the presiding judge and the EEO Coordinator. The grievance must be accompanied by a copy of the EEO Counselor's report.

B. Informal Resolution Procedures

Upon receipt of a request by the grievant or his or her representative for an appointment to discuss a discrimination grievance, the EEO Counselor will:

1. Schedule an appointed time for discussing the problem within ten days.

2. At the onset of the discussion, advise the grievant that his/her name will be used when the problem is discussed with all affected parties.

3. Take notes setting forth the alleged facts.

4. Prepare a dated statement listing the alleged facts as presented by the grievant.

5. Have the grievant read and sign the statement to verify he/she agrees the grievance is correctly stated.

6. Consult with the parties involved and seek to informally resolve

the issues.

7. Submit a statement within fifteen days of the meeting to the affected parties with recommendations or corrective action to be implemented.

8. Present the responding statement to the grievant. If the problem is resolved, have his/her acceptance. If the problem is not resolved, advise grievant of his/her right to file a formal grievance.

9. Immediately send copies of both statements to the parties involved.

C. Formal Procedures

1. If the grievant objects to the proposed informal resolution or not resolution was proposed, a written grievance may be filed with the presiding judge and the EEO Coordinator requesting to have the matter reviewed. Grievant must include with the written grievance a copy of the statement drafted by the EEO Counselor.

If the grievant desires a formal hearing, he/she must request one in writing. The request must be included in the written complaint. Failure to include such a request will operate as a waiver of the right to a formal hearing.

2. Review

a. Upon receipt or not later than five days of a grievance, the EEO Coordinator may request the presiding judge to:

i. Investigate the matter;

ii. Consult with the parties to seek a resolution;

iii. Prepare a report identifying the issues, the results of the investigation, and recommendations.

b. Upon receipt of the EEO Coordinator's report and recommendations, the presiding judge will:

i. Issue a final decision on the merits if it is found that no hearing is necessary; or

ii. Appoint a three-member Review Board Panel, designate a member as Chair, and set a date for review of the grievance and scheduling of a hearing.

If the grievance is directed toward the presiding judge, the next most senior active judge shall serve in lieu of the presiding judge for purposes described hereafter.

The Review Board Panel may consist of any active or senior judge of the court or any employee of this court. If the formal grievance is directed toward a judge of the court, the Review Board Panel shall be comprised of three individuals from outside the court.

3. Hearing

If a hearing is held, it must be held within thirty days of the filing of the grievance. Each party will have the right to representation. Both the grievant and the party named in the grievance, or his/her representative, may produce, examine, and cross-examine witnesses and submit evidence, written or oral. . The EEO Counselor may appear as a witness but cannot represent either of the parties involved. The Panel Chairperson shall preside at the hearing which is to be held before the full panel. The rules of evidence applicable in trials need not be observed, but the Panel Chairperson may exclude irrelevant or unduly cumulative testimony and evidence. The hearing will be open to the public if the employee seeking review so requests. Other employees are to be made available to participate in the hearing when requested by the Panel.

The Review Board Panel shall issue a final decision containing findings and conclusions to the presiding judge, the EEO Coordinator, and all parties named in the grievance within thirty days of the close of the record.

V. RECORDS

All papers, files, and reports will be filed with the EEO Coordinator at the conclusion of any informal or formal proceeding into a grievance. No papers, files, or reports relating to a grievance will be filed in any employee's personnel folder.

VI. NOTICE

Copies of these procedures shall be given to all employees and, upon request, to members of the public.

APPENDIX C

METHODOLOGY AND OTHER SURVEY INFORMATION REGARDING THE LAWYERS' SURVEY, JUDGES' SURVEY, AND THE COURT PERSONNEL SURVEY.[5]

Overview

Three surveys were designed to measure minority bias in the courts as perceived by lawyers, judges, and court personnel. Issues raised in five statewide public forums and discussions by Task Force members identified research topics for the survey instruments for judges, court personnel, and attorneys. Relevant questions used in similar surveys from other states's racial/ethnic minority and justice task forces or commissions were adapted for the questionnaire.

The final instruments included questions on courtroom interaction, cultural awareness and sensitivity of court officials, treatment of minority litigants in civil and criminal cases, selected tribal and state court jurisdictional issues, and the underrepresentation of minorities among judges, attorneys, court employees, and jurors. Identical questions were used in the three surveys, except for additional items in the attorney's survey. Additional questions related to cultural awareness and court room experience were asked in the attorney survey. The three surveys also differed in the type of background information requested from the respective respondents. Each survey instrument was pre-tested with subjects similar to the target groups.

The Task Force targeted court officials and personnel to participate in the three surveys. All judges, magistrates, and commissioners were included in the survey of judges. A sample of court personnel from all court levels was used in the survey of court personnel. A sample of attorneys who had some courtroom experience was selected to respond to the attorney survey.

Attorney Survey

The attorney survey was designed to obtain data on the perceptions and observations of attorneys on the treatment of minorities in the courts. In selecting attorneys to participate in the survey, the Task Force was interested in: (1) attorneys with court room experience, (2) attorneys representing defence, prosecution, and plaintiff in civil and criminal cases, and (3) ethnic minority and non-minority attorneys.

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[5]Appendix C was prepared by Dr. Jesus Dizon, Research Specialist, Washington State Minority and Justice Task Force.

To implement these selection criteria various attorney associations whose membership fit the criteria were requested to provide lists of their members. These include the Washington Association of Prosecuting Attorneys, Washington State Trial Lawyer's Association, Washington Defenders Association, Loren Miller Bar Association, La Raza Bar Association, Asian Bar Association, Washington Association of Criminal Defenders, various public defender offices, and Washington Defence Trial Lawyer's Association. After obtaining the lists from these associations, the lists were compared and duplicates were removed.

Table C-1 below shows the distribution of the attorneys who were included in the survey.

TABLE C-1
ATTORNEYS SURVEYED BY TYPE OF PRACTICE

	Number Sent	Number Responding	Percent Responding
Criminal: Prosecutors = 410 Defense = 561	971	316	32.5%
Civil: Plaintiff = 900 Defense = 708	1608	593	36.9%
Minority = 477	477	213	44.7%

One thousand one hundred and twenty two (1,122) completed surveys were returned out of a total of three thousand and fifty six (3,056) surveys mailed to attorneys. This represents a total response rate of 36.7%.

The following tables show the distribution of attorney respondents by gender, age, racial/ethnic group, and primary practice. A majority of the respondents (74.7%) were male. The average age was forty years. Most of the attorneys were Caucasian/White (80.5%), and only 19.5% were racial/ethnic minorities. By primary area of practice, most of the respondents were either in criminal law (33.8%) or civil litigation (31.8%).

TABLE C-2
ATTORNEY RESPONDENTS BY GENDER

Gender	Number	Percent
Female	281	25.3%
Male	828	74.7%
No information	13	

TABLE C-3
ATTORNEY RESPONDENTS BY AGE

Age	Number	Percent
30 or less	103	9.3%
31-35	261	23.5%
36-40	317	28.6%
41-45	213	19.2%
46-50	102	9.2%
51-55	40	3.6%
56-60	34	3.1%
61-65	21	1.9%
66+	18	1.6%

TABLE C-4
ATTORNEY RESPONDENTS BY RACIAL/ETHNIC GROUP

Racial/Ethnic Group	Number	Percent
Asian	73	6.6%
Black	70	6.4%
Caucasian	886	80.5%
Hispanic	32	2.9%
Native American	10	0.9%
Other/Combination	30	2.7%
No information	21	

TABLE C-5
ATTORNEY RESPONDENTS BY PRIMARY PRACTICE

Primary Practice	Number	Percent
Real Property	53	4.8%
Labor Law	19	1.7%
Criminal Law	374	33.8%
Family Law	54	4.9%
General Practice	102	9.2%
Probate	4	0.4%
Juvenile	5	0.5%
Taxation	5	0.5%
Business	12	1.1%
Civil Litigation	352	31.8%
Corporate Law	10	0.9%
Government	51	4.6%
Other	66	6.0%
No information	15	

Judges' Survey

The judges' survey was designed to obtain data on the perceptions and observations of judges, commissioners, and magistrates regarding the treatment of minorities in the courts. All (466) Washington state judicial officers were sent the survey. Table C-6 below shows the distribution of the judicial officials grouped by court level who were sent surveys, and the response from each group.

TABLE C-6
JUDICIAL OFFICERS SURVEYED AND THEIR RESPONSE

Court Level	Number Sent	Number Responding	Percent Responding
Supreme Court	9	6	66.7%
Court of Appeals	23	17	73.9%
Superior Court	214	136	63.6%
District/Municipal Court	220	109	50.0%
Total	466	275	59.0%

Two hundred and seventy five (275) completed surveys were returned, representing a fifty nine percent (59.0%) total response rate. Seven (7) respondents did not identify their court level.

The following tables show the distribution of the judicial respondents according to gender, age, and racial/ethnic group. A majority (84.4%) of the respondents were male and the average age of all respondents was fifty one years. By racial/ethnic group, a majority (92.9%) of the respondents were Caucasian/White.

TABLE C-7
JUDICIAL RESPONDENTS BY GENDER

Gender	Number	Percent
Female	42	15.6%
Male	227	84.4%
No information	6	

TABLE C-8
JUDICIAL RESPONDENTS BY AGE

Age	Number	Percent
31-35	8	3.0%
36-40	33	12.3%
41-45	54	20.1%
46-50	41	15.3%
51-55	34	12.7%
56-60	46	17.2%
61-65	34	12.7%
66+	18	6.7%
No information	7	

TABLE C-9 JUDICIAL RESPONDENTS BY RACIAL/ETHNIC GROUP		
Racial/Ethnic Group	Number	Percent
Asian	4	1.5%
Black	5	1.9%
Caucasian	250	93.2%
Hispanic	2	0.7%
Combination	7	2.6%
No information	7	

Court Personnel Survey

The court personnel survey was designed to obtain data on the perceptions and observations of court personnel on the treatment of minorities in the courts. All court personnel for the Supreme Court, Court of Appeals, and Superior Courts were included in the survey. Only court personnel from the 80 courts of limited jurisdiction with the highest case filings in 1988 were selected for the court personnel survey. This sampling represents all of the district courts and most of the municipal courts. A list of court interpreters was also used in the mailing, to obtain data from interpreters who were not court employees but whose services where contracted in judicial proceedings.

Table C-10 below shows the distribution of the court personnel who were sent surveys grouped by court level, and the response from each group.

TABLE C-10 COURT PERSONNEL SURVEYED AND THEIR RESPONSE			
Court Level	Number Sent	Number Responding	Percent Responding
Supreme Court	50	21	42.0%
Court of Appeals	102	51	50.0%
Superior Court	783	293	37.4%
District/Municipal	895	266	29.7%
Interpreters	83		
No information		13	15.6%
Total	1913	644	33.6%

Six hundred and forty four (644) surveys were completed by the court personnel, representing a thirty four percent (34.0%) total response rate. The number of responding interpreters who were not court employees are counted in the breakdown by court level. Among those who responded thirteen (13) did not identify the court level in which they worked.

The following tables show the distribution of court personnel respondents by gender, age, racial/ethnic group, and occupation. A majority of the respondents female (82.1%). The average age of all respondents was 41 years. Most of the respondents (85.6%) were Caucasian/White, and only 8.4% were racial/ethnic minorities. By occupation, there were more court clerks (39.4%) among the respondents than other court occupations.

TABLE C-11
COURT PERSONNEL BY GENDER

Gender	Number	Percent
Female	523	82.1%
Male	114	17.9%
No information	7	

TABLE C-12
COURT PERSONNEL BY AGE

Age	Number	Percent
30 or less	103	16.2%
31-35	103	16.2%
36-40	109	17.2%
41-45	123	19.4%
46-50	80	12.6%
51-55	45	7.1%
56-60	48	7.6%
61-65	13	2.1%
66+	10	1.6%
No information	10	

TABLE C-13
COURT PERSONNEL BY RACIAL/ETHNIC GROUP

Racial/Ethnic Group	Number	Percent
Asian	21	3.3%
Black	17	2.7%
Caucasian	542	85.6%
Hispanic	21	3.3%
Native American	14	2.2%
Other/Combination	18	2.8%
No information	11	

TABLE C-14
COURT PERSONNEL BY OCCUPATION

Occupation	Number	Percent
Court Clerk	240	39.4%
Records Clerk	14	2.3%
Law Clerk	34	5.6%
Legal Assistant	13	2.1%
Court Administrator	52	8.5%
Juvenile C. Adm.	3	0.5%
Court Reporter	27	4.4%
County Clerk	29	4.8%
Manager	10	1.6%
Admin. Assist.	23	2.3%
Secretary	14	2.3%
Bailiff	41	6.7%
Interpreter	30	4.9%
Other	79	13.0%

APPENDIX D
LAWYERS' SURVEY RESPONSES[1]

Never	=	0% of the time.
Seldom	=	1 to 10% of the time.
Sometimes	=	11 to 50% of the time.
Often	=	Over 50% of the time.
No Response	=	Not applicable, no direct experience, no basis for opinion; missing answers; or no response.

	Often	Some-times	Seldom	Never	No Response[2]
A. Interaction with Minorities.					
1. In your professional capacity, how often have you worked directly with:					
a. Minority judges, commissioners, or magistrates	122 11.2%	280 25.8%	420 38.7%	263 24.2%	37 --
b. Minority hearing examiners	8 1.0%	51 6.3%	200 24.9%	545 67.8%	318 --
c. Minority arbitrators	4 0.5%	32 3.8%	141 16.7%	668 79.1%	277 --
d. Minority lawyers	170 15.4%	421 38.2%	467 42.4%	43 3.9%	21 --
e. Minority court personnel	188 17.3%	444 40.8%	368 33.9%	87 8.0%	35 --
f. Minority litigants	27 2.5%	247 22.6%	449 41.0%	371 33.9%	28 --
g. Minority witnesses	27 2.5%	316 29.0%	441 40.5%	306 28.1%	32 --
B. Courtroom Interaction during the last five years.					
1. Have you observed court personnel being less respectful or courteous to minority judges than they are to non-minority judges?	4 0.5%	27 3.1%	50 5.7%	800 90.8%	241 --
2. Have you observed court personnel being less respectful or courteous to minority attorneys than they are to non-minority attorneys?	10 1.0%	58 5.7%	136 13.3%	819 80.1%	99 --
3. Have you observed court personnel being less respectful or courteous to minority litigants than they are to non-minority litigants?	37 3.6%	144 13.9%	228 21.9%	630 60.6%	83 --

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[1] Survey respondents were provided the following instructions:

Based upon your experience in the legal practice in Washington State during the last five years, does the treatment of racial/ethnic minorities vary from that of non-minorities? For the purpose of this survey, racial/ethnic minority is defined as one identified as: Asian or Pacific Islander; Black/African-American; Hispanic or Latino; or Native American. In addition, differences in the treatment of minorities versus non-minorities is assumed to be attributable to the minority status. For each item below, please circle the number which is closest to your answer using the following scale:

1	=	Never	(0%)
2	=	Seldom	(1 to 10% of the time)
3	=	Sometimes	(11 to 50% of the time)
4	=	Often	(Over 50% of the time)
N/A	=	Not applicable, no direct experience, no basis for opinion.	

If you have comments on the treatment of minorities in the state courts, please write them on separate pages and attach them to the questionnaire.

[2] Non-responses are not included in the calculation of percentages.

	Often	Some-times	Seldom	Never	No Response
4. Have you observed **court personnel** being less respectful or courteous to **minority witnesses** than they are to non-minority witnesses?	26 2.5%	111 10.8%	192 18.7%	699 68.0%	94 --
5. Have you observed **criminal defense attorneys** being less respectful or courteous in cross-examining **minority witnesses** than they are to non-minority witnesses?	10 1.5%	48 7.1%	146 21.6%	473 69.9%	445 --
6. Have you observed **criminal defense attorneys** being less respectful or courteous in cross-examining **minority litigants** than they are to non-minority litigants?	9 1.4%	43 6.5%	137 20.9%	468 71.2%	465 --
7. Have you observed **criminal defense attorneys** being less respectful or courteous in cross-examining **minority victims** than they are to non-minority victims?	8 1.2%	43 6.4%	145 21.7%	473 70.7%	453 --
8. Have you observed **prosecutors** being less respectful or courteous in cross-examining **minority witnesses** than they are to non-minority witnesses?	27 3.9%	96 13.9%	133 19.2%	436 63.0%	430 --
9. Have you observed **prosecutors** being less respectful or courteous in cross-examining **minority litigants** than they are to non-minority litigants?	32 4.6%	99 14.3%	137 19.9%	422 61.2%	432 --
10. Have you observed **prosecutors** being less respectful or courteous in cross-examining **minority victims** than they are to non-minority victims?	16 2.4%	66 9.8%	122 18.1%	470 69.7%	448 --
11. In civil cases, have you observed **counsel for either party** being less respectful or courteous in cross-examining **minority litigants** than they are to non-minority litigants?	11 1.4%	66 8.2%	157 19.5%	571 70.9%	317 --
12. In civil cases, have you observed **counsel for either party** being less respectful or courteous in cross-examining **minority witnesses** than they are to non-minority witnesses?	12 1.5%	61 7.6%	159 19.7%	575 71.3%	315 --
13. Have you observed **non-minority attorneys** being less respectful or courteous to **minority attorneys** than they are to non-minority attorneys?	13 1.3%	72 7.3%	195 19.7%	711 71.7%	131 --
14. Have you observed **non-minority attorneys** objecting more often to presentations of **minority attorneys** than they do to those of non-minority attorneys?	10 1.1%	36 3.8%	108 11.5%	787 83.6%	181 --
15. Have you observed **judges** paying less attention to statements of **minority attorneys** than they do to those of non-minority attorneys?	14 1.4%	65 6.6%	124 12.6%	779 79.3%	140 --
16. Have you observed **judges** addressing minority attorneys less formally than they do non-minority attorneys during legal proceedings?	13 1.3%	42 4.2%	97 9.8%	837 84.6%	133 --
17. Have you observed **judges** interrupting the presentations of **minority attorneys** more than they do those of non-minority attorneys?	11 1.1%	47 4.8%	96 9.8%	825 84.3%	143 --
18. Have you observed **judges** making comments about the personal appearance of **minority litigants** more than that of non-minority litigants?	10 1.0%	45 4.6%	101 10.3%	822 84.0%	144 --
C. Accessibility to Legal Counsel and the Courts.					
Based on your perceptions:					
1. **Do minorities distrust the courts** more than non-minorities?	301 32.1%	423 45.1%	149 15.9%	64 6.8%	185 --
2. **Do minorities utilize the courts** less than non-minorities **because they distrust the legal system?**	166 21.8%	261 34.3%	205 26.9%	130 17.1%	360 --

	Often	Some-times	Seldom	Never	No Response
3. Do minorities utilize the courts less than non-minorities because they cannot afford costs associated with trials?	284 35.9%	291 36.8%	134 17.0%	81 10.3%	332 --
4. Do more minority defendants than non-minority defendants feel that they will not be adequately represented by court appointed attorneys?	202 29.1%	248 35.7%	150 21.6%	94 13.5%	428 --
Based on your courtroom experience:					
5. Have you observed minority defendants represented by court appointed attorneys pleading guilty more than non-minority defendants charged with the same crime and all other factors being equal?	50 8.1%	89 14.4%	158 25.6%	320 51.9%	505 --
6. Have you observed court appointed attorneys explaining court proceedings less adequately to minority defendants than they do to non-minority defendants.	26 3.9%	60 9.0%	136 20.3%	448 66.9%	452 --
7. Have you observed judges denying full legal rights to minority defendants who are not citizens?	28 4.0%	72 10.2%	84 11.9%	524 74.0%	414 --
8. Have you observed attorneys inadequately representing minority defendants who are not citizens?	21 3.0%	74 10.6%	129 18.5%	473 67.9%	425 --
D. Disparate Treatment of Minorities: Criminal Cases.					
Based on your courtroom observations:					
1. Are minority defendants less likely to be released on their own recognizance than non-minorities charged with the same crime and all other factors being equal?	129 20.7%	140 22.5%	145 23.3%	208 33.4%	500 --
2. Do non-minority defendants avoid trial by pleading guilty to a lesser charge more than minority defendants?	47 8.2%	109 19.0%	175 30.5%	243 42.3%	548 --
3. Do non-minority defendants receive the first-time offender waiver more than minority defendants?	58 12.3%	75 15.9%	114 24.2%	225 47.7%	650 --
4. Do non-minority defendants receive the special sexual offender sentencing alternative more than minority defendants?	39 11.7%	58 17.4%	66 19.8%	170 51.1%	789 --
5. Do non-minority defendants receive deferred prosecution more than minority defendants?	46 9.3%	112 22.8%	112 22.8%	222 45.1%	630 --
6. Are bail amounts higher for minority defendants than for non-minority defendants charged with the same crime and all other factors being equal?	75 13.6%	137 24.9%	118 21.5%	220 40.0%	572 --
7. Are minority defendants more likely to receive longer jail sentences than non-minorities convicted of the same crime and all other factors being equal?	93 16.1%	127 22.0%	132 22.8%	226 39.1%	544 --
8. Do non-citizen defendants understand the impact of a guilty verdict on their present and future immigration status?	179 36.5%	160 32.7%	116 23.7%	35 7.1%	632 --
9. Does counsel request dispositional alternatives (e.g., drug treatment programs, supervised home release) for non-minority defendants more than for minority defendants?	38 7.4%	120 23.3%	137 26.7%	219 42.6%	608 --
10. Is there a greater disparity in the result of criminal prosecution when the victim is a minority rather than a non-minority and all other factors being equal?	68 12.3%	140 25.2%	132 23.8%	215 38.7%	567 --
Based on your perceptions:					
11. Do minority defendants see themselves disadvantaged more than non-minority defendants?	318 42.9%	300 40.4%	93 12.5%	31 4.2%	380 --

	Often	Some-times	Seldom	Never	No Response
12. Do minority defendants fear that they will be found guilty more than non-minority defendants?	39 5.6%	108 15.6%	265 38.2%	281 40.5%	429 --
E. Disparate Treatment of Minorities: Civil Cases.					
Based on your experience in the legal practice:					
1. Have you observed juries recommending lower judgments/damages to minority plaintiffs than to non-minority plaintiffs for similar cases?	34 6.5%	85 16.2%	104 19.8%	301 57.4%	598 --
2. Have you observed attorneys recommending smaller settlement amounts in personal injury cases for minority plaintiffs than for non-minority plaintiffs?	39 6.4%	106 17.3%	133 21.7%	334 54.6%	510 --
3. Have you observed minority litigants seeking recourse through arbitration more than non-minority litigants?	9 1.8%	21 4.2%	76 15.2%	393 78.8%	623 --
4. Have you observed non-minority litigants settling out of court more than minority litigants?	19 3.3%	67 11.7%	118 20.6%	369 64.4%	549 --
5. Have you observed judges ruling in favor of agricultural employers more than agricultural workers?	16 7.3%	20 9.1%	24 10.9%	160 72.7%	902 --
6. Have you observed minority parties in domestic relations cases being treated less advantageously than non-minority parties?	24 6.0%	46 11.5%	56 14.0%	275 68.6%	721 --
Based on your perceptions:					
7. Do minority litigants see themselves as disadvantaged in civil matters more than non-minority litigants?	167 24.5%	260 38.1%	166 24.3%	89 13.0%	440 --
F. Interaction with Tribal Courts.					
1. Have you observed cases where a state judge did not accord full faith and credit to the decisions rendered by a tribal court, when they were applicable?	16 8.3%	32 16.6%	21 10.9%	124 64.2%	929 --
2. Do state courts lack sufficient understanding of tribal sovereignty and tribal court jurisdiction?	79 29.9%	88 33.3%	53 20.1%	44 16.7%	858 --
3. In child custody cases, have you observed cases where the state court has pre-empted the tribal court's decision?	17 9.1%	24 12.9%	25 13.4%	120 64.5%	936 --
4. How often have you appeared before a tribal court?	16 2.3%	28 4.0%	65 9.2%	598 84.6%	415 --
G. Interpreters.					
1. Are qualified interpreters available for non-English speaking witnesses/litigants at all levels of legal proceedings?	423 54.6%	208 26.8%	123 15.9%	21 2.7%	347 --
2. Have you heard complaints about interpreters not accurately representing the ideas communicated by non-English speaking litigants or witnesses?	86 10.9%	223 28.2%	173 21.8%	310 39.1%	330 --
3. Are qualified interpreters available for the hearing impaired at all levels of legal proceedings?	197 37.7%	159 30.5%	122 23.4%	44 8.4%	600 --
H. Minorities and the Jury.					
Based on your courtroom observations:					
1. Are minorities adequately represented in the jury pools?	300 31.3%	178 18.5%	327 34.1%	155 16.1%	162 --
2. Are minorities adequately represented on jury panels?	261 27.4%	201 21.1%	334 35.0%	157 16.5%	169 --
3. Do prosecutors systematically use peremptory challenges to eliminate minorities from juries?	95 15.4%	167 27.2%	173 28.1%	180 29.3%	507 --

	Often	Some-times	Seldom	Never	No Response
4. Do **criminal defense attorneys** systematically use **peremptory challenges** to eliminate minorities from juries?	23 3.8%	84 14.0%	284 47.4%	208 34.7%	523 --
5. Do **plaintiffs' attorneys** systematically use peremptory **challenges** to eliminate minorities from juries?	23 3.7%	92 14.6%	268 42.6%	246 39.1%	493 --
6. Do **defense attorneys in civil matters** systematically use **peremptory challenges** to eliminate minorities from juries?	87 14.0%	171 27.5%	222 35.7%	142 22.8%	500 --
Based on your perceptions:					
7. Do **minority litigants** feel that they will not be judged by a **jury of their peers** more than non-minority litigants?	277 33.9%	331 40.5%	158 19.3%	52 6.4%	304 --
8. Do **jurors give less credibility to minority victims** than to non-minority victims?	112 14.0%	266 33.3%	267 33.4%	155 19.4%	322 --
9. Do **jurors give less credibility to minority expert witnesses** than to non-minority expert witnesses?	68 11.0%	168 27.1%	199 32.1%	184 29.7%	503 --
L. Cultural Awareness and Sensitivity of Court Officials.					
1. Have you observed judges **making jokes or demeaning remarks** about minorities in the court or in their chambers?	25 2.4%	95 9.1%	257 24.6%	666 63.9%	79 --
2. Have you observed cases where judges were lacking **cross-cultural understanding**?	135 13.5%	272 27.2%	300 30.0%	292 29.2%	123 --
3. Have you observed attorneys **making jokes or demeaning remarks** about minorities?	83 7.8%	313 29.4%	404 38.0%	263 24.7%	59 --
4. Have you observed cases where attorneys were lacking **cross-cultural understanding**?	168 16.5%	383 37.5%	300 29.4%	169 16.6%	102 --
5. Have you observed court personnel **making jokes or demeaning remarks** about minorities?	48 4.6%	159 15.3%	287 27.6%	544 52.4%	84 --
6. Have you observed cases where court employees were lacking **cross-cultural understanding**?	102 10.7%	289 30.4%	273 28.7%	287 30.2%	171 --
7. Notwithstanding language barriers, have you observed judges **failing to communicate effectively** with minorities from different races, ethnic groups or cultures?	88 8.9%	223 22.6%	352 35.6%	325 32.9%	134 --
8. Notwithstanding language barriers, have you observed attorneys **failing to communicate effectively** with minorities from different races, ethnic groups or cultures?	92 9.1%	264 26.1%	389 38.5%	266 26.3%	111 --
9. Notwithstanding language barriers, have you observed other court employees **failing to communicate effectively** with minorities from different races, ethnic groups or cultures?	83 8.4%	236 24.0%	346 35.2%	319 32.4%	138 --
10. Do judges' **perceptions about recent immigrants** impact their perceptions about minorities in general?	48 9.2%	150 28.6%	156 29.8%	170 32.4%	598 --
11. Do attorneys' **perceptions about recent immigrants** impact their perceptions about minorities in general?	46 7.8%	181 30.5%	211 35.6%	155 26.1%	529 --
12. Do court employees' **perceptions about recent immigrants** impact their perceptions about minorities in general?	49 9.4%	158 30.3%	163 31.2%	152 29.1%	600 --
13. Do judges' perceptions about **illegal aliens** impact their perceptions about minorities in general?	156 28.6%	171 31.3%	163 29.9%	56 10.3%	576 --
14. Do attorneys' perceptions about **illegal aliens** impact their perception about minorities in general?	145 25.0%	196 33.7%	184 31.7%	56 9.6%	541 --

	Often	Some-times	Seldom	Never	No Response
15. Do court employees' perceptions about **illegal aliens** impact their perceptions about minorities in general?	158 28.8%	172 31.3%	163 29.7%	56 10.2%	573 --
16. Have you observed judges **labeling litigants** by their racial or ethnic origin?	554 58.1%	244 25.6%	125 13.1%	31 3.2%	168 --
17. Have you observed attorneys **labeling litigants** by their racial or ethnic origin?	368 37.6%	316 32.3%	240 24.5%	55 5.6%	143 --
18. Have you observed court personnel **labeling litigants** by their racial or ethnic origin?	491 52.3%	248 26.4%	161 17.2%	38 4.1%	184 --
19. Have you observed any **instances or cases involving the biased treatment of minorities** in the state courts?	517 54.9%	227 24.1%	149 15.8%	49 5.2%	180 --

J. Representation of Minority Court Officials and Personnel.

Based on your opinion:	Yes	No	Not Sure	No Response
1. Are minorities **adequately represented** among the judiciary at the following levels?				
Supreme Court	381 34.9%	482 44.1%	229 21.0%	30 --
Court of Appeals	204 18.7%	563 51.6%	325 29.8%	30 --
Superior Court	431 39.4%	493 45.1%	170 15.5%	28 --
District Court	240 22.0%	515 47.2%	336 30.8%	31 --
Municipal Court	335 30.8%	399 36.6%	355 32.6%	33 --
2. **Are minorities adequately represented among:**				
County Clerks	248 22.8%	389 35.7%	452 41.5%	33 --
Court Administrators	183 16.8%	420 38.6%	486 44.6%	33 --
Bailiffs	340 31.3%	402 36.9%	346 31.8%	34 --
Court Clerks	357 32.8%	375 34.5%	355 32.7%	35 --
Support Staff	427 39.2%	288 26.4%	374 34.3%	33 --
3. Are minorities **adequately represented among:**				
Public Defenders	375 34.4%	315 28.9%	401 36.8%	31 --
Prosecutors	247 22.6%	468 42.9%	377 34.5%	30 --
Private Attorneys	278 25.4%	582 53.2%	234 21.4%.	28 --
4. Are minorities provided **advancement opportunities** in the courts?	251 23.2%	142 13.1%	687 63.6%	42 --

K. Court Experience.

	Number	Percent
1. During the past five years, how often did you appear in court?		
Weekly	606	55.3%
Monthly	268	24.5%
Yearly	24	2.2%
1-3 Times a Year	28	2.6%
4-7 Times a Year	54	4.9%
8-11 Times a Year	98	8.9%
Never	18	1.6%
No Response	26	--

	Yes	No	Not Sure	No Response
2. Do minorities have the same access to mentor relationships as non-minority attorneys?	176 16.7%	263 25.0%	615 58.3%	68 --

L. Demographic Information.

To help us interpret the information gathered on this form, please answer the following demographic questions.

		Number	Percent
1. What is your gender?	Female	281	25.3%
	Male	828	74.7%
	No Response	13	--
2. What is your age?	30 Years or less	103	9.3%
	31-35 Years	261	23.5%
	36-40 Years	317	28.6%
	41-45 Years	213	19.2%
	46-50 Years	102	9.2%
	51-55 Years	40	3.6%
	56-60 Years	34	3.1%
	61-65 Years	21	1.9%
	66 or more years	18	1.6%
	No Response	13	--
3. What is your racial/ethnic background?	Asian or Pacific Islander	73	6.6%
	Black/African-American	70	6.4%
	Caucasian/White	886	80.5%
	Hispanic or Latino	32	2.9%
	Native American	10	0.9%
	Other	30	2.7%
	No Response	21	--
4. What year were you admitted to the Washington bar?	Before 1941	31	2.8%
	1941-1950	11	1.0%
	1951-1960	43	3.8%
	1961-1970	100	8.9%
	1971-1980	463	41.3%
	1981+	474	42.2%
5. What is your primary county of practice?	Adams	1	0.1%
	Asotin	0	0.0%
	Benton	15	1.4%
	Chelan	10	0.9%
	Clallam	3	0.3%
	Clark	27	2.5%
	Columbia	0	0.0%
	Cowlitz	12	1.1%
	Douglas	2	0.2%
	Ferry	3	0.3%
	Franklin	6	0.6%
	Garfield	0	0.0%
	Grant	12	1.1%
	Grays Harbor	12	1.1%
	Island	5	0.5%
	Jefferson	2	0.2%
	King	571	52.9%
	Kitsap	25	2.3%
	Kittitas	2	0.2%
	Klickitat	1	0.1%
	Lewis	61	0.6%
	Lincoln	1	0.1%

		Number	Percent
	Mason	4	0.4%
	Okanogan	7	0.6%
	Pacific	2	0.2%
	Pend Oreille	1	0.1%
	Pierce	99	9.2%
	San Juan	0	0.0%
	Skagit	12	1.1%
	Skamania	1	0.1%
	Snohomish	53	4.9%
	Spokane	73	6.8%
	Stevens	5	0.5%
	Thurston	37	3.4%
	Wahkiakum	1	0.1%
	Walla Walla	4	0.4%
	Whatcom	16	1.5%
	Whitman	8	0.7%
	Yakima	41	3.8%
	No Response	42	--
6. What is your primary area of practice?	Real Property Law	53	4.8%
	Labor Law	19	1.7%
	Criminal Law	374	33.8%
	Family Law	54	4.9%
	General Practice	102	9.2%
	Probate Law	4	0.4%
	Juvenile Law	5	0.5%
	Taxation Law	5	0.5%
	Business Law	12	1.1%
	Civil Litigation	352	31.8%
	Corporate Law	10	0.9%
	Government/Admin. Law	51	4.6%
	Other	66	6.0%
	No Response	15	--
7. What is your primary type of practice?	Sole Practice	134	12.2%
	Sole Practice w/Associates	42	3.8%
	Sole Practice Sharing Space	39	3.5%
	City/State/County Government	176	16.0%
	Federal Service	9	0.8%
	Judge	2	0.2%
	Commissioner	--	--
	Magistrate	--	--
	Administrative Law Judge	1	0.1%
	Hearings Examiner	1	0.1%
	Partner (2-15 partners)	290	26.3%
	Partner (16-50 partners)	56	5.1%
	Partner (51+ partners)	19	1.7%
	Associate (2-15 partners)	90	8.2%
	Associate (16-50 partners)	36	3.3%
	Associate (51+ partners)	16	1.5%
	Law Professor	2	0.2%
	Corporate Counsel	18	1.6%
	Public Defender	105	9.5%
	Legal Services/Legal Aid	32	2.9%
	Other	34	3.1%
	No Response	20	--
8. Do you belong to any of the following attorney associations?[3]	Washington State Trial Lawyers Association	474	42.2%
	Washington Defender Association	167	14.9%
	Washington Defense Lawyers Association	287	25.6%
	A Minority Bar Association	99	8.8%
	Washington Association of Prosecuting Attorneys	148	13.2%
	Other	275	24.5%

[3] Percentages for each item indicate membership of respondents in that association. A respondent may also be a member of another attorney association.

APPENDIX E
JUDGES' SURVEY RESPONSES[1]

Never	=	0% of the time.
Seldom	=	1 to 10% of the time.
Sometimes	=	11 to 50% of the time.
Often	=	Over 50% of the time.
No Response	=	Not applicable, no direct experience, no basis for opinion; missing answers; or no response.

	Often	Some-times	Seldom	Never	No Response[2]
A. Interaction with Minorities.					
1. In your professional capacity, how often have you worked directly with:					
a. Minority judges, commissioners, or magistrates	37 14.0%	47 17.7%	112 42.3%	69 26.0%	10 --
b. Minority lawyers	45 16.7%	110 40.7%	103 38.1%	12 4.4%	5 --
c. Minority court personnel	68 25.2%	59 21.9%	111 41.1%	32 11.9%	5 --
d. Minority litigants	111 41.4%	103 38.4%	50 18.7%	4 1.5%	7 --
e. Minority witnesses	86 32.5%	107 40.4%	66 24.9%	6 2.3%	10 --
B. Courtroom Interaction during the last five years.					
1. Have you observed court personnel being less respectful or courteous to minority judges than they are to non-minority judges?	-- --	2 1.0%	14 6.9%	186 92.1%	73 --
2. Have you observed court personnel being less respectful or courteous to minority attorneys than they are to non-minority attorneys?	-- --	4 1.5%	20 7.6%	239 90.9%	12 --
3. Have you observed court personnel being less respectful or courteous to minority litigants than they are to non-minority litigants?	3 1.1%	11 4.1%	57 21.1%	199 73.7%	5 --
4. Have you observed court personnel being less respectful or courteous to minority witnesses than they are to non-minority witnesses?	-- --	8 3.1%	45 17.2%	209 79.8%	13 --
5. Have you observed criminal defense attorneys being less respectful or courteous in cross-examining minority witnesses than they are to non-minority witnesses?	-- --	8 3.2%	48 19.4%	192 77.4%	27 --

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[1] Survey respondents were provided the following instructions:

Based upon your court experience in Washington State during the last five years, does the treatment of racial/ethnic minorities vary from that of non-minorities? For the purpose of this survey, racial/ethnic minority is defined as one identified as: Asian or Pacific Islander; Black/African-American; Hispanic or Latino; or Native American. In addition, differences in the treatment of minorities versus non-minorities is assumed to be attributable to the minority status. For each item below, please circle the number which is closest to your answer using the following scale:

1	=	Never	(0%)
2	=	Seldom	(1 to 10% of the time)
3	=	Sometimes	(11 to 50% of the time)
4	=	Often	(Over 50% of the time)
N/A	=	Not applicable, no direct experience, no basis for opinion.	

If you have comments on the treatment of minorities in the state courts, please write them on separate pages and attach them to the questionnaire.

[2] Non-responses are not included in the calculation of percentages.

	Often	Some-times	Seldom	Never	No Response
6. Have you observed **criminal defense attorneys** being less respectful or courteous in cross-examining **minority litigants** than they are to non-minority litigants?	-- --	9 3.6%	50 20.2%	189 76.2%	27 --
7. Have you observed **criminal defense attorneys** being less respectful or courteous in cross-examining **minority victims** than they are to non-minority victims?	-- --	10 4.0%	40 16.1%	198 79.8%	27 --
8. Have you observed **prosecutors** being less respectful or courteous in cross-examining **minority witnesses** than they are to non-minority witnesses?	1 0.4%	10 4.0%	55 21.8%	186 73.8%	23 --
9. Have you observed **prosecutors** being less respectful or courteous in cross-examining **minority litigants** than they are to non-minority litigants?	-- --	10 3.9%	61 24.0%	183 72.0%	21 --
10. Have you observed **prosecutors** being less respectful or courteous in cross-examining **minority victims** than they are to non-minority victims?	-- --	5 2.0%	38 15.3%	206 82.7%	26 --
11. In civil cases, have you observed **counsel for either party** being less respectful or courteous in cross-examining **minority litigants** than they are to non-minority litigants?	1 0.4%	4 1.7%	42 18.1%	185 79.7%	43 --
12. In civil cases, have you observed **counsel for either party** being less respectful or courteous in cross-examining **minority witnesses** than they are to non-minority witnesses?	1 0.4%	4 1.8%	59 26.1%	162 71.7%	49 --
13. Have you observed **non-minority attorneys** being less respectful or courteous to **minority attorneys** than they are to non-minority attorneys?	1 0.4%	5 2.0%	34 13.5%	211 84.1%	24 --
14. Have you observed **non-minority attorneys** objecting more often to presentations of **minority attorneys** than they do to those of non-minority attorneys?	-- --	5 2.0%	28 11.5%	211 86.5%	31 --
15. Have you observed **judges** paying less attention to statements of **minority attorneys** than they do to those of non-minority attorneys?	1 0.4%	2 0.8%	13 5.5%	220 93.2%	39 --
16. Have you observed judges addressing minority attorneys less formally than they do non-minority attorneys during legal proceedings?	-- --	1 0.4%	15 6.4%	217 93.1%	42 --
17. Have you observed judges interrupting the presentations of **minority attorneys** more than they do those of non-minority attorneys?	-- --	2 0.9%	9 3.9%	222 95.3%	42 --
18. Have you observed judges making comments about the personal appearance of **minority litigants** more than that of non-minority litigants?	-- --	1 0.4%	11 4.7%	220 94.8%	43 --
C. Accessibility to Legal Counsel and the Courts.					
Based on your perceptions:					
1. **Do minorities distrust the courts** more than non-minorities?	39 17.5%	117 52.5%	46 20.6%	21 9.4%	52 --
2. **Do minorities utilize the courts** less than non-minorities **because they distrust** the legal system?	14 7.9%	66 37.3%	67 37.9%	30 16.9%	98 --
3. **Do minorities utilize the courts** less than non-minorities because they cannot afford costs associated with trials?	35 18.6%	87 46.3%	39 20.7%	27 14.4%	87 --
4. Do more **minority defendants** than non-minority defendants feel that they will not be adequately represented by court appointed attorneys?	11 5.3%	74 35.6%	81 38.9%	42 20.2%	67 --
Based on your courtroom experience:					
5. Have you observed court appointed attorneys **advising minority defendants** more than non-minority defendants to plead guilty?	4 1.7%	7 3.0%	43 18.5%	179 76.8%	42 --

	Often	Some-times	Seldom	Never	No Response
6. Have you observed court appointed attorneys explaining court proceedings less adequately to minority defendants than they do to non-minority defendants?	3 1.3%	11 4.8%	30 13.1%	185 80.8%	46 --
7. Have you observed judges denying legal rights to minority defendants who are not citizens?	1 0.4%	4 1.8%	12 5.3%	209 92.5%	49 --
8. Have you observed attorneys inadequately representing minority defendants who are not citizens?	3 1.3%	15 6.4%	28 11.9%	190 80.5%	39 --
D. Disparate Treatment of Minorities: Criminal Cases.					
Based on your courtroom observations:					
1. Are minority defendants less likely to be released on their own recognizance than non-minorities charged with the same crime and all other factors being equal?	7 3.0%	35 14.8%	56 23.6%	139 58.6%	38 --
2. Do non-minority defendants avoid trial by pleading guilty to a lesser charge more than minority defendants?	3 1.4%	25 12.1%	61 29.5%	118 57.0%	68 --
3. Do non-minority defendants receive the first-time offender waiver more than minority defendants?	6 3.6%	15 9.0%	32 19.3%	113 68.1%	109 --
4. Do non-minority defendants receive the special sexual offender sentencing alternative more than minority defendants?	5 3.8%	12 9.2%	29 22.3%	84 64.6%	145 --
5. Are bail amounts higher for minority defendants than for non-minority defendants charged with the same crime and all other factors being equal?	2 0.9%	11 4.9%	42 18.7%	170 75.6%	50 --
6. Are minority defendants more likely to receive longer jail sentences than non-minorities convicted of the same crime and all other factors being equal?	5 2.1%	19 7.9%	43 17.8%	174 72.2%	34 --
7. Do non-English speaking defendants understand the impact of a guilty verdict on their present and future immigration status?	92 45.8%	71 35.3%	29 14.4%	9 4.5%	74 --
8. Does counsel tend to recommend dispositional alternatives (e.g., drug treatment programs, supervised home release) for non-minority defendants more than for minority defendants?	8 3.8%	29 13.7%	58 27.5%	116 55.0%	64 --
9. Is there a greater disparity in the result of criminal prosecution when the victim is a minority rather than a non-minority and all other factors being equal?	3 1.3%	21 9.4%	64 28.7%	135 60.5%	52 --
Based on your perceptions:					
10. Do minority defendants see themselves disadvantaged more than non-minority defendants?	52 24.0%	108 49.8%	40 18.4%	17 7.8%	58 --
11. Do minority defendants fear that they will be found guilty more than non-minority defendants?	37 19.5%	95 50.0%	41 21.6%	17 8.9%	85 --
E. Disparate Treatment of Minorities: Civil Cases.					
Based on your courtroom experience:					
1. Have you observed juries awarding lower compensation to minority plaintiffs than to non-minority plaintiffs for similar cases?	2 1.4%	11 7.9%	21 15.1%	105 75.5%	136 --
2. Have you observed attorneys recommending smaller settlement amounts in personal injury cases for minority plaintiffs than for non-minority plaintiffs?	2 1.6%	6 4.7%	16 12.5%	104 81.3%	147 --
3. Have you observed minority litigants seeking recourse through arbitration more than non-minority litigants?	-- --	1 1.1%	9 9.7%	83 89.2%	182 --
4. Have you observed non-minority litigants settling out of court more than minority litigants?	1 0.8%	7 5.8%	21 17.5%	91 75.8%	155 --

	Often	Some-times	Seldom	Never	No Response
5. Have you observed judges ruling in favor of agricultural employers more than agricultural workers?	1 1.0%	4 4.1%	9 9.3%	83 85.6%	178 --
6. Have you observed minority parties in domestic relations cases being treated less advantageously than non-minority parties?	-- --	2 1.2%	20 12.4%	139 86.3%	114 --
Based on your perceptions:					
7. Do minority litigants see themselves as disadvantaged in civil matters more than non-minority litigants?	13 8.6%	71 46.7%	45 29.6%	23 15.1%	123 --
F. Interaction with Tribal Courts.					
1. Have you observed cases where a state judge did not accord full faith and credit to the decisions rendered by a tribal court, when they were applicable?	2 1.7%	2 1.7%	7 5.9%	107 90.7%	157 --
2. In cases where there are conflicting jurisdictional issues, do attorneys conduct adequate research in the area of Native American law?	42 34.1%	35 28.5%	34 27.6%	12 9.8%	152 --
3. Do state courts lack sufficient understanding of tribal sovereignty and tribal court jurisdiction?	36 22.9%	78 49.7%	26 16.6%	17 10.8%	118 --
4. In child custody cases, have you observed cases where the state court has pre-empted the tribal court's decision?	2 1.7%	4 3.5%	22 19.1%	87 75.7%	160 --
G. Interpreters.					
1. Are qualified interpreters available for non-English speaking witnesses/litigants at all levels of legal proceedings?	152 63.6%	55 23.0%	27 11.3%	5 2.1%	36 --
2. Have you heard complaints about interpreters not accurately representing the ideas communicated by non-English speaking litigants or witnesses?	12 4.8%	55 21.8%	73 29.0%	112 44.4%	23 --
3. Are qualified interpreters available for the hearing impaired at all levels of legal proceedings?	108 51.2%	52 24.6%	35 16.6%	16 7.6%	64 --
H. Minorities and the Jury.					
Based on your courtroom observations:					
1. Are minorities adequately represented in the jury pools?	79 34.3%	51 22.2%	80 34.8%	20 8.7%	45 --
2. Are minorities adequately represented on jury panels?	72 31.2%	61 26.4%	81 35.1%	17 7.4%	44 --
3. Do prosecutors systematically use peremptory challenges to eliminate minorities from juries?	7 3.2%	32 14.6%	72 32.9%	108 49.3%	56 --
4. Do criminal defense attorneys systematically use peremptory challenges to eliminate minorities from juries?	3 1.4%	24 11.1%	85 39.2%	105 48.4%	58 --
5. Do plaintiffs' attorneys systematically use peremptory challenges to eliminate minorities from juries?	3 1.7%	17 9.4%	72 39.8%	89 49.2%	94 --
6. Do defense attorneys in civil matters systematically use peremptory challenges to eliminate minorities from juries?	5 2.9%	31 17.9%	56 32.4%	81 46.8%	102 --
Based on your perceptions:					
7. Do you think that minority litigants feel that they will not be judged by a jury of their peers more than non-minority litigants?	36 18.8%	86 44.8%	49 25.5%	21 10.9%	83 --
8. Do you think that jurors give less credibility to minority victims than to non-minority victims?	6 2.9%	44 21.2%	92 44.2%	66 31.7%	67 --
9. Do you think that jurors give less credibility to minority expert witnesses than to non-minority expert witnesses?	4 2.4%	24 14.5%	61 37.0%	76 46.1%	110 --

	Often	Some-times	Seldom	Never	No Response
I. Cultural Awareness and Sensitivity of Court Officials.					
1. Have you observed judges **making jokes or demeaning remarks** about minorities in the court or in their chambers?	1 0.4%	25 9.7%	81 31.4%	151 58.5%	17 --
2. Have you observed cases where judges were lacking **cross-cultural understanding?**	9 3.7%	74 30.2%	93 38.0%	69 28.2%	30 --
3. Have you observed attorneys **making jokes or demeaning remarks** about minorities?	7 2.7%	58 22.1%	115 43.7%	83 31.6%	12 --
4. Have you observed cases where attorneys were lacking **cross-cultural understanding?**	6 2.4%	98 39.5%	88 35.5%	56 22.6%	27 --
5. Have you observed court personnel **making jokes or demeaming remarks** about minorities?	5 1.9%	28 10.6%	94 35.7%	136 51.7%	12 --
6. Have you observed cases where court employees were lacking **cross-cultural understanding?**	9 3.6%	61 24.2%	108 42.9%	74 29.4%	23 --
7. Have you observed judges **failing to communicate effectively** with minorities from different races, ethnic groups or cultures?	9 3.8%	59 24.7%	88 36.8%	83 34.7%	36 --
8. Have you observed attorneys **failing to communicate effectively** with minorities from different races, ethnic groups or cultures?	7 2.8%	67 26.8%	108 43.2%	68 27.2%	25 --
9. Have you observed other court employees **failing to communicate effectively** with minorities from different races, ethnic groups or cultures?	8 3.2%	60 24.1%	104 41.8%	77 30.9%	26 --
10. Do you think that judges' **perceptions about new immigrants** impact their perceptions about minorities in general?	5 2.4%	42 20.3%	81 39.1%	79 38.2%	68 --
11. Do you think that attorneys' **perceptions about new immigrants** impact their perceptions about minorities in general?	3 1.5%	42 20.8%	86 42.6%	71 35.1%	73 --
12. Do you think court employees' **perceptions about new immigrants** impact their perceptions about minorities in general?	6 2.9%	41 20.1%	83 40.7%	74 36.3%	71 --

J. Representation of Minority Court Officials and Personnel.

Based on your opinion:

	Yes	No	Not Sure	No Response
1. Are minorities **adequately represented** among the judiciary at the following levels?				
Supreme Court	122 47.1%	73 28.2%	64 24.7%	16 --
Court of Appeals	50 19.2%	121 46.5%	89 34.2%	15 --
Superior Court	105 40.5%	90 34.7%	64 24.7%	16 --
District Court	71 27.3%	102 39.2%	87 33.5%	15 --
Municipal Court	86 33.0%	73 28.0%	102 39.1%	14 --
2. Are minorities **adequately represented among:**				
County Clerks	52 20.0%	81 31.2%	127 48.8%	15 --
Court Administrators	43 16.5%	92 35.4%	125 48.1%	15 --

	Yes	No	Not Sure	No Response
Bailiffs	75 28.8%	71 27.3%	114 43.8%	15 --
Court Clerks	79 30.4%	75 28.8%	106 40.8%	15 --
Support Staff	89 34.5%	66 25.6%	103 39.9%	17 --
3. Are minorities **adequately represented** among:				
Public Defenders	114 44.0%	65 25.1%	80 30.9%	16 --
Prosecutors	82 31.8%	96 37.2%	80 31.0%	17 --
Private Attorneys	97 37.5%	82 31.7%	80 30.9%	16 --
4. Are minorities provided **advancement opportunities** in the courts?	123 50.0%	19 7.7%	104 42.3%	29 --

K. Demographic Information.

To help us interpret the information gathered on this form, please answer the following demographic questions.

		Number	Percent
1. What is your gender?	Female	42	15.6%
	Male	227	84.4%
	No Response	6	--
2. What is your age?	30 years or less	--	--
	31-35 Years	8	3.0%
	36-40 Years	33	12.3%
	41-45 Years	54	20.1%
	46-50. Years	41	15.3%
	51-55 Years	34	12.7%
	56-60 Years	46	17.2%
	61-65 Years	34	12.7%
	66 or more years	18	6.7%
	No Response	7	--
3. What is your racial/ethnic background?	Asian or Pacific Islander	4	1.5%
	Black/African-American	5	1.9%
	Caucasian/White	250	92.9%
	Hispanic or Latino	2	0.7%
	Native American	--	--
	Other	8	3.0%
	No Response	6	--
4. What is your current court level?	Supreme Court	6	2.2%
	Court of Appeals	17	6.3%
	Superior Court	136	50.7%
	District Court	51	19.0%
	Municipal Court	35	13.1%
	District/Municipal Court	23	8.6%
	No Response	7	--
5. What is your judicial position?	Judge	219	82.6%
	Commissioner	42	15.8%
	Magistrate	4	1.5%
	No Response	10	--

APPENDIX F
COURT PERSONNEL SURVEY RESPONSES[1]

Never	=	0% of the time.
Seldom	=	1 to 10% of the time.
Sometimes	=	11 to 50% of the time.
Often	=	Over 50% of the time.
No Response	=	Not applicable, no direct experience, no basis for opinion; missing answers; or no response.

	Often	Some-times	Seldom	Never	No Response[2]
A. Interaction with Minorities.					
1. In your professional capacity, how often have you worked directly with:					
a. Minority judges, commissioners, or magistrates	52 9.1%	58 10.1%	118 20.6%	346 60.3%	70 --
b. Minority lawyers	61 10.2%	175 29.2%	282 47.1%	81 13.5%	45 --
c. Minority court personnel	149 24.5%	136 22.4%	190 31.3%	133 21.9%	36 --
d. Minority litigants	221 37.8%	209 35.8%	110 18.8%	44 7.5%	60 --
e. Minority witnesses	147 26.2%	207 36.8%	158 28.1%	50 8.9%	82 --
B. Courtroom Interaction during the last five years.					
1. Have you observed court personnel being less respectful or courteous to minority judges than they are to non-minority judges?	3 0.9%	12 3.5%	15 4.4%	313 91.3%	301 --
2. Have you observed court personnel being less respectful or courteous to minority attorneys than they are to non-minority attorneys?	2 0.4%	15 2.8%	42 7.7%	485 89.2%	100 --
3. Have you observed court personnel being less respectful or courteous to minority litigants than they are to non-minority litigants?	14 2.5%	39 6.8%	82 14.4%	435 76.3%	74 --
4. Have you observed court personnel being less respectful or courteous to minority witnesses than they are to non-minority witnesses?	9 1.6%	28 5.1%	63 11.5%	447 81.7%	97 --

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[1] Survey respondents were provided the following instructions:

Based upon your court experience in Washington State during the last five years, does the treatment of racial/ethnic minorities vary from that of non-minorities? For the purpose of this survey, racial/ethnic minority is defined as one identified as: Asian or Pacific Islander; Black/African-American; Hispanic or Latino; or Native American. In addition, differences in the treatment of minorities versus non-minorities is assumed to be attributable to the minority status. For each item below, please circle the number which is closest to your answer using the following scale:

1	=	Never	(0%)
2	=	Seldom	(1 to 10% of the time)
3	=	Sometimes	(11 to 50% of the time)
4	=	Often	(Over 50% of the time)
N/A	=	Not applicable, no direct experience, no basis for opinion.	

If you have comments on the treatment of minorities in the state courts, please write them on separate pages and attach them to the questionnaire.

[2] Non-responses are not included in the calculation of percentages.

	Often	Some-times	Seldom	Never	No Response
5. Have you observed **criminal defense attorneys** being less respectful or courteous in cross-examining **minority witnesses** than they are to non-minority witnesses?	8 1.7%	20 4.1%	72 14.9%	383 79.3%	161 --
6. Have you observed **criminal defense attorneys** being less respectful or courteous in cross-examining **minority litigants** than they are to non-minority litigants?	6 1.3%	18 3.8%	68 14.3%	385 80.7%	167 --
7. Have you observed **criminal defense attorneys** being less respectful or courteous in cross-examining **minority victims** than they are to non-minority victims?	5 1.1%	29 6.1%	63 13.2%	379 79.6%	168 --
8. Have you observed **prosecutors** being less respectful or courteous in cross-examining **minority witnesses** than they are to non-minority witnesses?	10 2.1%	28 5.8%	70 14.5%	375 77.6%	161 --
9. Have you observed **prosecutors** being less respectful or courteous in cross-examining **minority litigants** than they are to non-minority litigants?	12 2.5%	26 5.5%	65 13.6%	374 78.4%	167 --
10. Have you observed **prosecutors** being less respectful or courteous in cross-examining **minority victims** than they are to non-minority victims?	6 1.2%	28 5.8%	51 10.6%	397 82.4%	162 --
11. In civil cases, have you observed **counsel for either party** being less respectful or courteous in cross-examining **minority litigants** than they are to non-minority litigants?	4 0.9%	21 4.9%	58 13.4%	349 80.8%	212 --
12. In civil cases, have you observed **counsel for either party** being less respectful or courteous in cross-examining **minority witnesses** than they are to non-minority witnesses?	4 1.0%	15 3.6%	63 15.3%	329 80.0%	233 --
13. Have you observed **non-minority attorneys** being less respectful or courteous to **minority attorneys** than they are to non-minority attorneys?	-- --	15 3.0%	57 11.3%	431 85.7%	141 --
14. Have you observed **non-minority attorneys** objecting more often to presentations of **minority attorneys** than they do to those of non-minority attorneys?	4 0.9%	9 2.0%	48 10.7%	388 86.4%	195 --
15. Have you observed **judges** paying less attention to statements of **minority attorneys** than they do to those of non-minority attorneys?	4 0.8%	14 2.9%	33 6.7%	439 89.6%	154 --
16. Have you observed **judges** addressing **minority attorneys** less formally than they do non-minority attorneys during legal proceedings?	5 1.0%	9 1.8%	28 5.7%	450 91.5%	152 --
17. Have you observed **judges** interrupting the presentations of **minority attorneys** more than they do those of non-minority attorneys?	3 0.6%	11 2.3%	34 7.1%	434 90.0%	162 --
18. Have you observed **judges** making comments about the personal appearance of **minority litigants** more than that of non-minority litigants?	7 1.3%	10 1.9%	41 7.9%	462 88.8%	124 --
C. Accessibility to Legal Counsel and the Courts.					
Based on your perceptions:					
1. **Do minorities distrust the courts** more than non-minorities?	93 18.7%	216 43.4%	119 23.9%	70 14.1%	146 --
2. **Do minorities utilize the courts** less than non-minorities **because they distrust the legal system?**	43 10.0%	128 29.8%	142 33.0%	117 27.2%	214 --
3. **Do minorities utilize the courts** less than non-minorities because they cannot afford costs associated with trials?	98 22.1%	113 25.5%	123 27.8%	109 24.6%	201 --
4. Do more **minority defendants** than non-minority defendants feel that they will not be adequately represented by court appointed attorneys?	58 13.4%	156 35.9%	130 30.0%	90 20.7%	210 --

	Often	Some-times	Seldom	Never	No Response
Based on your courtroom experience:					
5. Have you observed court appointed attorneys advising minority defendants more than non-minority defendants to plead guilty?	20 4.5%	33 7.4%	60 13.5%	333 74.7%	198 --
6. Have you observed court appointed attorneys explaining court proceedings less adequately to minority defendants than they do to non-minority defendants?	14 3.0%	41 8.8%	48 10.3%	363 77.9%	178 --
7. Have you observed judges denying legal rights to minority defendants who are not citizens?	5 1.1%	15 3.2%	9 1.9%	447 93.9%	168 --
8. Have you observed attorneys inadequately representing minority defendants who are not citizens?	9 2.0%	17 3.8%	42 9.3%	382 84.9%	194 --
D. Disparate Treatment of Minorities: Criminal Cases.					
Based on your courtroom observations:					
1. Are minority defendants less likely to be released on their own recognizance than non-minorities charged with the same crime and all other factors being equal?	25 5.4%	47 10.2%	90 19.6%	298 64.8%	184 --
2. Do non-minority defendants avoid trial by pleading guilty to a lesser charge more than minority defendants?	21 5.3%	61 15.3%	120 30.2%	196 49.2%	246 --
3. Do non-minority defendants receive the first-time offender waiver more than minority defendants?	12 3.3%	26 7.2%	62 17.2%	261 72.3%	283 --
4. Do non-minority defendants receive the special sexual offender sentencing alternative more than minority defendants?	14 5.1%	14 5.1%	33 12.0%	213 77.7%	370 --
5. Are bail amounts higher for minority defendants than for non-minority defendants charged with the same crime and all other factors being equal?	13 3.0%	21 4.9%	63 14.7%	333 77.4%	214 --
6. Are minority defendants more likely to receive longer jail sentences than non-minorities convicted of the same crime and all other factors being equal?	14 3.1%	38 8.3%	66 14.4%	339 74.2%	187 --
7. Do non-English speaking defendants understand the impact of a guilty verdict on their present and future immigration status?	151 43.4%	101 29.0%	62 17.8%	34 9.8%	296 --
8. Does counsel tend to recommend dispositional alternatives (e.g., drug treatment programs, supervised home release) for non-minority defendants more than for minority defendants?	25 6.0%	53 12.8%	85 20.5%	251 60.6%	230 --
9. Is there a greater disparity in the result of criminal prosecution when the victim is a minority rather than a non-minority and all other factors being equal?	19 4.5%	36 8.6%	75 17.9%	289 69.0%	225 --
Based on your perceptions:					
10. Do minority defendants see themselves disadvantaged more than non-minority defendants?	121 25.6%	187 39.5%	99 20.9%	66 14.0%	171 --
11. Do minority defendants fear that they will be found guilty more than non-minority defendants?	103 23.4%	176 39.9%	91 20.6%	71 16.1%	203 --
E. Disparate Treatment of Minorities: Civil Cases.					
Based on your courtroom experience:					
1. Have you observed juries awarding lower compensation to minority plaintiffs than to non-minority plaintiffs for similar cases?	9 3.4%	11 4.1%	40 15.0%	207 77.5%	377 --
2. Have you observed attorneys recommending smaller settlement amounts in personal injury cases for minority plaintiffs than for non-minority plaintiffs?	5 2.0%	6 2.4%	29 11.6%	209 83.9%	395 --

	Often	Some-times	Seldom	Never	No Response
3. Have you observed minority litigants seeking recourse through **arbitration** more than non-minority litigants?	2 1.0%	5 2.6%	32 16.8%	152 79.6%	453 --
4. Have you observed non-minority litigants **settling out of court** more than minority litigants?	6 2.6%	24 10.4%	41 17.8%	159 69.1%	414 --
5. Have you observed judges **ruling in favor** of agricultural employers more than agricultural workers?	6 3.2%	8 4.2%	15 7.9%	160 84.7%	455 --
6. Have you observed minority parties in domestic relations cases being **treated less advantageously** than non-minority parties?	7 2.1%	15 4.5%	31 9.3%	282 84.2%	309 --
Based on your perceptions:					
7. Do minority litigants see themselves as **disadvantaged in civil matters** more than non-minority litigants?	49 14.2%	121 35.2%	82 23.8%	92 26.7%	300 --
F. Interaction with Tribal Courts.					
1. Have you observed cases where a state judge did **not accord full faith and credit** to the decisions rendered by a tribal court, when they were applicable?	1 0.7%	7 5.1%	7 5.1%	121 89.0%	508 --
2. In cases where there are **conflicting jurisdictional issues**, do attorneys conduct adequate research in the area of Native American law?	52 46.0%	17 15.0%	20 17.7%	24 21.2%	531 --
3. Do state courts lack **sufficient understanding** of tribal sovereignty and tribal court jurisdiction?	22 17.1%	36 27.9%	24 18.6%	47 36.4%	515 --
4. In child custody cases, have you observed cases where the state court has **pre-empted** the tribal court's decision?	3 2.7%	9 8.0%	18 16.1%	82 73.2%	532 --
G. Interpreters.					
1. Are qualified interpreters available for **non-English speaking witnesses/litigants** at all levels of legal proceedings?	406 75.2%	82 15.2%	37 6.9%	15 2.8%	104 --
2. Have you heard complaints about interpreters not **accurately representing** the ideas communicated by non-English speaking litigants or witnesses?	24 4.5%	69 12.9%	85 15.9%	356 66.7%	110 --
3. Are qualified interpreters available for the **hearing impaired** at all levels of legal proceedings?	264 61.5%	80 18.6%	51 11.9%	34 7.9%	215 --
H. Minorities and the Jury.					
Based on your courtroom observations:					
1. Are minorities adequately represented in the **jury pools**?	145 34.6%	96 22.9%	136 32.5%	42 10.0%	225 --
2. Are minorities adequately represented on **jury panels**?	141 32.9%	100 23.4%	145 33.9%	42 9.8%	216 --
3. Do **prosecutors** systematically use **peremptory challenges** to eliminate minorities from juries?	13 3.5%	39 10.5%	92 24.9%	226 61.1%	274 --
4. Do **criminal defense attorneys** systematically use **peremptory challenges** to eliminate minorities from juries?	8 2.2%	31 8.5%	104 28.5%	222 60.8%	279 --
5. Do **plaintiffs' attorneys** systematically use **peremptory challenges** to eliminate minorities from juries?	7 2.0%	33 9.6%	94 27.3%	210 61.0%	300 --
6. Do **defense attorneys in civil matters** systematically use **peremptory challenges** to eliminate minorities from juries?	4 1.3%	31 10.4%	81 27.1%	183 61.2%	345 --

	Often	Some-times	Seldom	Never	No Response
Based on your perceptions:					
7. Do you think that **minority litigants** feel that they will not be judged by a jury of their **peers** more than non-minority litigants?	86 21.2%	163 40.1%	90 22.2%	67 16.5%	238 --
8. Do you think that **jurors give less credibility to minority victims** than to non-minority victims?	35 8.0%	85 19.4%	147 33.6%	71 39.0%	206 --
9. Do you think that **jurors give less credibility to minority expert witnesses** than to non-minority expert witnesses?	24 5.7%	55 13.0%	125 29.6%	219 51.8%	221 --
I. Cultural Awareness and Sensitivity of Court Officials.					
1. Have you observed judges **making jokes or demeaning remarks** about minorities in the court or in their chambers?	14 2.4%	52 8.9%	81 13.9%	435 74.7%	62 --
2. Have you observed cases where judges were lacking **cross-cultural understanding**?	33 6.0%	83 15.1%	111 20.2%	323 58.7%	94 --
3. Have you observed attorneys **making jokes or demeaning remarks** about minorities?	17 2.9%	84 14.4%	153 26.3%	328 56.4%	62 --
4. Have you observed cases where attorneys were lacking **cross-cultural understanding**?	33 6.0%	119 21.8%	129 23.6%	265 48.5%	98 --
5. Have you observed court personnel **making jokes or demeaning remarks** about minorities?	27 4.5%	89 14.9%	185 30.9%	298 49.7%	45 --
6. Have you observed cases where court employees were lacking **cross-cultural understanding**?	47 8.3%	116 20.6%	167 29.7%	233 41.4%	81 --
7. Have you observed judges **failing to communicate effectively** with minorities from different races, ethnic groups or cultures?	27 4.8%	82 14.6%	163 29.1%	288 51.4%	84 --
8. Have you observed attorneys **failing to communicate effectively** with minorities from different races, ethnic groups or cultures?	23 4.2%	99 18.0%	184 33.5%	243 44.3%	95 --
9. Have you observed other court employees **failing to communicate effectively** with minorities from different races, ethnic groups or cultures?	31 5.4%	119 20.7%	193 33.6%	232 40.3%	69 --
10. Do you think that judges' **perceptions about new immigrants** impact their perceptions about minorities in general?	19 4.4%	54 12.6%	120 27.9%	237 55.1%	214 --
11. Do you think that attorneys' **perceptions about new immigrants** impact their perceptions about minorities in general?	18 4.3%	69 16.4%	131 31.1%	203 48.2%	223 --
12. Do you think court employees' **perceptions about new immigrants** impact their perceptions about minorities in general?	23 4.9%	90 19.3%	145 31.0%	209 44.8%	177 --

J. Representation of Minority Court Officials and Personnel.

Based on your opinion:	Yes	No	Not Sure	No Response
1. **Are minorities adequately represented** among the judiciary at the following levels?				
Supreme Court	105 17.3%	132 21.8%	369 60.9%	38 --
Court of Appeals	76 12.6%	133 22.0%	395 65.4%	40 --
Superior Court	168 27.6%	177 29.1%	263 43.3%	36 --
District Court	158 25.8%	184 30.0%	271 44.2%	31 --

	Often	Some-times	Seldom	Never	No Response
Municipal Court	153 24.9%	143 23.3%	318 51.8%	30 --
2. Are minorities adequately represented among:				
County Clerks	165 26.8%	184 29.9%	266 43.3%	29 --
Court Administrators	121 19.6%	233 37.8%	262 42.5%	28 --
Bailiffs	164 26.8%	189 30.8%	260 42.4%	31 --
Court Clerks	236 38.1%	197 31.8%	186 30.0%	25 --
Support Staff	233 37.8%	176 28.5%	208 33.7%	27 --
3. Are minorities adequately represented among:				
Public Defenders	210 33.8%	173 27.8%	239 38.4%	22 --
Prosecutors	178 28.7%	206 33.2%	236 38.1%	24 --
Private Attorneys	209 33.8%	162 26.2%	248 40.1%	25 --
4. Are minorities provided advancement opportunities in the courts?	245 41.0%	64 10.7%	289 48.3%	46 --

K. Demographic Information.

To help us interpret the information gathered on this form, please answer the following demographic questions.

		Number	Percent
1. What is your gender?	Female	523	82.1%
	Male	114	17.9%
	No Response	7	--
2. What is your age?	30 Years or less	103	16.2%
	31-35 Years	103	16.2%
	36-40 Years	109	17.2%
	41-45 Years	123	19.4%
	46-50 Years	80	12.6%
	51-55 Years	45	7.1%
	56-60 Years	48	7.6%
	61-65 Years	13	2.1%
	66 or more years	10	1.6%
	No Response	10	--
3. What is your racial/ethnic background?	Asian or Pacific Islander	21	3.3%
	Black/African-American	17	2.7%
	Caucasian/White	542	85.6%
	Hispanic or Latino	21	3.3%
	Native American	14	2.2%
	Other	18	2.8%
	No Response	11	--
4. In what court level are you employed?	Supreme Court	21	3.3%
	Court of Appeals	51	8.1%
	Superior Court	293	46.4%
	District Court	180	28.5%
	Municipal Court	75	11.9%
	District/Municipal Court	11	1.7%
	No Response	13	--
5. In which county are you employed?	Adams	4	0.7%
	Asotin	2	0.3%
	Benton	20	3.4%
	Chelan	11	1.9%

		Number	Percent
	Clallam	5	0.9%
	Clark	17	2.9%
	Columbia	2	0.3%
	Cowlitz	18	3.1%
	Douglas	4	0.7%
	Ferry	0	0.0%
	Franklin	11	0.3%
	Garfield	0	0.0%
	Grant	13	2.2%
	Grays Harbor	13	2.2%
	Island	8	1.4%
	Jefferson	4	0.7%
	King	160	27.3%
	Kitsap	19	3.2%
	Kittitas	4	0.7%
	Klickitat	2	0.3%
	Lewis	8	1.4%
	Lincoln	0	0.0%
	Mason	4	0.7%
	Okanogan	4	0.7%
	Pacific	1	0.2%
	Pend Oreille	2	0.3%
	Pierce	49	8.3%
	San Juan	2	0.3%
	Skagit	21	3.6%
	Skamania	0	0.0%
	Snohomish	60	10.2%
	Spokane	63	10.7%
	Stevens	5	0.9%
	Thurston	34	5.8%
	Wahkiakum	1	0.2%
	Walla Walla	4	0.7%
	Whatcom	11	1.9%
	Whitman	2	0.3%
	Yakima	10	1.7%
	No Response	57	--
6. What is your position?	Court Clerk	240	39.4%
	Record Clerk	14	2.3%
	Law Clerk	34	5.6%
	Legal Assistant	13	2.1%
	Court Administrator	52	8.5%
	Juvenile Court Administrator	3	0.5%
	Court Reporter	27	4.4%
	County Clerk	29	4.8%
	Office Manager	10	1.6%
	Administrative Assistant	23	3.8%
	Secretary	14	2.3%
	Cashier	5	0.8%
	Interpreter	30	4.9%
	Bailiff	41	6.7%
	Other	74	12.2%
	No Response	35	--
7. Where do you usually work?	In Court	113	18.4%
	Outside Court	182	29.6%
	Both Inside and Outside Court	300	48.8%
	Other	20	3.3%
	No Response	29	--

APPENDIX G: THE SURVEY QUESTIONNAIRE

THE WASHINGTON STATE BAR ASSOCIATION IS ASSISTING THE STATE OF WASHINGTON MINORITY AND JUSTICE TASK FORCE IN CONDUCTING A DEMOGRAPHIC SURVEY OF THE BAR MEMBERSHIP. RESPONSE TO THIS SURVEY IS VOLUNTARY. INFORMATION WILL BE USED FOR VALID STATISTICAL PURPOSES ONLY.

MEMBERSHIP SURVEY

1.0 GENDER Female _____ Male _____

2.0 DATE OF BIRTH (Month/Day/Year) ____/____/____

3.0 RACIAL OR ETHNIC GROUP

_____ Asian _____ Black _____ Caucasian
_____ Hispanic _____ Native American _____ Other (Specify) _____

4.0 LAW SCHOOL GRADUATED

_____ Gonzaga University _____ University of Puget Sound
_____ University of Washington _____ Other(Specify)_____

5.0 YEAR FIRST ADMITTED TO PRACTICE _____

6.0 YEAR ADMITTED TO WASHINGTON BAR _____

7.0 COUNTY WHERE YOUR OFFICE IS LOCATED _____

8.0 TYPE OF PRACTICE OR OTHER PROFESSIONAL ACTIVITY

_____ Government Attorney _____ Legal Services/Public Defender
_____ Private Practice _____ Corporate Counsel
_____ Law School Faculty (full-time) _____ Law School Faculty (adjunct)
_____ Other Law Related (Specify) _____
_____ Non-Law Related (Specify) _____

9.0 IF IN PRIVATE PRACTICE OF LAW AS OF JULY 1, 1988, WERE YOU

_____ Sole Practioner
_____ Law Firm: _____ Partner _____ Associate

10.0 WASHINGTON STATE BAR ASSOCIATION ACTIVITIES

_____ Officer (Current) _____ Officer (Past)
_____ Committee (Current) _____ Committee (Past)
_____ Task Force (Current) _____ Task Force (Past)
_____ Section Member

11.0 APPROXIMATE GROSS ANNUAL INCOME

_____ $25,000.00 or Below _____ $25,001.00 - $50,000.00
_____ $50,001.00 - $75,000.00 _____ $75,001.00 - $100,000.00
_____ $100,001.00 or Above

IF YOU ARE WILLING TO RESPOND TO A RESEARCH PROJECT RELATING TO THE STATUS OF ETHNIC MINORITIES AND WOMEN IN THE LEGAL PROFESSION IN WASHINGTON, PLEASE PROVIDE THE FOLLOWING:

NAME _____
ADDRESS _____ CITY _____ STATE _____ ZIP _____

(You may return this survey separately or with your CLE Affidavit. If returned separately, please fold and staple or tape so that the Bar Association address and your stamp are visible [see reverse side] to the postmaster.)

APPENDIX H

THE SAMPLE AND SAMPLE SELECTION FOR THE BAR SURVEY QUESTIONNAIRE[6]

Representativeness of the Bar Survey Sample

This part of the report discusses the survey sample. A major concern is whether the results of the Bar survey are statistically representative of the actual composition of the Washington State Bar Association. Because the survey data are based upon a "self-selected" sample of the Association's membership--that is, those attorneys who decided to respond to the questionnaire--there may be biases in the sample which make generalization to all Bar Association members impossible. Most important, of course, are race, ethnicity and gender and whether the composition of the survey sample with respect to minorities is similar to the Association's entire membership.

Regrettably, there exists no readily available and recent census of attorneys in Washington State with information on their race, ethnicity and gender. Determining the "representativeness" of the Bar survey sample with respect to race, ethnicity and gender becomes a matter of estimation from other available sources of information on attorneys and the general population in the state and the nation as a whole.

One approach to this estimation problem compares information on the racial and ethnic composition of: 1) the sample; 2) all attorneys in the United States; 3) the general population of Washington State; and 4) the population of the United States. In the case of Blacks, two particularly important findings emerge when these sources of information are compared. First, there is a smaller share of Black attorneys in the Washington Bar sample than in the nation as a whole. While the sample includes 1.3% Blacks, the census of attorneys in the United States based on census and other figures, includes 3.4% Blacks. Second, the general population of Washington as a whole includes much smaller percentages of Blacks than the United States population. Blacks represent 2.3% of the state's population, while they represent 11.2% of the United States population.

If the racial and ethnic composition of Washington's population were similar to the nation as a whole, we would expect that the composition of the Washington Bar would approximate that of all attorneys in the United States. Thus, we would expect there would be approximately 3.4% Black attorneys in the survey sample. Of course, Washington's general population actually has a smaller percentage of minorities than the United States population. It is therefore not unreasonable to expect that the Washington Bar would have different percentages of minorities than the census of attorneys in the United States.

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[6]Appendix H. was prepared by George S. Bridges, Ph.D.

One possible approach to this estimation problem is to compare the percentages of minority attorneys in the state and United States with the percentages of minorities in the general populations of the state and the nation as a whole. All other factors being equal, the percentages of Black attorneys in Washington should equal the percentages of Black attorneys in the United States as a whole, once adjustments are made for differences between the racial and ethnic composition of the populations of Washington State and the country as a whole. Given that the actual percentage of minority attorneys in Washington is unknown, we may assume that the ratio of (1) the percentage of minority attorneys in the state to (2) the percentage of minorities in the general population in the state should roughly equal the ratio of the percentage of minorities attorneys in the United States to the percentage of minorities in the general population in the United States.

In fact, a larger percentage of Black attorneys is observed than would be expected if the percentages of minority attorneys are proportional to the percentages of minorities in the general populations. According to this reasoning, the survey sample should contain approximately .7% Blacks–3.4% divided by 11.2% and all multiplied by 2.3%–rather than 1.3%. By this standard, the sample slightly over-represents Blacks.

Such differences may be explained by many factors. For example, there may be more Black attorneys in Washington State than expected because there may be more Black professionals in Washington than in other areas of the country. An alternative explanation of the overrepresentation of Blacks looks to the rate at which persons responded to the survey. Due to the topic of the survey and concerns of the Task Force, Black attorneys may have been more interested and willing to respond to the survey than other attorneys. With higher response rates, Blacks would appear overrepresented in the survey data.

An alternative and less formal approach to estimating the representativeness of the sample is to survey informally minority bar associations across the state of Washington, compiling the number of attorneys participating in these organizations. As part of the study, such a survey was conducted for Black attorneys. The results of that survey yielded estimates quite similar to those reported above. For a further analysis of these issues, see Minority and Justice Task Force, 1988 Bar Membership Survey Data, April 1989.

The largest concern in this type of study is whether sampling biases, large or small, in any way distort the interpretation of the empirical results. Two points are important here. First, sampling biases such as those described above, however large or small, distort point estimates of population values such that it is impossible to estimate accurately population values or characteristics. For example, the sampling biases with respect to race, ethnicity or gender preclude precise estimation of the actual number of minority attorneys in the State Bar.

Second, the biases may distort analyses of relationships between variables such as race and income, educational attainment and income, gender and educational attainment, and so forth. In order to assess the possible effects of sampling biases with respect to race, ethnicity and gender, the analyses reported in Section IV–the multivariate analyses of factors associated with attorney income–were replicated with sampling weights in order to adjust for the potential effects of underrepresentation and/or overrepresentation of some racial

or ethnic groups and the composition of the sample with respect to women. Results of these additional analyses were negative–the findings reported in Section IV were replicated completely when sampling weights were included.

APPENDIX I

LIST OF RANKED LAW SCHOOLS INCLUDED IN "RANKING THE LAW SCHOOLS: THE REALITY OF ILLUSION?"[7]

Boston College
Brigham Young University
Boston University
University of California, Berkeley
University of California, Davis
University of California, San Francisco
University of California, Los Angeles
University of Chicago
University of Connecticut
University of Colorado
Columbia University
Cornell University
Duke University
University of Florida
George Washington University
Georgetown University
Harvard University
University of Illinois
University of Iowa
University of Michigan
University of Minnesota
University of North Carolina
Northeastern University
Northwestern University
New York University
University of Pennsylvania
Rutgers University
University of Southern California
Stanford University
University of Texas
Vanderbilt University
University of Virginia
University of Washington
William and Mary
Yale University

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[7]This list is comprised of law schools which ranked in the top twenty percent (20%) of all accredited law schools in the country. The law schools have been listed in alphabetical order.

APPENDIX J

VARIOUS JUDICIAL SCREENING COMMITTEES: THEIR PROCESSES AND PROCEDURES

The Washington Women Lawyers (WWL) of SKCBA endorses and rates candidates for appointments and elections to the municipal, district and superior benches. The State WWL evaluates and endorses aspirants for the appellate benches. The King County WWL's screening committee is composed of fourteen members, selected by the president of the organization and with an eye toward balancing representation between private and public sectors, plaintiff and defense bars, and prosecutor and defense attorneys. In contested races for municipal, district and superior benches in King County, the WWL invites the contenders to an interview session with members of its screening committee. Not all accept the invitation.

For appointments, announcements of the group's screening sessions are published in the SKCBA Bar Bulletin and aspiring candidates can call to schedule an interview. A version of SKCBA's candidate questionnaire is used by the screening committee in preparation for the interviews, and, of course, special attention is given to the candidates' attitudes toward gender issues. A three step rating system, recently more clearly defined, is used--"highly qualified," "qualified," and "unqualified." If a candidate declines to participate in the evaluation by the screening committee, he or she receives a "no rating" designation.[1] The recommendations of the screening committee now go directly to the WWL governing board for final approval rather than to the general membership and then to the appointing authorities or to the media in elections. The WWL also holds forums on "How to be a Judge" in order to encourage judicial aspirants to come forward.

The Washington Women's Political Caucus also works toward influencing the appointment and election of judges to all levels of the state judiciary. The state organization pays attention to those being considered for the appellate benches and, if a local chapter is not active, for other appointments. Because little time is available for evaluations of possible appointees, the caucus usually relies on an informal network for gathering information. Candidates are rarely interviewed, but sufficient information on their attitudes toward fundamental women's issues (e.g., Equal Rights Amendment, Roe v. Wade, government's role in child care) is collected from candidates, references, and the informal network. Often letters to the appointing authorities will urge rejection of a candidate because of his or her unacceptable views on gender issues.

For elections, the Caucus's ten person evaluation committee gathers information on a candidate's record on women's issues and submits its recommendations to a steering

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[1] Recently, approximately twenty-five applicants were considered for two municipal court vacancies, but only six received favorable WWL endorsement. The 1989 committee had no minority attorney representation although previously minorities had been appointed to the committee.

committee or to the full membership for a formal vote. The Caucus's endorsement can be used in the candidate's campaign materials and a press release notifies the voters of the Caucus's decision. The Caucus also gives special endorsements several months before the July deadline for filing for elective office. These early endorsements are designed to discourage others from filing against a favored candidate. On occasion, the group will release its evaluations of an unacceptable judicial candidate even though he or she might remain unchallenged on the ballot. The caucus regards its role as a watchdog, providing a veto over the appointment or election of candidates–judicial and otherwise–who fail to be sensitive to women's issues.

The Loren Miller Bar Association, with a membership of approximately 175 African-American attorneys throughout the state, has a six-member judicial evaluation committee that screens and rates candidates for both elections and appointments and for all levels of the state and county benches. In King County the committee makes itself available for interviews with candidates when a vacancy is announced and prior to the September primary elections in contested races.

Community activities, pro bono commitments, sensitivity to issues confronting people of color, and public service involvement are special concerns for the committee. The rating system varies from "exceptionally well qualified" to "unqualified." Those interviewed are all notified of the results of the evaluation and the ratings are released to the press before elections and to the governor, county council or mayor for appointments.

A seven member screening committee of the Asian Bar Association of Washington follows a process similar to that followed by SKCBA. A questionnaire similar to SKCBA's is used which also gathers information on issues of special interest to Asians and minorities (e.g., memberships in private clubs, minority clients, pro bono work and activities in minority communities). Background work on possible appointees is divided among the members of the committee, interviews are conducted, and prior to a final vote on a rating, input is considered from the general membership of approximately one hundred attorneys and other interested parties. The committees rating decision is final and released directly to the appointing authority or to the media in contested elections. Recently, the Association has sponsored a "brown bag" luncheon session on judicial selection in order to inform and encourage members and others to consider a judgeship.

The Seattle Municipal League also evaluates judicial candidates in contested elections for the superior court and for Division I of the Court of Appeals. A subcommittee of the League's Candidate Evaluation Committee, composed of interested League members and seven or so invited attorneys (a total of twelve to fifteen members) is responsible for screening and rating candidates. Candidates in contested races are invited to a general orientation session with the League where procedures, goals and criteria are discussed. Later, each candidate is interviewed by the subcommittee at a thirty minute session. On occasion, candidates may be rated without the interview, and, of course, a candidate may decline to participate. Based on the results of the interview, on responses from references and others who the subcommittee may contact, and on the members own investigation (using media accounts, letters, personal knowledge, etc.), each candidate is rated on a scale from

"outstanding," "very good," "good," "fair," to "poor." When an aspirant's file is incomplete or if he or she declines to participate, they receive a "no rating because of not enough information". A press conference is called and the results of the evaluation are released before the September primaries and, if necessary, the November elections.[2]

[2]A knowledgeable member of the League estimated that the League's rating can swing 5% or 6% of the vote. In close races, of course, this swing in the vote can determine the outcome. The League is nonpartisan and attributes much of its influence to this fact.

APPENDIX K

The Supreme Court

State of Washington

BARBARA DURHAM
JUSTICE
TEMPLE OF JUSTICE
MAIL STOP AV-11
OLYMPIA, WASHINGTON
98504-0511

(206) 357-2049

TO: All Staff

FROM: Durham, J.

DATE: October 17, 1990

RE: Equal Opportunity Program

At the October 4, 1990 en banc, the Court adopted the attached Equal Opportunity Program. This program was developed and recommended to the Court by the Supreme Court Personnel Policies Development Committee. The intent of the program is to provide equal employment opportunities for all current staff and potential employees of the Court.

All employees share the responsibility of equal employment opportunity within the Court. Please read the program and become familiar with its concepts. Your department head or our Personnel Department can answer any questions you may have about the program.

Enclosure: Equal Opportunity Program

cc: Justices
Department Heads

EQUAL OPPORTUNITY PROGRAM

Equal Opportunity Policy Statement

It shall be the policy of the judicial branch to provide equal employment opportunity to all persons regardless of race, color, sex, creed, religion, sexual orientation, age, national origin, disability, marital, veteran's or disabled veteran's status.

The judicial branch will continue to strive to eliminate all barriers to equal employment opportunity and improve employment opportunities available for protected group members in all areas of employment. This will include recruitment methods which will encourage protected group members to apply for available positions.

This policy applies equally to all job classifications and titles and all types of appointments. It governs all employment policies, practices and actions including, but not limited to, recruitment, appointment, retention, training, disciplinary actions, rate of pay or other compensation, reallocation, promotion, transfer, reduction-in-force, termination, safety, and all employee benefits and welfare of judicial branch employees. Reasonable accommodations will be made for persons of disability.

Major responsibility for implementation of this program rests with the department heads of the judicial branch but all employees share a responsibility by active support and commitment to the principles and practices of equal employment opportunity.

Equal Employment Opportunity Practices

1. The Personnel Department will assess current staff to identify protected group members. Comparisons will be made with statewide (and/or county) labor force availability base statistics. Reports will be sent, at least once a year, to the Chief Justice, Justice responsible for personnel matters, and all department heads.

2. All recruitment efforts will include an equal employment opportunity statement in the advertisement. Recruitment efforts will include publication of employment opportunities in a manner which will encourage protected group applications, such as publication with protected group organizations and news media. An analysis will be made by job classification at least once a year, (more often if necessary) to determine the most effective method of recruiting protected group members for available positions and whether the percentage of protected group applicants is similar to the labor force availability base statistics.

3. Reasonable accommodations will be provided for persons of disability, whenever possible, in order for them to obtain or retain employment.

4. A review will be conducted of screening methods, internal career ladders, upward mobility systems, and the availability of job-related and discretionary training tuition reimbursed education courses. Revisions will be made in these areas if artificial barriers are found to be impeding upward mobility for any judicial branch employee.

5. When it is determined to be mutually beneficial, the departments will approve and provide necessary training for protected group members according to an approved staff development program. Job rotation and/or cross training with other positions will be used whenever feasible to enhance protected group members' skills.

6. The Personnel Department will provide individual counseling in career advancement opportunities in state government to all protected group members when requested.

7. Equal employment opportunity, affirmative action, cultural awareness and sexual harassment training will be conducted for management, supervisors, and employees.

8. Judicial branch employees will be encouraged to express their suggestions, interest and concerns in all phases of the administration of the equal employment opportunity program.

9. Alleged cases of discriminatory treatment of any of the protected group members shall be reviewed by a three person committee appointed by the Justice responsible for personnel matters.

Adopted 10/4/90 En Banc

APPENDIX A: DEFINITIONS

AFFIRMATIVE ACTION: Procedures by which racial/ethnic minorities, women, persons in the protected age category, persons with disabilities, Vietnam era veterans, and disabled veterans are provided with increased employment opportunities. This also includes programs for monitoring progress and problem identification. It shall not mean any sort of quota system.

AVAILABILITY BASE: The percentage of protected group members who have or who are capable of attaining the requisite skills for entry into a specific job group in a designated recruitment area.

EQUAL EMPLOYMENT OPPORTUNITY: The opportunity to obtain employment, promotions, and other benefits of employment without discrimination because of race, color, religion, sex, marital status, sexual orientation, national origin, age, physical sensory or mental handicap, or status as a disabled or Vietnam era veteran.

JOB CLASSIFICATION: Any position or position in a class.

PERSONS OF DISABILITY: Persons with physical, mental or sensory impairments that would normally impede an individual in obtaining and maintaining permanent employment and promotional opportunities. The impairments must be material rather than slight; static and permanent in that they are seldom fully correctable by medical replacements, therapy or surgical means.

PROTECTED GROUP: Refers to group(s) with respect to race, creed, color, national origin, sex, age, marital status, veteran status, or the presence of any sensory or physical disability.

UPWARD MOBILITY: The opportunity to advance to a higher job class.

(Taken from Affirmative Action Plan Guidelines, Department of Personnel, March, 1990.)

EEOPOLIC
10/4/90

APPENDIX L
DATA COLLECTION INSTRUMENT FOR ASBESTOS CASE STUDY

CIVIL LITIGATIONS--ASBESTOS
SURVEY INSTRUCTIONS

Case #.	This refers to the numerical identification of each case, to differentiate it from another. The number can be your own filing number or just a number from 1 to 10.
County.	Give the client's county.
Gender.	Give the client's gender.
Minority.	Indicate whether the client is a minority or not a minority. For the purpose of this study, a minority is one who belongs to one of the following racial/ethnic groups: Asian or Pacific Islander, Black or African American, Hispanic or Latino, or Native American. A non-minority is one who is White or Caucasian.
Marital Status.	Indicate whether client is married, divorced or single.
Age.	Select the client's age grouping.
Date of Filing.	Indicate the month, date and year when the case was filed.
Date of Resolution.	Indicate the month, date and year when the case was resolved.
Number of Resolution Types.	Indicate how many of each category of resolution was obtained for the client. This question assumes that the plaintiff had claims against more than one defendant in the case.
Final Total Plaintiff Demand.	Provide the final total dollar amount demanded by the plaintiff from all the defendants.
Final Total Defendants Offer.	Provide the final total dollar amount offered by all the defendants.
Special Damages.	Provide the amount of special damages awarded to the plaintiff at the time of the resolution.
Total Settlement/Verdict.	Provide the total amount of settlement/verdict awarded to the plaintiff at the time of the resolution.
Opinion.	Please give your evaluation of the adequacy of the total settlement/verdict, i.e., was it adequate, low or high. They give the reason for your evaluation.

Twenty-five pages with two forms each are attached for you to complete. If you need more forms, either photocopy the form or contact:

Dr. Jesus Dizon
Office of the Administrator for the Courts
Telephone (206) 753-3365

Please return the completed forms by October 23, 1989. A return envelope has been included for your convenience.

Minority and Justice Task Force
Civil Cases - Asbestos - Plaintiff

Case # _____ County: _____

Claimant Information (at time of case resolution):

Gender: ___ Female ___ Male. Minority: ___ Yes ___ No Deceased? ___ Yes ___ No

Marital Status: ___ Married ___ Divorced ___ Single. No. of children: _____

Age: ___ 18-30 ___ 31-40 ___ 41-50 ___ 51-60 ___ 61-70 ___ 71+

Condition: ___ Pleural Plaques ___ Asbestosis ___ Lung cancer ___ Mesothelioma ___ Other:_____

Work type: ___ Shipyard ___ Construction ___ Longshore ____ Friction ___ Other

DATE of FILING(mdy): ___ ___ ___ DATE of RESOLUTION(mdy): ___ ___ ___

Number of resolution types: ___ Settlement ___ Arbitration ___ Dismissal ___ Jury Trial (plaintiff won)

___ Jury trial (defendant won) ___ Non-jury trial (plaintiff won) ___ Non-jury trial (defendant won)

Final Total Plaintiff Demand: $ _____ Final Total Defendants Offer: $ _____

Special Damages: $_____ Total Settlement/Verdict: $_____

In your opinion, was the total settlement/verdict: ___ Adequate ___ Low ___ High?

Why?_____

_____

_____

_____

Case # _____ County: _____

Claimant Information (at time of case resolution):

Gender: ___ Female ___ Male. Minority: ___ Yes ___ No Deceased? ___ Yes ___ No

Marital Status: ___ Married ___ Divorced ___ Single. No. of children: _____

Age: ___ 18-30 ___ 31-40 ___ 41-50 ___ 51-60 ___ 61-70 ___ 71+

Condition: ___ Pleural Plaques ___ Asbestosis ___ Lung cancer ___ Mesothelioma ___ Other:_____

Work type: ___ Shipyard ___ Construction ___ Longshore ____ Friction ___ Other

DATE of FILING(mdy): ___ ___ ___ DATE of RESOLUTION(mdy): ___ ___ ___

Number of resolution types: ___ Settlement ___ Arbitration ___ Dismissal ___ Jury Trial (plaintiff won)

___ Jury trial (defendant won) ___ Non-jury trial (plaintiff won) ___ Non-jury trial (defendant won)

Final Total Plaintiff Demand: $ _____ Final Total Defendants Offer: $ _____

Special Damages: $_____ Total Settlement/Verdict: $_____

In your opinion, was the total settlement/verdict: ___ Adequate ___ Low ___ High?

Why?_____

_____

_____

_____

APPENDIX M

METHODOLOGY, SURVEY RESPONSE, AND INTERVIEW INFORMATION FOR ASBESTOS CASE STUDY[3]

Methodology

The survey was directed at lawyers who represent plaintiffs in asbestos litigations. Case data comes from the information provided by the attorneys surveyed. Court records could have been used primarily because courts do not identify the race or ethnicity of the plaintiff.

In planning the study, opinions were obtained from lawyers who have represented plaintiffs in asbestos litigation as to the types of questions to ask and the selection of respondents for the survey. The assistance of the law firms of Bateman and Hanneman, and Schroeter,Goldmark & Bender were helpful in obtaining background information on the processing of asbestos cases. This information was used in the design of the survey.

The survey instrument contained questions about client background (gender, minority or non-minority status, age, disease suffered, work environment), when the cases were filed and date of resolution, county, number and type(s) of resolution, total plaintiff demand, total defendant offer, special damages, total settlement/verdict. In addition to the facts of each case, lawyers were also asked their opinion on whether the total settlement/verdict was adequate, low, or high.

With the assistance of Schroeter, Goldmark, & Bender, law firms who practice in the asbestos litigation area were selected to participate in the survey. Eleven (11) lawyers from these law firms were identified as active in asbestos litigation. These lawyers were from various parts of the state. The survey was intended to gather information about recently resolved cases. Lawyers were therefore asked to provide information on cases resolved during the period 1985-1989. Follow-up telephone calls were made two weeks after the surveys were mailed to those lawyers who had not yet responded to the survey request.

Survey Response

Out of the eleven lawyers who were sent survey forms, four (4) responded with 432 cases; a 36.4% response rate from the lawyers. The majority of the cases reported came from Schroeter, Goldmark and Bender (89.4% of the cases).

Many of the initial cases reported did not have all of the information requested,

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[3]The information provided in this Appendix was prepared by Dr. Jesus A. Dizon, Research Specialist, Washington State Minority and Justice Task Force.

e.g. date of filing, date of resolution, type of work, county, number and types of resolutions, total plaintiff demand, total verdict/settlement. To complete the data, Kitsap and King county Superior Courts were requested to provide as much comparable information as was available from their files.

King County was unable to provide the information requested, their system did not identify claimants by racial/ethnic status. Kitsap County Superior Court provided supplemental information on their cases, out of which 100 cases matched the Kitsap county cases reported by Schroeter, Goldmark and Bender.

With the additional information from Kitsap county, a total of 224 (out of 432) cases had the minimum information needed to analyze cases by minority status, age, gender, type of work, type of disease, county, and total settlement received.

Interviews

Additionally, two attorneys were interviewed about individual asbestos cases involving eighteen (18) minority clients from the sample cases obtained. These interviews were conducted to supplement the quantitative data from the survey. The primary questions asked were: (1) if the verdict/settlement was considered low, high, or adequate; (2) if the minority status of the client may have affected the settlement amount; (3) if life expectancy charts were used in calculating the verdict/settlement; (4) what other factors may have affected the outcome of the case. Anecdotal material was extracted from the interviews and included in the discussion of the survey data.

APPENDIX N
DATA COLLECTION INSTRUMENT FOR LANDLORD-TENANT CASE STUDY

CIVIL LITIGATIONS--LANDLORD-TENANT MATTERS
SURVEY INSTRUCTIONS

The Minority and Justice Task Force was authorized by the State Legislature to study the treatment of minorities in the state courts. It is gathering data on landlord-tenant disputes as part of its efforts to study the status of minorities in the sample of civil cases. The results of this study will be included in the Task Force's 1990 final report to the Legislature.

Survey Instructions

Please complete the attached forms for the ten recent landlord-tenant cases that you handled and have been resolved.

Each page contains two forms, one form per case. Fill in the requested information for each case by choosing one of the options given or fill in the appropriate information when no options are provided. Each item is further explained as follows:

Case #.	This refers to the numerical identification of each case, to differentiate it from another. The number can be your own filing number or just a number from 1 to 10.
Client.	Indicate if the client is a landlord or a tenant.
Litigant.	Indicate if the client is a defendant or a plaintiff.
Gender.	Give the client's gender.
Minority.	Indicate whether the client is a minority or not a minority. For the purpose of this study, a minority is one who belongs to one of the following racial/ethnic groups: Asian or Pacific Islander, Black or African American, Hispanic or Latino, or Native American. A non-minority is one who is White or Caucasian.
Marital Status.	Indicate whether client is married, divorced or single.
Age.	Select the client's age grouping.
Date of Filing.	Indicate the month, day and year when the case was filed.
Date of Resolution.	Indicate the month, day and year when the case was resolved.
Court Type.	Select the court type where the case was resolved.
County.	Give the client's county.
Dispute.	Select the dispute type. If the dispute is not among those given, please choose "other" and specify the category of dispute.
Resolution Type.	Select the type of resolution.
Outcome.	Fill in the outcome information.
Opinion--Tenant's Race.	Indicate if the outcome was or was not influenced by the tenant's race.

Opinion--

Tenant's Economic Status.	Indicate if the outcome was or was not influenced by the tenant's economic status.
Comments.	Provide additional comments about the case's outcome.

Five pages with two forms each are attached for you to complete. If you need further information regarding the study please contact:

Dr. Jesus Dizon
Office of the Administrator for the Courts
Telephone (206) 753-3365

Bob Stalker
Evergreen Legal Services
Telephone (206) 464-5933

Please return the completed forms by October 23, 1989. A return envelope has been included for your convenience. Thank you for your participation in this study.

Minority and Justice Task Force
Civil Cases - Landlord-Tenant Matters

Case # _____ Client: ____ Landlord ____ Tenant Litigant: ___ Defendant ___ Plaintiff

Tenant Information.
Gender: ___ Female ___ Male. Minority: ___ Yes ___ No

Marital Status: ___ Married ___ Divorced ___ Single.

Age: ___ 18-30 ___ 31-40 ___ 41-50 ___ 51-60 ___ 61-70 ___ 71+

Date of filing(mdy): ___ ___ ___ Date of resolution(mdy): ___ ___ ___

County: _____ Court Type: ___ Superior ___ Small Claims

Dispute: ___ Eviction (rent non-payment) ___ Eviction (misconduct: _____)

___ Eviction (Other: _____) ___ Other: _____

Resolution Type: ___ Settlement ___ Negotiated w/o litigation ___ Negotiated w/ litigation

___ Court decision (show cause hearing) ___ Court decision (trial)

What was the outcome? _____

_____

In your opinion, was the outcome influenced by the tenant's race? ____ Yes ____ No.

In your opinion, was the outcome influenced by the tenant's economic status? ____ Yes ____ No.

Comments _____

_____

_____

Case # _____ Client: ____ Landlord ____ Tenant Litigant: ___ Defendant ___ Plaintiff

Tenant Information.
Gender: ___ Female ___ Male. Minority: ___ Yes ___ No

Marital Status: ___ Married ___ Divorced ___ Single.

Age: ___ 18-30 ___ 31-40 ___ 41-50 ___ 51-60 ___ 61-70 ___ 71+

Date of filing(mdy): ___ ___ ___ Date of resolution(mdy): ___ ___ ___

County: _____ Court Type: ___ Superior ___ Small Claims

Dispute: ___ Eviction (rent non-payment) ___ Eviction (misconduct: _____)

___ Eviction (Other: _____) ___ Other: _____

Resolution Type: ___ Settlement ___ Negotiated w/o litigation ___ Negotiated w/ litigation

___ Court decision (show cause hearing) ___ Court decision (trial)

What was the outcome? _____

_____

In your opinion, was the outcome influenced by the tenant's race? ____ Yes ____ No.

In your opinion, was the outcome influenced by the tenant's economic status? ____ Yes ____ No.

Comments _____

_____

_____

APPENDIX O

METHODOLOGY AND RESPONSE INFORMATION FOR LANDLORD-TENANT CASE STUDY

Methodology

The study was directed at attorneys who represent clients with landlord-tenant problems. Case data comes from information provided by the attorneys surveyed.[4] The attorneys were asked to supplement the facts provided in the survey with their opinion on whether race and ethnicity and economic factors influenced case outcome.

In planning the study, opinions were obtained from attorneys concerning the types of questions to ask and the selection of respondents for the survey. Since more minorities reportedly make up a disproportionate percentage of the poor population in Washington State, it was assumed that minorities would more likely be represented by legal aid attorneys than other legal practitioners. Therefore, the assistance of Evergreen Legal Services, one of the largest legal aid services in Washington State, proved helpful in obtaining background information on the processing of landlord-tenant cases. Their assistance was also helpful in designing the survey.

A data collection instrument was designed to gather information about recently resolved cases from attorneys for landlords and tenants. The following questions were asked: client background (gender, minority or non-minority status, age); when the cases were filed and date of resolution; at what level resolved (agency, court, county); type of dispute; how cases were resolved and eventual outcome; and attorney's opinion as to the importance of racial and ethnic and economic status considerations in case outcomes.

With the assistance of Evergreen Legal Services, a pool of thirty eight (38) attorneys who practice in the landlord-tenant area was selected to participate in the survey. Ten (10) frequently represented landlords and twenty eight (28) frequently appeared on behalf of tenants. Attorneys representing landlords were all from King County, but tenant representatives were from various parts of the state, including eastern Washington.

In order to equalize the information acquired from each side of the issue, those attorneys representing landlords were asked to provide information on their 30 most recent cases, whereas tenant attorneys were asked to provide information on their 10 most recent cases. Total participation by all attorneys would have produced a maximum of 580 cases, with almost equal number of cases from landlord attorneys and tenant attorneys. Follow-up

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[4]Court records could have been used primarily but many courts do not use minority status as an identifier of individual cases. A statistical study of landlord-tenant cases by the Washington Public Interest Research Group encountered the same problem in 1980 (Fischer 1980, p. 27).

telephone calls were made two weeks after the surveys were mailed to those attorneys who had not yet responded to the survey request.

Survey Response

Out of the eleven lawyers who were sent survey forms, four (4) responded with 432 cases; a 36.4% response rate from the lawyers. The majority of the cases reported came from Schroeter, Goldmark and Bender (89.4% of the cases).

Many of the initial cases reported did not have all of the information requested, e.g. date of filing, date of resolution, type of work, county, number and types of resolutions, total plaintiff demand, total verdict/settlement. To complete the data, Kitsap and King county Superior Courts were requested to provide as much comparable information as was available from their files.

King County was unable to provide the information requested, their system did not identify claimants by racial/ethnic status. Kitsap County Superior Court provided supplemental information on their cases, out of which 100 cases matched the Kitsap county cases reported by Schroeter, Goldmark and Bender.

With the additional information from Kitsap county, a total of 224 (out of 432) cases had the minimum information needed to analyze cases by minority status, age, gender, type of work, type of disease, county, and total settlement received.

APPENDIX P

A PROPOSED CULTURAL AWARENESS EDUCATION PROGRAM FOR THE JUDICIARY, COURT OFFICIALS AND OTHER COURT EMPLOYEES[5]

GENERAL PURPOSE

This type of educational experience should enhance the participants' knowledge of various racial, ethnic and cultural groups. It should also improve their skills and abilities to contribute to a more racially, ethnically and culturally diverse and discrimination-free state court system. The general program objectives are:

1. To identify and discuss the various norms, values and cultural differences of the major racial, ethnic and cultural groups, including a discussion of the origins and evolution of the groups' contemporary values, norms and cultural differences;

2. To identify behavior and behavioral patterns that are biased, as well as those which are supportive of a diverse and discrimination-free environment;

3. To inform participants about the impact or possible consequences which racial, ethnic or cultural stereotyping may have on their decisions and behavior;

4. To identify the forms in which institutional bias may be manifested in the judicial system's policies, practices and procedures;

5. To identify and discuss the results and impact of institutional bias and discrimination; and

6. To discuss or recommend policies and procedures which could counter or eliminate institutional bias and discrimination in the judicial system.

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[5]This outline for a proposed cultural awareness education program has been revised by Desiree B. Leigh, Project Director of the Washington State Minority and Justice Task Force. The revised outline reflects her recommended changes to the recent education program conducted by the Washington State Minority and Justice Task Force during 1989 and 1990. The program's initial outline was prepared by Desiree B. Leigh and the following Technical Support Task Force Members: Gil Hirabayashi, Community Relations Service, United States Department of Justice; Evelyn Gordon, U.S. West Communications; and Myra Wall, Washington State Criminal Justice Training Center.

GENERAL PARAMETERS

- The minimum number of contact hours should be between 14 and 28 hours, with daily sessions not to exceed seven hours of actual training or instruction.

- The ideal group size for instructional purposes is between twenty-four and forty-eight, depending on the nature and degree of experiential activities which are included in the seminar or session.

- It is strongly recommended that the audience or participants be mixed in terms of race, ethnicity, culture, gender, age and occupations.

- The consulting staff must include a gender, racial, and ethnically mixed team of consultants/facilitators.

- It is strongly recommended that the consulting staff include a legal professional or other professional who is knowledgeable about the judicial system and the treatment of minorities in the court system.

- The training team should possess three years of training platform/presentation skills, and have a command of adult learning processes and experiential activities.

- If possible, the consulting firm should have on staff, or available to the staff preparing the curriculum and conducting the program, a certified psychologist or psychiatrist who has some knowledge of or expertise in conducting cultural awareness seminars or similar programs.

- The consulting firm should conduct a "needs" assessment(s) to determine the participants' level of awareness, participants' areas of interest, and the specific instructional methods/techniques which would best facilitate the participants' understanding of the subject matter.

RECOMMENDED METHODOLOGY OR APPROACH

- In general, consultants/facilitators will need to provide a balanced and integrated program of information and exercises, using a variety of instructional methods (e.g., lecture-discussion, small group exercises, etc.) and a wide assortment of training aids (e.g., multimedia techniques).

- Seminars must develop necessary skill building.

- Consultants/facilitators should utilize experiential activities that allow for practice and necessary skill building.

- In their presentations, consultants/facilitators must include material pertinent to the

treatment of minorities in the judicial system. All modules or presentations must also include court-relevant information and should emphasize the relationship or relevance of material to the treatment of minorities in the judicial system.

- Consultants/facilitators must include contemporary and regionally relevant material.
- There must be feedback and dialogue between the consultants/facilitators and the participants.
- Presentations by guest speakers, who can provide information on substantive areas of the law or on legal procedures, should be incorporated into the program.
- Strong facilitation skills are required, especially in the area of helping participants recognize the impact of their own behavior.
- Consultants/facilitators will need to encourage development of a networking system among participants.
- Consultants/facilitators must work with participants to develop meaningful and realistic action plans.
- Several months after the completion of each seminar, the consultants/facilitators should contact the participants to determine if the action plans were implemented and to determine the effectiveness of training.
- Consultants/facilitators may need to develop a two-track system. One would be for participants who may need an introductory program and the other would be for participants who may need a more advanced program.

PILOT PROGRAM

The consultants/facilitators should have primary responsibility for development of the program and its implementation. However, prior to implementation, the consultants/facilitators must conduct a pilot or mock program which should be critiqued and evaluated on the basis of several criteria, including, but not limited to: content, methodology or approach; and each presenter's knowledge and expertise. Any reasonable recommendations or requested revisions should then be incorporated into the program prior to it being presented to judges, court officials and other court employees.

APPENDIX Q

WASHINGTON STATE MINORITY AND JUSTICE TASK FORCE
CULTURAL AWARENESS SEMINAR

Agenda

Day One

8:00 a.m.	Introductions and Welcome *Justice Charles Z. Smith, Washington State Supreme Court*
8:10 a.m.	Opening Remarks and Focus *Desiree B. Leigh, Project Director, Minority and Justice Task Force*
8:15 a.m.	Expectations and Rationale
8:50 a.m.	Key Terms and Definitions
9:15 a.m.	Break
9:30 a.m.	Cross-Cultural Simulation
12:00 p.m.	Lunch
1:00 p.m.	Trends and Demographics
2:00 p.m.	Cultural Dilemma Identification Exercise
2:35 p.m.	Core Values of U.S. Racial and Ethnic Groups
3:15 p.m.	Break
4:00 p.m.	Core Value Conclusions and Applications
4:40 p.m.	Summation
5:00 p.m.	Adjournment

Day Two (Option One)

8:00 a.m.	Reconvening
8:20 a.m.	Regional Justice Issue Presentation
9:25 a.m.	Regional Justice Issue Presentation
10:25 a.m.	Break
10:35 a.m.	Culture Iceberg and Organizational Conflict
12:30 p.m.	Lunch
1:30 p.m.	Courtroom Simulation
3:45 p.m.	Personal Goal Statements
4:15 p.m.	Summary and Final Evaluations
4:30 p.m.	Adjournment

Day Two (Option Two)

8:00 a.m.	Reconvening
8:20 a.m.	Regional Justice Issue Presentation
9:25 a.m.	Regional Justice Issue Presentation
10:25 a.m.	Break
10:35 a.m.	Culture Iceberg and Organizational Conflict
12:30 p.m.	Lunch
1:30 p.m.	Regional Justice Issue Presentation
2:30 p.m.	"*Bias in the Courtroom*" - Video Tape and Discussion
3:15 p.m.	Personal Goal Statements
3:45 p.m.	Summary and Final Evaluation
4:00 p.m.	Adjournment

APPENDIX R

TASK FORCE PROJECT DIRECTOR'S REMARKS BEFORE
THE BOARD FOR TRIAL COURT EDUCATION

Seattle, Washington
October 12, 1990

INTRODUCTION

THANK YOU FOR THIS OPPORTUNITY TO APPRISE YOU OF THE TWO-DAY INTRODUCTORY CULTURAL AWARENESS SEMINAR THAT NESBY AND ASSOCIATES CONDUCTED FOR THE WASHINGTON STATE MINORITY AND JUSTICE TASK FORCE THIS PAST SPRING AND SUMMER. IN THE FINAL ANALYSIS, THE SEMINAR WAS SUCCESSFUL DESPITE THE SHORT DEVELOPMENT TIME GIVEN TO THE CONSULTING FIRM. ALSO, THERE WERE SOME INITIAL HURDLES WHICH WE HAD TO OVERCOME IN ORDER TO TAILOR THE PROGRAM TO MEET THE TASK FORCE'S NEEDS. FOR INSTANCE:

- MOST MODULES AND PRESENTATIONS HAD TO BE REDESIGNED TO ENSURE THAT EACH ONE INCORPORATED COURT-RELEVANT DATA;

- THE CONSULTING FIRM INITIALLY HAD SOME DIFFICULTY INCORPORATING THE TASK FORCE'S SPECIFIC RESEARCH FINDINGS ON THE TREATMENT OF MINORITIES IN THE STATE COURT SYSTEM INTO THEIR STANDARD PROGRAM; AND

- WE HAD TO RETAIN A CONTENT SPECIALIST ADVISOR TO WORK CLOSELY WITH THE FIRM IN DESIGNING AN APPROPRIATE PROGRAM.

FORTUNATELY, BY THE FOURTH SEMINAR, THE CULTURAL AWARENESS SEMINARS DID COMPLY WITH MOST OF THE TASK FORCE'S REQUESTS AND EXPECTATIONS.

BRIEF DESCRIPTION OF THE SEMINAR

FOR TODAY'S MEETING, AN AGENDA OF THE SEMINAR IS INCLUDED IN THE MATERIAL. PLEASE REFER TO ATTACHMENT 3, PAGE 3. AS YOU CAN SEE, THE SEMINAR INCLUDED A VARIETY OF TOPICS DESIGNED TO INCREASE PARTICIPANT'S BASIC KNOWLEDGE ABOUT VARIOUS RACIAL, ETHNIC, AND CULTURAL GROUPS. FOR EXAMPLE, THE TRENDS AND DEMOGRAPHICS MODULE PROVIDED INFORMATION ON THE CHANGING U.S. POPULATION TRENDS, AS WELL AS STATISTICS ON MINORITIES AS COURT EMPLOYEES (E.G., JUDICIAL OFFICERS, ADMINISTRATORS, PROFESSIONALS, CLERICAL, ETC.). ANOTHER EXAMPLE IS THE CORE VALUE MODULE, WHICH PROVIDED SOME BASIC

FACTS ON THE NORMS AND VALUES OF VARIOUS GROUPS. THE PROGRAM WAS ALSO ENHANCED BY THE REGIONAL JUSTICE ISSUES WHICH INCLUDED GUEST SPEAKER PRESENTATIONS ON THE FOLLOWING TOPICS:

- COURT INTERPRETERS AND HOW TO IDENTIFY GOOD TRANSLATION AND INTERPRETING SKILLS;
- TRIBAL AND STATE COURT JURISDICTIONAL ISSUES;
- THE USE OF PROSECUTORIAL DISCRETION;
- JUVENILE AND FAMILY MATTERS, SUCH AS UNDERSTANDING YOUTH BEHAVIOR VERSUS GANG-RELATED BEHAVIOR; AND
- ADMINISTRATIVE LAW MATTERS AND MINORITIES.

THE REGIONAL JUSTICE ISSUES VARIED FROM SEMINAR TO SEMINAR DEPENDING ON LOCATION AND AUDIENCE COMPOSITION.

NUMBER AND LOCATION OF SEMINARS

THE TASK FORCE HAD PLANNED TO CONDUCT SIX SEMINARS. BUT, DUE TO BUDGET CONSTRAINTS IT CANCELED THE LAST GENERAL SEMINAR SCHEDULED FOR SPOKANE IN EARLY SEPTEMBER. THE FIVE SEMINARS WHICH WERE DELIVERED TOOK PLACE IN FIVE KEY LOCATIONS:

- SILVERDALE AT THE SUPERIOR COURT JUDGES' CONFERENCE;
- OLYMPIA;
- SPOKANE AT THE JUVENILE COURT ADMINISTRATOR'S CONFERENCE;
- BELLEVUE; AND
- WENATCHEE.

ATTENDANCE

THE TASK FORCE WAS VERY PLEASED WITH THE ATTENDANCE AT THE SEMINARS. WE ESTIMATE THAT THEY WERE:

- 99 ATTENDEES AT THE SUPERIOR COURT JUDGE'S CONFERENCE;
- 71 JUDICIAL OFFICIALS, ATTORNEYS, COURT STAFF, AND INTERPRETERS AT THE GENERAL SESSION IN OLYMPIA;
- 36 JUVENILE COURT ADMINISTRATORS AT THEIR CONFERENCE;

- 71 PROSECUTORS, PUBLIC DEFENDERS, JUDGES, AND COURT STAFF AT THE BELLEVUE GENERAL SESSION; AND

- 24 JUDGES, PROSECUTORS, AND COURT STAFF AT THE WENATCHEE SEMINAR.

WE HAD APPROXIMATELY 80 PERSONS ON THE WAITING LIST.

FUNDING/SUPPORT

IN ASSESSING THE COSTS OF DELIVERING THIS TWO-DAY INTRODUCTORY CULTURAL AWARENESS SEMINAR, I ESTIMATE THAT THE TASK FORCE SPENT ABOUT $120,000.00 OUT OF ITS GENERAL FUNDS. THIS AMOUNT DOES NOT INCLUDE THE STAFF SUPPORT PROVIDED BY THE OAC AND THE ASSISTANCE RENDERED BY INDIVIDUAL TASK FORCE MEMBERS.

ACCORDING TO THE EDUCATION DIVISION, B.T.C.E. CONTRIBUTED APPROXIMATELY $32,000.00 TOWARD TRAVEL AND PER DIEM, WHICH DOES NOT INCLUDE COSTS AFFILIATED WITH THE SUPERIOR COURT JUDGES' ASSOCIATION.

THE FUTURE

WASHINGTON STATE'S EFFORTS IN THE AREA OF CULTURAL AWARENESS EDUCATION HAS BEEN RECOGNIZED BY OTHER STATE COURT SYSTEMS AND THE NATIONAL JUDICIAL COLLEGE. WE BELIEVE THAT WE ARE IN THE FOREFRONT. WE ALSO BELIEVE THAT WE CAN IMPROVE UPON FUTURE PROGRAMS. WE, THEREFORE, STRONGLY RECOMMEND THE FOLLOWING FOR ANY FUTURE CULTURAL AWARENESS SEMINARS:

1. A HETEROGENEOUS GROUP OF PARTICIPANTS;

2. A CONSULTING FIRM WHICH HAS A LEGAL PROFESSIONAL OR OTHER PROFESSIONAL FAMILIAR WITH THE LEGAL SYSTEM OR COURT SYSTEM ON STAFF TO ASSIST IN MAKING ALL MODULES RELEVANT TO THE LEGAL PROCESS AND THE COURT SYSTEM;

3. A TRAINING TEAM WHICH IS RACIALLY AND ETHNICALLY MIXED TO ENSURE THAT THE PERSPECTIVES OF VARIOUS RACIAL AND ETHNIC GROUPS ARE INCORPORATED INTO THE PROGRAM'S CONTENT;

4. SUFFICIENT DEVELOPMENT TIME–A MINIMUM OF FOUR MONTHS PRIOR TO THE PILOT AND A MINIMUM OF THREE MONTHS BETWEEN THE PILOT AND DELIVERY OF THE FIRST PROGRAM;

5. A NEEDS ASSESSMENT OUGHT TO BE CONDUCTED PRIOR TO THE DEVELOPMENT OF THE PROGRAM IN ORDER TO ASSESS THE FUTURE AUDIENCE'S LEVEL OF AWARENESS AND THEIR KNOWLEDGE OF THE SUBJECT MATTER;

6. INCORPORATION OF CURRENT RESEARCH ON THE TREATMENT OF MINORITIES IN THE LEGAL SYSTEM; AND

7. INCLUSION OF TOPICS ON SUBSTANTIVE AREAS OF THE LAW, AS WELL AS INSTITUTIONAL BIASES.

IN ITS FINAL REPORT TO THE LEGISLATURE IN DECEMBER, THE TASK FORCE WILL RECOMMEND AND REQUEST FUNDS TO SUPPORT A TWO-TRACK CULTURAL AWARENESS EDUCATION PROGRAM. THIS APPROACH WILL INCLUDE CONTINUATION OF AN INTRODUCTORY TWO-DAY SEMINAR FOR COURT EMPLOYEES NEEDING SUCH A PROGRAM AND A MORE INTERMEDIATE OR ADVANCED ONE-DAY SEMINAR ON SPECIAL TOPICS. SOME EXAMPLES OF SPECIAL TOPICS ARE: A REPRESENTATIVE JURY POOL/PANEL; HOW TO RECRUIT AND RETAIN MINORITY COURT EMPLOYEES; AND HOW TO LOCATE AND USE A COMPETENT INTERPRETER. THE TASK FORCE HAS ALSO REQUESTED ABOUT $59,000.00 FROM THE LEGAL FOUNDATION OF WASHINGTON TO SUPPORT THE INTERMEDIATE OR ADVANCED SEMINAR, WHICH THE TASK FORCE CALLS PHASE III.

CONCLUSION

FINALLY, ON BEHALF OF THE TASK FORCE'S CHAIRPERSON, JUSTICE CHARLES Z. SMITH, AND ALL THE TASK FORCE MEMBERS, I WOULD LIKE TO EXTEND OUR THANKS AND APPRECIATION TO THE BOARD FOR HAVING THE FORESIGHT AND VISION TO SUPPORT THE FIRST COURT-WIDE CULTURAL AWARENESS EDUCATION PROGRAM IN OUR STATE AND ONE OF THE FIRST IN THE COUNTRY.

I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS, IF TIME PERMITS.

APPENDIX S

AFFILIATED WITH
AMERICAN BAR ASSOCIATION

THE NATIONAL JUDICIAL COLLEGE

JUDICIAL COLLEGE BLDG. • UNIVERSITY OF NEVADA, RENO • RENO, NEVADA 89557

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V. ROBERT PAYANT, *Dean*
LAURANCE M. HYDE, JR., *Associate Dean*

JUSTICE TOM C. CLARK 1899-1977
Chairman of the Founders

JUDGE FRANK J. MURRAY
Chairperson, Emeritus

October 3, 1990

Desiree B. Leigh
Project Director
Minority & Justice Task Force
Office of the Administrator
for the Courts
1206 S. Quince St., Mail Stop EZ-11
Olympia, WA 98504

Dear Ms. Leigh:

Thank you very much for your letter of September 24, 1990, including the education program and the curriculum outline for the Cultural Awareness Seminar. Your observations and recommendations are most appreciated as The National Judicial College proceeds to do more work in this area.

As I believe you are aware, NJC has prepared and presented, as part of a course module project, a seminar on Equal Justice in the Courts. The pilot was presented on September 10 for Arizona judges. It attempted to incorporate matters of racial and gender sterotyping into substantive law matters. According to the evaluations of the participants, it was very successfully done.

Enclosed please find the course materials notebook used in the Arizona presentation. As part of the project, this material will be developed into a course module which will be distributed to all of the state judicial educators.

Washington is certainly taking a leading role in this aspect of judicial and court official training and your activities are going to be helpful as this kind of project moves across the nation. Dr. Steve Weller who was the project director for the Equal Justice in the Courts project extends his thanks for the materials sent.

Yours very truly,

V. Robert Payant
Dean

VRP:pv
Enclosure

cc: Justice Charles Z. Smith
Judge James M. Murphy
Lorraine Weber

U.S. Department of Justice
Community Relations Service
Northwest Regional Office

Room 1898
915 Second Street
Seattle, Washington 98101

October 17, 1990

Honorable Justice Charles Z. Smith
Temple of Justice
MS AV-11
Olympia, WA 98504

Dear Justice Smith:

Region 10 of the Community Relations Service (CRS) of the United States Department of Justice has been pleased and honored to provide technical assistance to the State of Washington's Minority Justice Task Force.

This assignment has been made highly productive through the motivation and outstanding efforts of the Task Force Project Director, Ms. Desiree Leigh. Although I have found her accomplishments to be enumerable, I enthusiastically welcome this opportunity to commend her for the direction and expert guidance proven to be effective and mutually beneficial. Ms. Leigh's leadership and vision have created adroit strategies that will become proven practices in the future. I am certain that as the Judiciary looks at its history years from now the efforts of the Task Force will be regarded as a milestone. It is my sincere opinion this will in great measure be due to the extraordinary hard work and competence of Ms. Leigh.

During the past two plus years our working relationship with Ms. Leigh has been demanding, but most rewarding and exciting. We are proud to have been associated with her and pleased that you have given us the honor of this opportunity. The Task Force is a history making project and we wish to extend to you our commendation for Ms. Leigh's outstanding contribution in enhancing the principles of a democratic society and the pursuit of equal justice.

Sincerely yours,

Robert Lamb, Jr.
Regional Director

APPENDIX U

Presidential Elections (1952-1988)

Year	Eligible to Vote	Registered Voters	Votes Cast	Percent of Eligible Voters Registered	Percent of Eligible Voters Voting
1952	1,533,500	1,392,594	1,116,414	90.81	72.80
1956	1,622,500	1,451,375	1,164,104	89.45	71.75
1960	1,753,700	1,527,510	1,257,952	87.10	71.73
1964	1,857,900	1,582,046	1,276,956	85.15	68.73
1968	1,975,000	1,649,734	1,310,942	83.53	66.38
1972	2,306,000	1,974,849	1,519,771	85.64	65.91
1976	2.546,000	2,065,378	1,584,590	81.12	62.24
1980	2,992,000	2,236,603	1,772,904	74.75	59.25
1984	3,182,000	2,457,667	1,931,546	77.24	60.70
1988	3,417,000	2,499,309	1,923,016	73.14	56.28

Even-Year Elections (Non-Presidential) (1954-1986)

Year	Eligible to Vote	Registered Voters	Votes Cast	Percent of Eligible Voters Registered	Percent of Eligible Voters Voting
1954	1,593,300	1,292,871	890,509	81.14	55.89
1958	1,703,200	1,375,035	978,400	80.73	57.44
1962	1,813,500	1,446,593	971,706	79.77	53.58
1966	1,869,400	1,472,054	987,134	78.74	52.80
1970	2,078,000	1,562,916	1,123,000	75.21	54.04
1974	2,419,000	1,896,214	1,044,425	78.39	43.18
1978	2,651,000	1,960,900	1,028,854	73.97	38.81
1982	3,119,000	2,105,563	1,404,831	67.51	45.04
1986	3,307,000	2,230,354	1,358,160	67.44	41.07
1989	*3,473,053*	*2,221,407*	*1,068,721*	*63.96*	*30.77*

National Center for State Courts

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Larry L. Sipes
President

October 30, 1990

Ms. Desiree Leigh
Project Director
Washington State Minority and
Justice Task Force
3200 Columbia
Seafirst Center
701 Fifth Avenue
Seattle, Washington 98104-7097

Dear Ms. Leigh:

Permit me to congratulate you and your Task Force for putting together an outstanding cultural awareness seminar curriculum outline and notebook.

As you know, judges and court administrators throughout the nation often call the National Center for State Courts and request substantive judicial administration information on a multitude of matters. Within the past two years, the National Center has received many requests for information on the cultural sensitization of judges and court administrators. Up until now, very little information had been collected and compiled that dealt with cross-cultural communication barriers in the courtroom, minority trends in the justice system, stereotyping and minority perceptions of the courtroom setting, organizational conflict, and cultural sensitivity to verbal and nonverbal communication in the courtroom. Your efforts in compiling this type of material will no doubt assist us as well as the national court community in addressing the needs of minorities who feel that they are not treated fairly in the courts.

Again, thanks for sharing with the Center and the National Consortium of Task Forces and Commissions on Race/Ethnic Bias in the Courts your great work. I am

Very truly yours,

Phillip A. Lattimore III
Staff Attorney

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