MINNESOTA SUPREME COURT TASK FORCE

ON RACIAL BIAS IN THE JUDICIAL SYSTEM

FINAL REPORT

MAY, 1993

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DEDICATION

Justice Thurgood Marshall

The death of Justice Thurgood Marshall saddens and diminishes us all. The passing of this great Justice, lawyer, and man, has left a tremendous void in the struggle for equal justice in the law.

No one can deny that Justice Marshall was the greatest lawyer of the Twentieth Century. As an attorney, to a greater extent than any single member of his profession, he knocked down the racist walls of segregation in American society. As Justice on the United States Supreme Court, he was the champion of the rights of the excluded and oppressed. Justice Marshall was America's great Constitutional watchdog, insisting that this nation live up to its most sacred principles.

Justice Marshall is a constant reminder to all of us that we must continue to create institutions that make the principles of our Constitution meaningful in the lives of ordinary citizens.

In that spirit, the Task Force adopts Justice Marshall's July 4, 1992 challenge to America:

> "I wish I could say that racism and prejudice were only distant memories . .. and that liberty and equality were just around the bend. I wish I could say that America has come to appreciate diversity and to see and accept similarity.
>
> But as I look around, I see not a nation of unity but of division – Afro and white, indigenous and immigrant, rich and poor, educated and illiterate. Even many educated whites and successful Negroes have given up on integration and lost hope in equality. They see nothing in common – except the need to flee as fast as they can from our inner cities.
>
> But there is a price to be paid for division and isolation, as recent events in California indicate. Look around. Can't you see the tension in Watts? Can't you feel the fear in Scarsdale? Can't you see the alienation in Simi Valley? The despair in the South Bronx? The rage in Brooklyn?
>
> We cannot play ostrich. Democracy cannot flourish amid fear. Liberty cannot bloom amid hate. Justice cannot take root amid rage. . . . We must go against the prevailing wind. We must dissent from the indifference. We must dissent from the apathy. We must dissent from the fear, the hatred and the mistrust. We must dissent from a government that has left its young without jobs, education, or hope. We must dissent from the poverty of vision

and the absence of moral leadership. We must dissent because America can do better, because America has no choice but to do better.

The legal system can force open doors, and, sometimes, even knock down walls. But it cannot build bridges. That job belongs to you and me. We can run from each other, but we cannot escape each other. We will only attain freedom if we learn to appreciate what is different and muster the courage to discover what is fundamentally the same. Take a chance, won't you? Knock down the fences that divide. Tear apart the walls that imprison. Reach out; freedom lies just on the other side."

The Honorable Michael J. Davis
District Court Judge
Fourth Judicial District
Editorial Committee Chair,
Task Force on Racial Bias Final Report
April 30, 1993

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Many people have contributed to the work of the Task Force and the preparation of this Report. While it would be impossible to thank them all, the Task Force wishes to acknowledge the following for their work in the preparation of the Report:

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REPORT TERMINOLOGY

For people of color, the issue of what to call ourselves is trickier and more sensitive than it might seem on the surface. For people who have historically been named by others, naming ourselves becomes an important act of cultural self-affirmation. However, given the incredible diversity that exists sometimes even within the smallest faction or sub-group of a given culture, it is impossible to get unanimous agreement from representatives of major racial or ethnic groups on what those groups should be called.

Even the term "people of color" is controversial. Some feel it's wrong to put an emphasis on color; that by doing so, we encourage others to continue to see us as peoples whose characters are defined by the colors of our skins rather than the characters of the diverse cultures we represent.

Nevertheless, the use of this term has become more commonly used over the last several years because many people from communities that have generally been called "minority" feel the word has a subtle pejorative tone. Others dislike the term "minority" because it ignores the fact that non-white peoples are the overwhelming majority of the world's population, and, if current population trends hold, will in a few short years be the majority here in North America as well. There was general consensus on the Task Force that the term "people of color" would be used. Wherever it was gramatically awkward to use the term, "minority" was used instead.

After consulting with Task Force members and others, the Task Force decided to use the following terms for the major communities of color:

* Native American

* African American

* Hispanic

* Asian/Pacific Islander

On another note, throughout the Report, the term "greater Minnesota" is used instead of the term "outstate," and refers to the other 80 counties of Minnesota beyond the 7 county area of metropolitan Minneapolis/St. Paul.

PREFACE

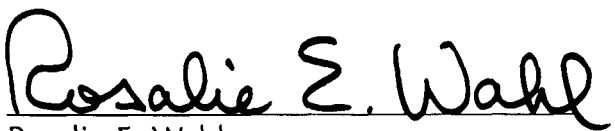
No study the Minnesota Supreme Court has ever undertaken has been more important than this study on racial bias in the courts. It is crucial to our system of justice. We are indebted to those who have given over two years of their lives in the service of the Task Force and its mission and to all those others who have come to us in the data gathering process, sometimes in fear, but with the hope that their experiences and their words would somehow make a difference.

We have focused in our study on how the law and our whole court system impacts on four communities of color — Hispanic, Native American, African American and Asian/Pacific Islander — in all our substantive and administrative areas of study. We have focused also on women of color, a group not specifically covered in our gender bias study, and on victims.

The words of women of color, at a meeting held with members of Black, Indian, Hispanic, and Asian Women in Action (BIHA) and the Task Force, still ring in my ears. "It is not safe for a woman out there. It is less safe for a woman of color." "You are not even seen if you are a woman of color." "The system ignores us." A Hispanic victim advocate, recalling a case in which she had realized the interpreter was not making an accurate interpretation, asked, "Could the system be so careless if this were a white person?" What do we say when we are asked, "How many voices will never be heard? How many voices will ever be silent?"

People of color came forward at public hearings, angry and anguished, saying, "This is just another study!" This cannot be "just another study." People trusted us enough to come and make their feelings known. We who are the stewards of this justice system cannot fail the people it belongs to.

A member of the Task Force recently said, "It would be good to change minds and hearts, but I just want to change conduct." Wherever peoples' conduct frustrates the goal of equal justice for all we will work to change that conduct. This we vow: that we will not cease our efforts until this court system, of which we are so proudly a part, treats every person equally before the law — and with dignity and respect — regardless of such irrelevancies as race or gender or class.



Rosalie E. Wahl
Associate Justice
Minnesota Supreme Court
Chair, Supreme Court Task Force on Racial Bias in the Courts
April 30, 1993

EXECUTIVE SUMMARY

INTRODUCTION

The Task Force and Its Charge

Institutional or systemic change can be hard to effect even when there is substantial agreement on problems and solutions. It follows then that it is much harder to effect change in a system where there is disagreement on whether or not a problem exists, much less its basic shape and character. In addition to the subtle nature of much institutional bias, graphic examples of blatant, open racial bias also abound. The struggle for civil rights taught us that although we cannot change peoples' hearts through rules and legislation, we *can* change the procedures, policies and practices through which institutional bias perpetuates itself.

This inquiry, ably led by Justice Rosalie Wahl, involved substantive areas of law, procedural issues, personnel issues and issues which may arise in gaining access to court processes. The Task Force collected data on Minnesota court decisions and proceedings, administrative procedures, treatment of litigants and witnesses, and hiring and treatment of people of color within the court system. Committees of the Task Force were formed to focus on the broad areas of criminal, civil, and family and juvenile law.

Addressing problems facing the criminal justice system was of particular concern. The Criminal Process Committee was formed to look specifically at whether or not race affects arrests, detention on probable cause, charging offenses, bail, plea negotiations, jury selection, sentencing, the treatment of victims, and other related issues. The Task Force studied the adequacy of Minnesota's interpreter resources for non-English speakers as well.

The Task Force also created a Juvenile and Family Law Committee charged with investigating whether or not there are race-related differences in the area of children in need of protective services (CHIPS), foster care policies and procedures, and issues related to juvenile delinquency.

The Task Force's Access, Representation and Interaction & General Civil Process Committee probed such issues as access to representation, especially in civil matters, access to the profession for people of color, including a look at the Minnesota Bar examination, and the hiring and retention of minority lawyers. The Committee also looked at judicial evaluation and the treatment of minority judges.

The methodologies used to collect this data included the commissioning of research studies, interviews, and public hearings at nine sites across the state. In addition, questionnaires were sent to all 261 trial court judges and referees, over 4,000 attorneys, 860 victim services providers and nearly 1,000 probation officers.[1]

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[1]See Appendix for complete summary of research methodologies.

The Task Force used the information gathered from these sources to develop findings and recommendations that will be used by the Court and the Legislature as a blueprint for action.

The search for bias in the justice system of this state has been a complex matter. Only some of the bias encountered fits the narrowest definition of *prejudice evidenced by repulsive comments or disrespectful displays by people who seek to harm others because of their race or ethnicity.*[2] The fact that bias is often hard to detect makes it no less treacherous or devastating. It is the part of an iceberg that is completely hidden from view beneath the waves that destroys a ship.

Some of the policies and practices that have the ultimate effect of impeding the dispensation of justice to people of color stem from well-intended, if naive, efforts to demonstrate that the system is "color blind." Others seem to result more from indifference than from outright malevolence. Whatever the initial cause or motivation, it has been the charge of the Task Force to identify problem areas that lead to the consistent denial of equal justice to communities of color, and to propose specific remedies.

After more than two years of research and study, one might assume that many of us have grown disillusioned. We have not. We come to the end of this part of the process full of faith and great hope that the recommendations found here will soon be implemented, as was the case with the Gender Bias Task Force Report that preceded our work in 1989.

There is good reason for our optimism. The last two statewide judges conferences generated a great deal of positive inquiry and response. As of this writing, the chief judges have announced the coordination of an ambitious cultural-diversity training program for all court employees. The response from the law enforcement community has helped ensure that, even though law enforcement issues could not be adequately covered in the work of this Task Force, there will now be a high level forum where new initiatives on law enforcement/community relations issues can be created. The Task Force has recommended to a responsive Chief Justice A.M. (Sandy) Keith the creation of a Community/Law Enforcement Relations Commission that will keep alive the momentum generated during a Task Force-initiated law enforcement focus group.

As you read through this report, certain recurring themes will become obvious: the need to hire more people of color throughout our court system and to ensure that those we hire, whatever color, are culturally sensitive to all the people we serve; the need to begin systematically keeping race-specific records; the need for more and better training in cultural awareness/cultural diversity, and others. The findings and recommendations give the flavor and much of the detail of what changes are being *specifically* called for.

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[2]Florida Supreme Court Racial and Ethnic Bias Study Commission, Where the Injured Fly For Justice, p. 3 (Dec. 11, 1990).

Taking these recommendations and turning them into complete directives, programs, or legislation is the job of the Task Force's Implementation Committee, which, under the leadership of Justice Alan Page, intends to mount a sustained effort to promote and monitor progress toward their full realization. A great part of the responsibility for effecting these changes rests with the Implementation Committee and the judiciary. The other part of the responsibility rests with people of good will across all areas of the bar, the state Legislature, law enforcement, and the general citizenry who are motivated by a strong desire to see to it that every man, woman and child in Minnesota has equal *access* to justice and can expect in full confidence to *receive* equal justice under the laws of this state. This Executive Summary includes some of the most interesting and compelling information found by the Task Force. The complete narrative, supporting data, findings and recommendations will be found organized by topic in the body of the full report.

CRIMINAL PROCESS

Despite the fact that racial discrimination in the courts is often subtle, its ultimate effects are anything but. One glaring signpost of the specter of racism in the disposition of criminal cases is the fact that although people of color comprise 6% of the state's population, they comprise 45% of the prison population.[3]

This section of the Task Force Report contains the Task Force's analysis of problem areas throughout the system that have helped create the state of affairs of which this statistic is a symptom. The narrative progression of this chapter takes the reader through the "funnel effect", starting with arrest and charging and ending with sentencing, through which a disproportionate number of people of color get caught up in the system and a disproportionate number are eventually sentenced. The Task Force commissioned studies on many topics including misdemeanor processing, non-imprisonment sentences, and sentencing guidelines in order to gain an understanding of where and how discrimination enters into decisions made along the continuum of criminal case processing.

The Task Force also received a vast amount of useful information from public hearings, focus groups, and the responses to the questionnaires sent to prosecutors, public defenders and other attorneys, judges, victim advocates, and probation officers across the state.

Because most counties do not keep thorough information on crimes, victims, and case dispositions by race, it was not possible to get as complete a picture of what is going on in our state as we would have liked, but it is anticipated that one of the effects of this Report's release will be that from now on, such records will be kept and the task of monitoring the elimination of racial bias in our system of justice will be greatly enhanced.

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[3]Interview with staff of the Information and Analysis Office, Minnesota Department of Corrections (April 8, 1993). Figures given represent actual percentages as of January 1, 1993.

ARREST/CHARGING/FORFEITURE

Within the context of examining racial bias, the enormous power of law enforcement and the justice system to arrest and detain is an obvious flashpoint for confrontation and abuse of power. The consistent fairness of the use of this power, both in fact and in terms of public perception, is critical to ensuring the fairness of the justice system.

In Hennepin county, people of color are arrested in numbers that greatly exceed their proportion of the population. Since 1975, the percentage of people of color arrested in Hennepin County has steadily increased. People of color represented approximately 11% of the Hennepin County population in 1990,[4] but accounted for 18% of all Part II crime arrests in 1975 and 36% of the 36,631 Part II crime arrests in Hennepin County in 1991.[5] This is an arrest ratio over *3 times* their percentage of the population.

A comprehensive study undertaken by the Task Force of all misdemeanor assault, theft, and prostitution offenses charged in Hennepin County during January 1989 through April 1992 found that people of color had higher dismissal rates in all offense categories when compared to whites.[6]

It must also be noted that this study, in addition to an extensive study conducted by the Hennepin County Bureau of Community Corrections, found strong evidence that racial differences exist in the *method* of charging defendants.[7] Both studies found that white defendants were more likely to receive a summons than people of color, thus allowing them to avoid arrest.[8]

People of color have also expressed strong feelings that they are frequently abused by Minnesota's Forfeiture Law.[9] They state that their personal items, such as money, jewelry, and jackets are often confiscated by the police. Some say they are not given receipts, which makes it impossible to recover their property. Innocent bystanders complain

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[4]Bureau of the Census, U.S. Dept. of Commerce, 1990 Census of Population and Housing, Summary Population and Housing Characteristics, Minnesota, p. 97 (Aug. 1991) (hereinafter "Census Bureau's 1990 Population Characteristics").

[5]Office of Planning and Development, Hennepin County, Hennepin County Crime Report 1991 Appendix, p. 79 (Aug. 1992). (hereinafter "Hennepin County Crime Report 1991 Appendix); Part II Crimes include simple assault, stolen property, other sex, driving while intoxicated, forgery and counterfeiting, vandalism, narcotics, liquor law, fraud, weapons, gambling, disorderly conduct, embezzlement, prostitution, and family/children, and all other offenses. See Office of Planning and Development, Hennepin County, Hennepin County Crime Report 1991 p. 85 (Aug. 1992).

[6]Sharon Krmpotich, Minnesota Supreme Court, Hennepin County Misdemeanor Processing Analysis Report for the Task Force on Racial Bias in the Courts, pp. 11-12 (Jan. 28, 1993)(See Appendix D) (hereinafter "Hennepin County Misdemeanor Processing Analysis Report").

[7]Id. p. 4; Letter from Mike H. Cunniff, Associate County Administrator, Hennepin County, Bureau of Community Corrections, to Sue K. Dosal for the Task Force on Racial Bias in the Courts, p. 4 (March 4, 1992) (on file with the Minnesota Supreme Court) (hereinafter "Cunniff letter of 3/4/92").

[8]Hennepin County Misdemeanor Processing Analysis Report, supra note 6, p. 4; Cunniff letter of 3/4/92, supra note 7, p. 4.

[9]Minn. Stat. § 609.531-.5317 (1992); Public Hearing, Minneapolis (Nov. 13, 1991).

that their personal property is also confiscated.[10] Currently the forfeiture statute has no provisions which allow the automatic return of non-contraband property to those people who are arrested and not charged or for those who are charged and not convicted of an offense. Currently, no statistics on the race of those whose property is seized are kept.

Findings

1. In Hennepin County, people of color are arrested and charged at levels far in excess of their percentage of the population. They are also much more likely to have their cases dismissed when compared to whites.

2. Prosecutors in Hennepin county are more likely to charge whites by summons than people of color, even when holding constant the type of offense charged.

3. No statistical information is available to determine if Minnesota's Forfeiture Law, as enforced, disproportionately impacts people of color. County attorneys do not keep records including racial data to allow for an objective study of forfeiture practices. Anecdotal evidence suggests, however, that the police abuse this power.

Recommendations

1. The Supreme Court, through a future Community/Law Enforcement Relations Commission should conduct a statewide study of all law enforcement and county and/or city attorney offices' arrest and charging policies and procedures to determine if people of color are disproportionately arrested and charged on an insufficient basis.

2. The Legislature should require that all law enforcement agencies, county and/or city attorney offices keep statistics regarding annual arrests by type of offense, with a breakdown by municipality, race, age, gender and dispositions.

3. The Legislature should require each county attorney's office to compile statistics concerning the race, age, and gender of citizens forfeiting property to the police. The State Auditor should publish this information in an annual Forfeiture Accounting Report.

4. The forfeiture statute should be amended to establish a $300 minimal threshold value of property to be forfeited as described in Minn. Stat. § 609.5314. Forfeited non-contraband property should be returned to those people who are arrested and not charged as well as to those people who are charged but not convicted of an offense.

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[10]Public Hearing, Minneapolis (Nov. 13, 1991) (statement of Legal Rights Workers).

VICTIM SERVICES

Minnesota Statute 611A (Crime Victims: Rights, Programs, Agencies) sets forth very clearly what rights are to be accorded to victims. They include the right to restitution, to be notified of any plea negotiations, and to be notified of the release of the offender.

Even with the statute in place there are several problem areas that prevent victims from being protected to the full extent the statute intends. One key problem is that the first contact, and sometimes the only contact victims have with the system, is with law enforcement — and that first contact is often a very negative experience. Female crime victims often feel powerless in these encounters and so do their advocates. Domestic violence and sexual assault workers told the Task Force that for many of the women they serve, involving the police ultimately makes them feel they have been victimized all over again.

Women's advocates report that, besides the gross insensitivity they often see, many police seem to be unaware of the Domestic Abuse Act[11] and what it requires of them.[12] Furthermore, victims generally are unaware that they *have* any rights. Even though law enforcement officers are required to provide victimes notice of their rights,[13] this is not always done.[14]

Statewide, the number of victim services providers is very small compared to the need. The Task Force's survey of victim service providers indicates that fully half the victims served in 1991 were people of color,[15] even though people of color are only 6% of the state's population. By comparison, less than 15% of the state's volunteer advocates are people of color.[16]

Compounding the problem of generally inadequate victim assistance is a perception that white victims are more likely than people of color to be accorded their statutory rights.

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[11]Minn. Stat. 518B.01 et. seq.

[12]Hearing at Black, Indian, Hispanic and Asian Women in Action (BIHA)(Jan. 29, 1993).

[13]Minn. Stat. § 611A.02, subd. 2(b) (1992).

[14]See, e.g., Bruegger v. Faribault County Sheriff's Dept., 486 N.W.2d 463 (Minn. App. 1992), rev. granted (Aug. 4, 1992).

[15]Minnesota Supreme Court, Victim Service Provider Demographic Information for the Task Force on Racial Bias in the Courts, p. 3 (Jan. 14, 1993)(on file with the Minnesota Supreme Court).

[16]Minnesota Supreme Court, Victim Service Provider Survey Results for the Task Force on Racial Bias in the Courts, p. 1 (Jan. 1993)(on file with the Minnesota Supreme Court) (hereinafter 'Victim Service Provider Survey Results').

According to 40% of the metropolitan area judges under age 50 and 39% of public defenders, prosecutors are more likely to file charges when the victim is white.[17] Forty-four percent (44%) of public defenders[18] and 40% of the metropolitan area judges under 50 said that prosecutors were more likely to perceive their cases as strong when the victim was white.[19]

People of color are less likely than white victims to receive reparations, or more likely to receive a reduced reparation amount, based on police reports of the victim's contributory conduct. In 1990, for example, 27% of the African American victims seeking reparations in Hennepin County received reduced awards based on contributory conduct alleged by the police compared to 7% of white victims.[20]

Findings

1. Little data is kept on crime victims, and generally does not include race.

2. There is little public awareness of victims' rights.

3. There is inadequate awareness of victims' rights in the law enforcement community.

4. Women of color who are crime victims often become victims of the justice system due to insensitive, inadequate services at every stage.

5. Given the disproportionately high number of people of color who are crime victims, there are too few minority victim service providers in the system.

Recommendations

1. The state should require a victim services program in every county, to be funded with state funds.

2. More minority victim service providers should be hired, retained and promoted within the justice system.

3. The Supreme Court should require all judges, court administrators, clerks, probation officers, attorneys and other court personnel to receive training on victims' rights as well as cultural diversity training.

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[17]Minnesota Supreme Court, Judges Questionnaire Results for the Task Force on Racial Bias in the Courts, p. 24 (Nov. 1992)(On file with the Minnesota Supreme Court)(hereinafter "Judge Survey Results"); Minnesota Supreme Court, Attorney Questionnaire Results for the Task Force on Racial Bias in the Courts, p. 18 (Nov. 1992)(on file with the Minnesota Supreme Court)(hereinafter "Attorney Survey Results").

[18]Attorney Survey Results, supra note 17, p. 19.

[19]Judge Survey Results, supra note 17, p.21.

[20]Interview with Marie Bibus of the State of Minnesota Crimes Victims Reparations Board (April 16, 1993).

4. State law should require the collection of data on the race of victims in police incident reports and on the Sentencing Guidelines' worksheets.

BAIL AND PRETRIAL RELEASE

Setting Bail and Pretrial Release for Felonies and Misdemeanors

The public hearings held by the Task Force throughout Minnesota made clear that the perception of minority citizens is that court procedures, from the initial setting of bail, are biased against them. This perception was strongly expressed in public hearings throughout the metropolitan area as well as greater Minnesota. The perception of bias against people of color was echoed by professionals in the court system as well.[21]

> People of color are arrested more often, charged more often, bail is set higher, plea bargains are tougher, trials less fair and sentences far longer. Racism is pervasive in the courts in Minnesota. (White Metropolitan Area Public Defender, Attorney Survey).

Several studies have now looked at the perceived disparities in the setting of bail and pretrial release. These studies indicate bias exists at a number of points in the setting of bail and the pretrial release process.

One such study, which involved a series of extensive analyses on bail and pretrial release criteria, was conducted by the Hennepin County Bureau of Community Corrections in 1992.[22] At the request of the Task Force, this group answered a set of specific questions regarding the relationship between race, pretrial release, and bail status.[23] The research staff of the Hennepin County Bureau of Community Corrections analyzed a group of African Americans and whites who had a first appearance on a felony or gross misdemeanor for a three month period. Among the findings were the following:

- African Americans were significantly *less likely* to be released with no bail required. When individuals who posted bail prior to first appearance were excluded, race remained statistically significant.
- Whites were *significantly more likely* to be mailed a summons (26% for whites vs. 13% for African Americans). After controlling for offense type, whites were still significantly more likely to be mailed a summons (35% for whites vs. 20% for African Americans).

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[21] Attorney Survey Results, supra note 17, p. 31; Judge Survey Results, supra note 17, p. 37.

[22] Rebecca Goodman, Hennepin County Bureau of Community Corrections, Pretrial Release Study (Dec. 1992).

[23] Cunniff letter of 3/4/92, supra note 7; Letter from Rebecca Goodman, Senior Statistical Analyst, Hennepin County Bureau of Community Corrections to Sharon Krmpotich, Minnesota Supreme Court (April 29, 1992) (on file with the Minnesota Supreme Court) (hereinafter "Goodman letter of 4/29/92").

- Once bail was set, there was a difference in ability to post bail and be released. *African Americans comprised 65% of the detained population while 35% of the detainees were white.*

For those charged with a felony against a person, 65% of African Americans were detained in comparison to only 35% of whites.[24] Twenty-eight percent of African Americans who were charged with felony property crimes were detained in comparison to 14% of whites.[25] While 18% of the African American defendants charged with felony drug offenses were detained, only 6% of white defendants were detained.[26] Since average bail amounts did not significantly differ by race within offense categories, it appears that there was a racial difference in the ability to post bail and be released.

Findings

1. Many people of color and a significant percentage of prosecutors, judges, and public defense lawyers perceive the court system as biased against people of color in the setting of bail and pretrial release on a statewide basis.

2. Extensive studies have shown that *race of the defendant* is a statistically significant factor when offense severity level is held constant in the setting of bail and pretrial release in Hennepin County.

3. Racial disparity occurs at a number of points in the release process:

   a. Hennepin County prosecutors disproportionately use the summons more often for whites than for people of color on both felony and misdemeanor offenses.

   b. People of color are being held in custody prior to trial in Hennepin County at a rate disproportionately greater than whites on both felonies and misdemeanors when offense severity level is held constant.

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[24] Goodman letter of 4/29/92, supra note 23, p. 3.

[25] Id.

[26] Id.

Criteria (Standards) used by the Courts to Determine Bail and Set Conditions of Release

There are a variety of court staff, probation officers, investigators and social workers who perform bail evaluations.[27] These recommendations are a crucial part of the decision making process regarding pretrial release.[28] Although the Minnesota Rules of Criminal Procedure indicate a strong preference for pretrial release, particularly for misdemeanor offenses,[29] over 40% of Minnesota's 87 counties reported that bail evaluations based on articulated, objective criteria are not conducted.[30]

Minnesota does not have uniform bail criteria guidelines. Throughout the state, judges rely on their own wisdom and court services criteria such as the VERA scale or other "objective" standards.

As a result of the extensive pretrial release study conducted in 1992 by the Hennepin County Bureau of Community Corrections, a new pretrial evaluation point scale which replaces the modified VERA scale was implemented. This new pretrial evaluation point scale eliminates many factors that directly correlated with race, but were not predictive of pretrial criminal activity or failure to appear.

Findings

1. Bail evaluations based on objective criteria are not conducted in over 40% of Minnesota's 87 counties, thus leaving these decisions to subjective criteria.

2. The modified VERA scale, formerly used in Hennepin County, has indirect bias within it that works against minority defendants and, therefore, should not be used.

Recommendations

1. Prosecutors, judges and bail evaluators should be mandated to attend cultural diversity training as well as special skills training in the area of racially and culturally neutral bail determinations.

2. Prosecutors and police officers should be sensitized to the issue of summons/tickets being disproportionately sent to whites, and the criteria for being mailed a summons or ticket should be examined to ensure they are race neutral.

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[27]Conference of Chief Judges, Criminal Justice Resource Management Plan Survey, Minnesota Trial Courts Summary of Bail Evaluation Function (Nov. 16, 1992) (on file with the Minnesota Supreme Court) (hereinafter "Criminal Justice Resource Management Plan Survey").

[28]Chief Judges of Minnesota, Focus Group, St. Paul (Aug. 16, 1991) (hereinafter "Chief Judges Focus Group).

[29]Minn. R. Crim. P. 6.02, subd. 1; Minnesota Judges Criminal Benchbook, ch. 5, p. 17.

[30]Criminal Justice Resource Management Plan Survey, supra note 27.

3. The Hennepin County Pretrial Services Point Scale should be used by prosecutors, judges, and evaluators as a model in developing neutral pretrial release tools *based* on factors which relate only to pretrial failure to appear and risk of pretrial crime.[31]

4. Each county should be required to conduct bail evaluation/supervisory release studies.

5. The Supreme Court Advisory Committee on Rules of Criminal Procedure should amend Rule 6.02 to *expressly* authorize the posting of a refundable ten percent (10%) of the face value of an unsecured bond to the court. This procedure would be consistent with the federal system and Rule 341(g)(2) of the Uniform Rules of Criminal Procedure (1987) and Standard 10-5.3(d) of the American Bar Association Standards for Criminal Justice (1985).

PLEA NEGOTIATIONS

Plea bargaining, because of the number and complexity of variables involved in each case, is difficult to examine for clear evidence of racial bias. In addition, the concept of *prosecutorial discretion* protects a wide range of plea bargaining decisions from scrutiny. Nevertheless, national studies have found that the race of the defendant and the race of the victim can both influence the exercise of this discretion.[32]

Even though analysis is difficult, it is very important to consider the role of plea negotiations because such a large percentage of cases are resolved through this process. Statewide figures for 1991 show that of the most serious criminal cases disposed, only 3% of the gross misdemeanors and 4% of the felonies were tried.[33]

There are a number of justice system professionals who believe there is a pattern of racial disparity in plea bargaining. Twenty-seven percent (27%) of Hennepin/Ramsey judges under age 50 believe that white defendants get more favorable plea bargains. Thirty percent (30%) of these judges believe that prosecutors give better deals in cases involving minority victims.[34]

Like judges, a substantial minority (19%) of all attorneys statewide and 37% of public defense attorneys believe that "prosecutors are more likely to make favorable plea offers when defendants are white."[35] While direct evidence in support of (or against) these views is unavailable, a variety of factors suggest that the potential for bias is strong. One such

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[31]See Appendix E.

[32]Note, Developments-Race and the Criminal Process, 101 Harv. L. Rev. 1472, 1525-32 (1988).

[33]Office of Research and Planning, Minnesota Supreme Court, 1991 Trial Court Statistics (Feb. 1992)(on file with the Minnesota Supreme Court).

[34]Judge Survey Results, supra note 17, p. 20.

[35]Attorney Survey Results, supra note 17, p. 17.

factor is the very small representation of racial minorities in the system. The Task Force estimates that out of 1165 prosecutors, public defenders and legal services attorneys statewide, only 26 are people of color.[36] Of the 18 public defender investigators in the state, only one is a person of color.[37] Only 11 of 87 counties even have victim advocacy programs, and their staffs are predominantly white.[38]

Findings

1. Minority attorneys are seriously underrepresented in both prosecution and criminal defense offices across the state.

2. Investigative personnel, who influence attorneys' perceptions of the strength of their cases — on both sides — are predominantly white.

3. There is tremendous variation among victim advocacy services (where they exist at all) throughout the state. Variation, and in many cases, the complete lack of these services, affects charging, negotiation, and sentencing practices.

4. There is very little cultural-diversity training required of prosecutors, defense lawyers and investigators on both sides.

5. There is a lack of multi-cultural skills training in specific areas, for example, how to prepare a minority defendant or victim to testify as a witness.

6. Prosecutorial offices have few, if any, written standards on plea negotiation.

7. Ethical standards applicable to lawyers on both sides have generally been silent on issues relating to racial bias.

8. Some judges and attorneys believe that the race of the defendant and victim affect plea bargaining in Minnesota.

Recommendations

1. Prosecution and defense offices should take all necessary steps to improve the recruitment, retention, and promotion of people of color.

2. These efforts should extend to support personnel and victim advocates, whose views shape attorneys' perceptions of their cases.

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[36]Wayne Kobbervig, et al., Minnesota Supreme Court, Research Methodologies for the Minnesota Supreme Court Racial Bias Task Force Research Projects, p. 2 (Feb. 2, 1993) (See Appendix B).

[37]Interview with John M. Stuart, Minnesota State Public Defender, (April 26, 1993).

[38]Statement to the Task Force on Racial Bias in the Courts by a member of State Office of Victims Ombudsman, (Feb, 27, 1993).

3. Statewide organizations such as the County Attorneys Association, State Board of Public Defense, Criminal Justice Institute, and Bemidji Trial School should enhance both general cultural diversity training and specific skills training that relate to participation in a culturally diverse criminal justice system.

4. Supervisors of prosecutors and defenders in every jurisdiction should discuss with their staff attorneys the potential for race influencing plea bargains.

JURIES

As amply documented elsewhere in this report, people of color are over-represented in the number of individuals arrested and prosecuted, as well as in the number of individuals who are victims. A random walk through the Hennepin and Ramsey county courts brings one face-to-face with how culturally diverse the state has become in recent years. People of color waiting for justice or judgment abound. Yet somehow, people of color on the *other* side of the courtroom — in the jury box — are very hard to find. In fact, jury pools rarely, if ever, are representative of the racial composition of our communities.[39]

Hennepin County, for example, at 11%, has one of the state's highest percentages of people of color.[40] Since 1968, only 5% of Hennepin County's grand jurors and approximately 6% of the petit jurors have been people of color.[41] Public defenders testifying at the public hearings identified this disparity as a serious concern.

Participation in the jury process by people of color has a profound impact on their attitude toward law and the system of justice in the United States.[42]

The judgment of the Hennepin County Task force on the Racial Composition of the Grand Jury was that a fair racial cross-section on the grand jury serves at least three important governmental and community interests:

1) decreasing the risks of miscommunication and racial or cultural bias in the process of receiving testimony and deliberation;

2) enhancing the perceived legitimacy and fairness of the grand jury; and

3) promoting greater cooperation between minority communities and law enforcement.[43]

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[39]See Office of the Hennepin County Attorney, Hennepin County Attorney's Task Force on Racial Composition of the Grand Jury, p. 28 (April 1992)(hereinafter "Racial Composition of the Grand Jury"); see generally Van Dyke, Jury Selection Procedures (1977).

[40]Bureau of the Census, U.S. Dept. of Commerce, supra note 4, p. 97.

[41]Racial Composition of the Grand Jury, supra note 39, p. 25.

[42]Dale W. Broder, The Negro in Court, 1965 Duke L.J. 19, 26 (1965).

[43]Racial Composition of the Grand Jury, supra note 39, p. 28.

Findings

1. People of color are overrepresented in the number of individuals arrested, prosecuted and imprisoned, as well as in the number of individuals who are victims and witnesses.

2. Jury pools rarely are representative of the racial composition of a community.

3. People of color have a general distrust of the criminal justice system and exclusion from jury service fosters that distrust.

4. The ethnic, racial and sexual makeup of a jury affects the outcomes of cases.

5. Grand and petit juries need people of color to truly reflect the whole community if the jury's verdict is to reflect the community's judgment.

Recommendations

1. Jury Management Rules should be amended to require that source lists for juries be expanded to include tribal eligible voter lists and lists of recently naturalized citizens.

2. Public education programs should be promoted to increase awareness about the purpose and function of the grand and petit juries.

3. The trial courts should educate themselves about the U.S. Supreme Court Batson[44] decision and related cases, with an eye towards strict enforcement regarding peremptory challenges. Because of the cultural diversity of our community and bias held by many members of the community, the lawyers should be given ample opportunity to inquire of jurors as to racial bias.

4. Measures should be adopted to decrease the impact of hardships on potential jurors. For example, judicial districts should pay for drop-in daycare for jurors who normally are not daycare users.

   In May 1993, the Fourth Judicial District, Hennepin Coutn, overwhelmingly approved the adoption of the Grand Jury Pilot Project.

5. The Minnesota Supreme Court should amend the Jury Management Rules to allow Hennepin and Ramsey County District Courts on a pilot basis to adopt new jury selection procedures that will guarantee minority representation on the grand jury equal to the percentage of the minority adult population of each judicial district as measured by the most recent census. This pilot project would allow jurors to be randomly selected as required under the current rules unless there are no people of

[44] Batson v. Kentucky, 476 U.S. 79 (1986).

color among the first 21 grand jurors selected. The selection process should continue until at least two out of the 23 grand jurors are people of color, thereby proportionately reflecting the minority population in Hennepin or Ramsey County.

TRIALS

Forty-one percent (41%) of the metropolitan judges under 50 responded that judges sometimes display culturally-insensitive behavior and 21% of this group answered that judges sometimes make demeaning remarks or jokes about people of color in court or in chambers.[45] Fifty-two percent (52%) of victim service providers identified cultural insensitivity on the part of judges as occurring often or sometimes, and 32% identified demeaning remarks or jokes as occurring often or sometimes.[46]

Over 40% of public defenders also reported the use of derogatory language toward minority defendants by court personnel.[47] Forty-six percent (46%) of the victim service providers said that court personnel always, often or sometimes made remarks or jokes demeaning to people of color in court or in chambers.[48]

There are numerous accounts of openly disrespectful courtroom behavior on the part of prosecutors as well.

The fact that public defender caseloads are so consistently heavy also works to the detriment of people of color.

Findings

1. Sometimes judges do not take minorities, defendants and non-defendants, seriously or treat them with respect.

2. Prosecutors sometimes make disparaging remarks about people of color in the presence of defendants.

3. Public Defenders, whose client loads are top-heavy with people of color, are sometimes seen by people of color as uncaring and disparaging. They often cannot give their cases the time and attention they require.

4. People of color often choose not to go to trial because of the perception that they will not receive a fair trial.

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[45]Judge Survey Results, supra note 17, p. 33.

[46]Victim Service Provider Survey Results, supra note 16, p. 12.

[47]Attorney Survey Results, supra note 17, p. 24.

[48]Victim Service Provider Survey Results, supra note 16, p. 12.

*In May 1993, the Hennepin County bench overwhelmingly approved the Grand Jury Pilot Project, which this recommendation essentially summarizes.

Recommendations

1. The Supreme Court, through the Implementation Committee, should require cultural sensitivity training for judges, prosecutors, private defense attorneys, public defenders, law clerks, bailiffs and other court personnel.

2. Each office responsible for hiring prosecutors, public defenders, law clerks, court reporters and other court personnel should actively recruit and hire more people of color for these positions.

3. More minority judges must be appointed to the bench.

4. The state and counties should improve the public defender system by:

   a. Increasing the level of funding.

   b. Adopting and funding the ABA[49] or Spangenberg[50] caseload standards for attorneys representing indigent clients.

5. The Supreme Court, through the Implementation Committee, should create a process to address complaints about issues of race involving the judiciary.

PRESENTENCE INVESTIGATIONS

In Minnesota, presentence investigations are routinely ordered by judges in felony and misdemeanor cases when defendants plead or are found guilty. Presentence investigations are prepared by probation officers, who work directly for the court, to aid judges in formulating appropriate sentences.

For this process to work fairly and in the best interests of both defendants and society, it is important that probation officers give accurate, objective, unbiased information and recommendations for judges to rely upon in appropriately assessing each defendant. However, there is a perception among some in the legal community that the recommendations of probation officers are not always racially neutral.

Corroborating evidence of this perception was found in a report on intermediate sanctions imposed on felons who were sentenced in 1987.[51] Although the study did not

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[49]American Bar Association recommendation, 1985.

[50]The Spangenberg Group, Inc. Weighted Caseload Study for the State of Minnesota Board of Public Defense, (Jan. 1991) (on file with the Minnesota Supreme Court).

[51]Minnesota Sentencing Guidelines Commission, Report to the Legislature on Intermediate Sanctions, (Feb. 1991) (on file with the Minnesota Supreme Court).

control for type of offense, it found whites were *twice as likely* to be recommended by probation officers for stays of imposition of sentence than people of color.[52]

The Task Force commissioned a study on non-imprisonment felony sentences that employed some of the most rigorous and stringent statistical methodologies currently available to analyze sentencing data. The research methodology was able to hold constant several important legal and demographic factors related to sentencing outcomes, and isolate the direct effect race of the offender has on sentence.[53]

The study concluded that presentence jail time was a source of differential treatment between whites and people of color.[54] African Americans were more likely than whites to serve presentence jail time; and Native Americans, Asian/Pacific Islanders, and Hispanics served significantly longer jail terms than whites when pretrial jail time was included in a measure of total jail time served.

Findings

1. Probation officers are disproportionately white in comparison to their clientele.

2. More training for probation officers on cultural sensitivity skills is needed.

3. There are not enough culturally-specific/sensitive treatment programs to meet the need.

4. There appear to be racial disparities in sentencing recommendations which may point to bias in the presentence process.

5. There are racial disparities in the likelihood of serving presentence jail time, as well as in the length of total jail time served when pretrial jail time is included.

Recommendations

1. Counties should hire more probation officers who are people of color.

2. The Supreme Court should encourage the creation of more culturally-specific treatment programs, and probation officers and judges should be encouraged to divert appropriate people of color into such programs.

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[52] Id. p. 44.

[53] Sharon Krmpotich, Minnesota Supreme Court, Non-Imprisonment Sentences: An Analysis of the Use of Jail Sanctions for Minnesota Offenders for the Task Force on Racial Bias in the Courts, (Sept. 24, 1992) (See Appendix D).

[54] Id. p. 18.

3. Counties should hire and encourage contracted service providers to hire more chemical dependency assessors who are people of color.

SENTENCING

Despite the intent of the Guidelines, the perception of minority citizens is that the court system is biased against them.[55] This general perception of bias against people of color is shared by professionals in the court system as well.[56] In response to the questionnaires that the Task Force sent to members of the bar and probation officers throughout the state, more than 75% of the attorneys, judges and probation officers responded that bias against people of color exists in the court system.[57] Nearly 90% said the bias is subtle and hard to detect.[58]

Analysis of Sentencing Guidelines Departures and Imprisonment Rates

An analysis was undertaken to examine racial differences in dispositional and durational departures from Minnesota's Sentencing Guidelines as well as imprisonment rates for a select group of offenses during 1990: aggravated robbery, criminal sexual conduct, weapons offenses and second degree assault commitments.[59] The study *found that people of color had consistently higher imprisonment rates compared to whites in these offense categories.*[60]

For those offenders with no criminal history, there are large differences in the imprisonment rates in three of the four offense categories. The largest discrepancies can be seen in the offense categories of aggravated robbery (a 24% difference) and dangerous weapons (a 32% difference).[61] These two categories, along with second degree assault, indicate that *people of color had significantly higher imprisonment rates* in comparison to whites. A lack of criminal history was much more beneficial to whites than people of color in avoiding prison for convictions in these offense categories.

In the offense categories of aggravated robbery, second degree assault, and dangerous weapons, there is a statistically significant association between race of the offender and imprisonment. *People of color had significantly higher imprisonment rates than whites.*

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[55] See generally Public Hearing testimony.

[56] Attorney Survey Results, supra note 17, p. 31; Judge Survey Results, supra note 17, p. 37.

[57] Judges Survey Results, supra note 17, p. 37; Attorney Survey Results, supra note 17, p. 30; Minnesota Supreme Court, Probation Officer Survey Results for the Task Force on Racial Bias in the Courts, p. 23 (Nov. 1992) (On file with the Minnesota Supreme Court) (hereinafter "Probation Officer Survey Results").

[58] Attorneys Survey, supra note 17, p. 31.

[59] Sharon Krmpotich, Minnesota Supreme Court, Analysis of Sentencing Guidelines 1986-1990; Imprisonment Rates and Departure Data for Minnesota Felons (Feb. 10, 1993) (See Appendix D).

[60] Id. pp. 7-12.

[61] Id.

The analysis of offenders with some criminal history again found some large racial differences in imprisonment rates. People of color had higher rates in all four offense categories examined.[62]

People of color were imprisoned at a rate that was at least 12% greater than the white imprisonment rate for convictions of aggravated robbery, criminal sexual conduct, and weapons offenses.[63] Since all of these offenders were classified as presumptive prison commitments, *white offenders received more lenient treatment than minority offenders who were similarly situated* under Sentencing Guidelines.

Another study was commissioned to determine if any racial differences exist in the handling of misdemeanors in Hennepin County.[64] The offenses of assault, theft and prostitution were specifically examined. It was found that whites were more likely to receive a fine when compared to people of color, and *people of color were more likely than whites to have a jail sentence imposed* even though they were convicted of the same offense and had similar criminal histories.[65]

Drug Offenses and Sentencing Policy

The decade of the 80's saw a pronounced shift in law enforcement philosophy and tactics toward arresting users rather than focusing primarily on dealers as part of the "war on drugs." In Minnesota the number of arrests of African Americans for narcotics crimes rose 500% between 1981 and 1990, almost 17 times as fast as the rise in arrests of whites.[66]

Findings

1. There is racial bias in sentencing in Minnesota.

2. Certain criminal legislation has had a disparate impact on people of color.

Recommendations

1. Judges and probation officers should be mandated to attend cultural diversity training as well as special skills training in the area of racially and culturally neutral sentencing determinations.

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[62] Id.

[63] Id.

[64] See Hennepin County Misdemeanor Processing Analysis Report, supra note 6.

[65] Id. pp. 13, 14.

[66] Minnesota Sentencing Guidelines Commission, Report to the Legislature on Controlled Substance Offenses (Feb. 1992).

2. The Minnesota Sentencing Guidelines Commission should more completely and routinely analyze and summarize information on sentencing practices by race and highlight this information in an annual report.

3. Each judicial district should implement be a continuing program for diversion of first time drug offenders into treatment. For people of color, when possible, the treatment should be culturally specific/sensitive. Monitoring should be done by the chief judge of the judicial district with periodic reporting to the chief justice.

4. The appropriate legislative committee(s), where practicable, should review legislation for any differential treatment which could result from enforcement. Without such review for discriminatory impact, unintended but nevertheless racially biased outcomes can result.

5. The Minnesota Sentencing Guidelines Commission should continue to monitor and compare sentencing practices on cases involving powder cocaine versus crack cocaine.

6. The State Court Administrator's Office in conjunction with the Sentencing Guidelines Commission should study and evaluate sentencing disparities in order to identify and eliminate those based on race.

CRIMES MOTIVATED BY BIAS

Minnesota is rapidly becoming more culturally diverse. The occurrence and reporting of bias crimes appears to be increasing.[67] In its 1991 bias-motivated crime summary, the Office of Information Systems Management found a 38% increase in bias offenses reported for January through December, 1991 (425) when compared to the same time period in 1990 (307).[68] As examples, during 1992 the Ramsey County Attorney's Office received convictions in a bias-motivated first degree murder where the African American victim was killed because he was "in the wrong (white) neighborhood", and in a terroristic threats case where a white student threatened to "eradicate" an African American college professor because of his "liberal teachings" regarding racial issues.

Findings

1. Racial bias incident reports have increased faster than reports of any kind since 1988 when records started being kept.

2. Minnesota currently has statutes in place that provide for enhanced penalties for certain crimes motivated by bias.

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[67]Office of Information System Management, Minnesota Department of Public Safety, Minnesota Crime Information, 1991, p. 141 (1992).

[68]Id. p. 141.

3. Even though the POST Board is required to offer a course on identifying and responding to bias-motivated crimes, peace officers are not required to take it.

Recommendations

1. The Legislature should extend the time period during which the Attorney General must provide bias crime training to prosecuting attorneys on a continuing basis.

2. The appropriate supervisory authority should subject law enforcement personnel to discipline where they fail to follow the notification requirements of Minn. Stat. § 611.A et seq.

3. To the extent permissible by law, the Minnesota Sentencing Guidelines Commission should amend the sentencing guidelines to recognize bias motivation as an aggravating factor in felony prosecutions.

LAW ENFORCEMENT

Anger, fear, and mistrust characterize public discourse on police-community relations. A very common perception among the communities of color is that the justice system is either unable or unwilling to vigorously investigate and prosecute, where appropriate, assaults committed against people of color by the police.

The perception that police often treat people of color in a biased manner is not limited to members of minority communities. For example, the Task Force found in its statewide surveys that 41% of responding public defense attorneys throughout the state and 47% of judges under fifty years of age in Hennepin and Ramsey Counties believe that minority defendants are more likely to be physically mistreated during custody.[69]

It was apparent from the beginning of the Task Force's work that the subject of police-community relations demands more focused attention than could be provided in the context of an overall examination of racial bias in the justice system. Nevertheless, because concerns about law enforcement were continually raised to this current Task Force on racial bias in the judicial system, a few basic issues were addressed.

One such basic issue that clearly emerged from the work of the Task Force was the lack of cultural diversity within law enforcement agencies.

A second basic concern is the lack of cultural sensitivity training for peace officers. The need for police officer training in cultural issues was specifically cited by members of

[69]Wayne Kobbervig, Minnesota Supreme Court, Summary and Analysis of Criminal Process Data for Questionnaires and Research Projects for the Task Force on Racial Bias in the Courts, p. 8 (Nov. 23, 1992)(see Appendix D).

the public who testified before the Task Force at its hearings.[70] The law enforcement focus group similarly recognized the need for such training. This group noted the importance of the chiefs creating a culture in which racial bias is not tolerated. It also recommended training that is "real world" oriented.[71]

Lack of cultural sensitivity training directly affects the conduct of law enforcement in its dealings with communities of color. In response to a survey question about incidents of racial bias, judges throughout the state frequently identified law enforcement officers as a source of racist conduct ranging from illegal stopping of defendants solely because of their color to excessive use of force and use of racial slurs.[72]

Another concern identified by the Task Force is the lack of clear procedures for filing a complaint against an officer. The Task Force heard from many public hearing participants of their frustrations in attempting to lodge complaints about police officer conduct.

Findings

1. Law enforcement agencies in Minnesota employ very few minority officers. Those that do, do not employ minority officers in proportional numbers to the demographics of the communities they serve.

2. State law does not require affirmative action efforts by local law enforcement agencies and no state agency monitors their affirmative action efforts.

3. Citizens across the state perceive that the procedures for making complaints against law enforcement officers are inaccessible, difficult to understand or nonexistent.

4. The hiring, initial training, and continuing education of police officers does not effectively provide officers with the communication skills and cultural awareness to serve diverse Minnesota citizens effectively.

Recommendations

1. The Supreme Court should establish and the Legislature should fund an initiative to develop long-term plans to address problems in minority community-police relations.

2. Police recruitment, education and in-service training must be reoriented to ensure that officers have the skills needed to interact effectively and supportively with the diverse communities whom they serve. Innovative "real world" rather than classroom

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[70]Public Hearing, Albert Lea (Nov. 6, 1991), Marshall (Oct. 30, 1991), and St. Paul (Oct. 9, 1991).

[71]Law Enforcement Focus Group (Jan. 13, 1993).

[72]Minnesota Supreme Court Judges Open-Ended Responses for the Task Force on Racial Bias in the Courts, pp. 42-50 (Nov. 1992) (On file with the Minnesota Supreme Court).

bound programs to provide officers with the experiences necessary to interact effectively with communities of color should be developed.

3. The Legislature should require that a significant percentage of forfeiture funds be used to fund programs, such as summer jobs in law enforcement, to encourage minority youth who are interested in pursuing law enforcement careers.

4. The POST Board should develop programs in management training on diversity issues for supervisory personnel which specifically address recruiting and managing a culturally diverse workforce and assuring that law enforcement services are delivered fairly and equally throughout a culturally diverse community.

5. The Legislature should authorize the POST Board to develop a simple and easy-to-use complaint form for statewide use. Law enforcement agencies located in communities with non-English speaking minorities should make translations of the complaint form available.

INTERPRETERS

This extremely important and fundamental issue has been allowed to become a "stepchild" of the justice system: understudied, underfunded, and in terms of its ultimate impact, little understood. The Task Force has found that in Minnesota, notwithstanding the existence of a strong statute governing the management of this issue, and despite recent attention from the Conference of Chief Judges, there is much to be done and a long way to go before full compliance with existing law can be achieved.

Minnesota has sizable and growing Hispanic and Asian/Pacific Islander populations whose primary language is not English. The significant increase in the size of Minnesota's non-English speaking populations has resulted in an increased demand upon the court system to meet the needs and protect the rights of people handicapped by language. The existence of racial bias impedes the administration of justice. The problems inherent with such bias are exacerbated by an inability to communicate directly with people who cannot read, speak or understand English, a difficulty that affects every phase of the judicial process.

People who speak little or no English cannot explain their feelings at sentencing directly to a judge who might equate embarrassment or silence with lack of remorse. They cannot communicate directly with probation officers who closely monitor strict compliance with technical requirements of probation. They cannot take full advantage of treatment programs that are unable to accommodate non-English speakers.

Training about the use of interpreters for all personnel within the court system is clearly indicated. Strict compliance with established law and procedures must also be required of police officers.

As the Supreme Court has stated, "Translation is an art more than a science, and there is no such thing as a perfect translation..."[73] While perfection may not be possible, court systems which require interpreters to pass a rigorous examination like the federal court system's before they may interpret certainly achieve a standard closer to perfection than the trial court system. The stakes are too high to settle for mediocrity or for less than what is provided in the federal system.

Findings

1. Citizens with limited English speaking skills have the same rights and protections as any other citizens involved in the court system in both civil and criminal matters. It is imperative that these individuals understand fully their rights and responsibilities.

2. Currently there are no uniform standards for the training of language interpreters.

3. Minnesota does not have a certification process to ensure that the interpreters used in our courts are competent and translating accurately.

4. Public defenders and county attorneys do not have adequate interpreters available to assist them with non-English speaking defendants, victims and witnesses.

5. Minnesota's state statute uses the term "qualified interpreter", but there is no adequate definition of this term. A "qualified interpreter" should be defined as someone who is properly trained, tested and certified to work in the court system.[74]

Recommendations

1. The Supreme Court should recommend and the Legislature should establish and fund a State Board for Interpretive Services to propose standards and procedures for the training, professional conduct, certification, qualification, testing and adequate compensation of certified interpreters. In establishing standards and qualifications, the Board should consult with the affected communities. If such a Board is not recommended or established by the Legislature, the Supreme Court should establish an equivalent board.

2. The Legislature should define the term "qualified interpreter" to be a person who is certified by the state board for interpretive services.

3. The Supreme Court should recommend and the Legislature should establish a comprehensive statutory basis for providing adequate court interpretation and legal translation services for all people in need of interpreters. (Existing statutory provisions for the deaf and hearing impaired may serve as a model.)

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[73] State v. Mitjans, 408 N.W.2d 824, 832 (1987).

[74] Mass. Gen. L. ch. 221C, §§ 1-7 (Supp. 1993); 28 U.S.C. § 1827.

4. The Supreme Court should adopt uniform standards to govern all phases of all interpreted court proceedings and determine responsibilities for paying the related costs.

5. The Supreme Court should adopt a policy that requires all judicial forms and documents used by people involved in court proceedings to be drafted in easily translatable English and to be translated into such additional languages as the state court administrator approves. All such translations are to be made by approved legal translators, and should be printed at levels of quality equal to that of the corresponding English versions.

6. The Supreme Court should adopt policies and programs to orient and sensitize all court personnel who deliver services to people in need of interpreters with regard to the importance and complexities of communicating with people of diverse linguistic and cultural backgrounds. This orientation should include instruction regarding techniques for working with a court interpreter as well as how to develop a better "ear" for communicating with people whose English may be heavily accented.

JUVENILE AND FAMILY LAW

Despite the shift in philosophy the Indian Child Welfare Act (ICWA) helped engender, Minnesota's Native American children are being removed from their homes today at an even higher rate than the rate that triggered the ICWA's passage in 1978.[75]

It is also quite clear from an initial examination of the data that minority youth are overrepresented within the juvenile justice system. Although people of color comprise 8% of the state's juvenile population, 22% of juveniles processed as delinquent are people of color.[76]

In 1983, the Minnesota Legislature extended the protection of the ICWA and the Indian Family Preservation Act to other racial or cultural minorities by adopting the Minnesota Minority Heritage Act, in which "the policy of the state is to ensure that the best interests of children are met by requiring due consideration of the child's race or ethnic heritage in foster care placements."[77]

Nevertheless, while the federal government was espousing the value of protecting the racial and ethnic heritage of minority children, its funding mechanism tended to undermine the achievement of that goal. In part, the disproportionate removal rates have been caused

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[75]Minnesota Department of Human Services, Minnesota Minority Foster and Adoptive Care, 1989 (Jan. 1991).

[76]Minnesota Criminal Justice Statistical Analysis Center, Minorities in the Juvenile Justice System, At-a-Glance, pp. 5,9 (Oct. 1991)(hereinafter "Minorities in the Juvenile Justice System").

[77]Minn. Stat. § 260.181, subd. 3.

by federal funding aimed largely at providing and licensing foster care, *despite the stated goal of trying to avoid placing children in foster care.*

Children in Need of Protection and Services (CHIPS)

Initial data from the Department of Human Services indicated to the Task Force that minority children were vastly overrepresented within the foster care system. Thirty-six percent (36%) of all out-of-home placements are of minority children.[78]

Both judges and attorneys reported cultural insensitivity on the part of social workers and court-intake personnel in CHIPS cases. One-third of all judges and nearly 70% of the metropolitan area judges said that these employees demonstrate cultural insensitivity sometimes, often or always in working with minority families.[79] Nearly 50% of all attorneys and over 60% of public defenders agreed.[80]

Nearly 25% of all judges and 63% of Hennepin and Ramsey County judges report that judges, also, demonstrate cultural insensitivity always, often or sometimes in working with minority families.[81]

The Minnesota Department of Human Services monitored Hennepin County's compliance with the cultural heritage laws in January, 1991.[82] In its study of placement with relatives, it found that case records did not adequately reflect the efforts that were made to find relatives for a first placement.[83] Efforts were apparently minimal in 48% of the cases, and there was a lack of consistent effort to meet the placement preference requirements once a first placement was made. There was greater noncompliance in cases involving Native Americans than other people of color.[84]

In order for the court to properly render its decision it is essential that the court require full documentation of the placement efforts, including reasons for a removal decision, conduct of relative searches, same race foster care availability, and the adequacy of the basis for any different race placements that might occur. This process must not be regarded as a "hoop" to jump through, but as an integral part of protecting the welfare of children from communities of color by the justice system.

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[78]Minnesota Department of Human Services, 1991 Substitute and Adoptive Care Reports, (April 1, 1993)(preliminary draft report on file with the Minnesota Supreme Court).

[79]Judge Survey Results, supra note 17, p. 11.

[80]Attorney Survey Results, supra note 17, p. 10.

[81]Judge Survey Results, supra, note 17, p. 11.

[82]Minnesota Department of Human Services, Monitoring of Hennepin County Compliance with Laws Respecting Cultural Heritage, (Jan. 1991).

[83]Id. p. 15.

[84]Id. p. 21.

Findings

1. The failure of the justice system to keep sufficient and accurate race-specific data permits a biased system to operate free from effective scrutiny, wrongly shifting the burden of proving that bias exists to the people of color the system processes.

2. The juvenile justice system fails to elicit data on the racial and cultural background of children brought into the system, which thwarts the proper application and enforcement of laws designed to protect the heritage of such children.

3. Children from communities of color are grossly overrepresented in the foster care system.

4. Communities of color are distrustful of the juvenile justice system and that distrust is based upon actual and perceived bias, including the absence of minority personnel within the system itself. Many people of color perceive white system personnel as indifferent or hostile to cultural differences.

5. A significant percentage of attorneys, judges and court personnel are unfamiliar with the Indian Child Welfare Act and the Minority Heritage Preservation Act.

6. Many people of color being brought into the judicial system do not understand nor do they receive an adequate explanation of their rights and resources available to them, e.g., in the case of Native American Families, the availability of counsel, the right to know the child's placement, the right to relative placement, and the right of their tribes to intervene.

7. There is an urgent need for family-based services to prevent the disproportionate removal of minority children from the home.

8. There is a systemic failure to comply or to document compliance with laws regarding protection of racial or cultural heritage.

9. There is a failure to engage affected communities of color in the placement process, including a failure to recognize functional and significant relationships within their families.

Recommendations

1. The Supreme Court should require courts to collect accurate race-specific data on all people being brought into juvenile court.

2. The Department of Human Services should develop a written notice of rights that social services workers must provide in appropriate languages to parents or custodians at the earliest possible time, such as the initial meeting or at an emergency removal, which will explain to the family their legal rights, and also refer

the family to the appropriate ombudsperson and any other appropriate service or agency. In the case of Native Americans, this must include the right to have the tribe intervene and the right to have the matter brought to a tribal court.

3. All current judges, attorneys, social workers, guardians ad litem, and other court personnel should receive education and training to increase their sensitivity to cultural and racial issues, including training in the provisions of the ICWA.

4. All state and local agencies should make significant efforts in the recruitment, training, retention, and promotion of minority personnel within the juvenile justice system. These efforts should be directed toward providing personnel in proportion to the client community, and not be based solely upon demographic representation of communities of color in the population at large.

5. The Legislature should develop and fund full-time, culturally-specific independent minority legal advocacy programs statewide, such as the Indian Child Welfare Center.

6. The Courts should more actively pursue recruitment and retention of minority guardians ad litem on a statewide basis, and all guardians should be adequately compensated.

7. The Legislature should redirect state resources from out-of-home placement programs to family and community based programs, including culturally specific placement alternatives, to the greatest extent possible without endangering the ability of the state to meet the appropriate needs of children.

8. The Department of Human Services should increase recruitment and licensing of foster care families within communities of color and state aid should be available to bring relative placement homes into compliance with state licensing requirements, where denial is based upon grounds other than personal fitness.

9. The Legislature should establish foster care associations, independent of, but under the auspices of, the various minority councils within each community of color. Such associations should include foster care providers and serve as part of the licensing, recruitment and review process of the Department of Human Services. Adequate state funding should be provided for such associations.

JUVENILE DELINQUENCY

Evidence of differential treatment in Minnesota of juveniles based upon race has been well documented in the research of Professor Barry Feld of the University of Minnesota Law School. Professor Feld has undertaken extensive analysis of Minnesota's juvenile justice system using, among other sources, State Judicial Information System (SJIS) data.

Nearly half of all juveniles arrested for serious crimes reside within the two urban counties,[85] and almost all arrests are made by white officers.[86] Forty-seven percent (47%) of the minority juveniles and 32% of the white juveniles reported being treated roughly during their arrest. One-third of the minority juveniles in both metro and outstate areas felt race was a factor in their arrest. Additionally, 27% of metropolitan area minority juveniles experienced racial putdowns.[87]

As expected, the seriousness of the present offense greatly influences the arrest decision. Arrest data indicates that minority juveniles are arrested for more serious delinquent behavior. Arrests in 1990 for crimes against the person (which includes aggravated assault, robbery, homicide, and criminal sexual conduct) involved minority youth over 50% of the time. Of those arrested for such crimes, 37% were African-American and 10% were Native American. Crimes against property, both felony and minor, were much more likely to be committed by whites (77% and 84% respectively).[88]

The Task Force also undertook an in-depth examination of juvenile data which was available. Hennepin County and fifteen greater Minnesota counties were selected for analysis using SJIS data collected from 1987 through 1991.[89]

Two separate, but identical, analyses were conducted. The study was divided between Hennepin County and the greater Minnesota counties, as Hennepin's case data (10,000+ cases) was larger than all the greater Minnesota counties combined (8,000+ cases) and the racial composition of the samples was significantly different. The Hennepin sample was 61% white, with African Americans being the largest minority group. The outstate sample was 78% white. Its dominant minority group was Native American.[90]

The evidence the Task Force examined revealed that *race is a significant, independent variable* that influences decisions on both pretrial detention and out-of-home placement.

Following arrest, a decision again must be made whether to detain or release the juvenile prior to an adjudication and disposition. After controlling for present offense and prior history, the Task Force study of juvenile case processing data found that for first-time delinquents in Hennepin County, there is, in fact, a significant relation between race and detention within three offense categories: felony against a person, felony against property,

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[85] Minorities in the Juvenile Justice System, supra note 76, p. 7.

[86] Minnesota Supreme Court, Juvenile Exit Survey for the Task Force on Racial Bias in the Courts (June 1992)(on file with the Minnesota Supreme Court)(hereinafter "Juvenile Exit Survey").

[87] Minnesota Supreme Court, Juvenile Exit Survey Results for the Task Force on Racial Bias in the Courts, p. 2, 3 (Jan. 21, 1993)(on file with the Minnesota Supreme Court)(hereinafter "Juvenile Exit Survey Results").

[88] Minorities in the Juvenile Justice System, supra, note 76, pp. 7-9.

[89] Sharon Krmpotich, Minnesota Supreme Court, Juvenile Case Processing Analysis for the Task Force on Racial Bias in the Courts, (April 28, 1992)(See Appendix D).

[90] Id. p. 2.

and other delinquent behavior. *Minority youths are detained at nearly two and one-half times the rate of whites* in each of these categories. Even for repeat delinquents within the same three offense categories a higher rate of detention existed.[91]

In greater Minnesota, removal and race were significantly associated for first-time offenders in three of the categories: felony property, minor property, and other delinquent behavior. People of color were removed at higher rates than whites in each of the categories.[92]

The problem of juvenile "gangs" was much discussed within the Task Force. Although the Task Force had no desire to minimize or ignore a problem which it recognized as one with serious implications for the study of racial bias within the criminal justice system, it did not have the resources or data necessary to do justice to a study of the problem.

The Task Force's concern is that current gang definitions are not objectively applied; and, that *none* of the current gang legislation addresses the root causes of gang association and behavior. The necessity for identifying and dealing with "gang behavior" requires an in-depth analysis which will not only distinguish the root causes, but provide solutions that can be implemented at a stage *before the juvenile becomes involved with the criminal justice system.* To punish a juvenile more severely because of his or her associations, particularly when identification of those association may be done in a biased manner, is not acceptable in a juvenile system which emphasizes individualized treatment of the offender.

Findings

1. The failure of the justice system to keep sufficient and accurate race-specific data has the effect of wrongly shifting the burden of proving the juvenile justice system operates in a biased manner to the minority defendants it processes.

2. Minority juveniles are detained at a significantly higher rate than whites, and detention has a direct relation to the seriousness of the disposition.

3. Minority first-time offenders are removed from the home in greater Minnesota at disproportionate rates.

4. Even where alternatives to removal are available, few of these alternatives offer culturally specific programs to help minority juveniles.

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[91] Id.

[92] Id. p. 10.

Recommendations

1. The Supreme Court should mandate that courts collect accurate race-specific data on all people subject to juvenile court jurisdiction.

2. The Department of Corrections should develop objective detention criteria for use in all detention decisions. The State Public Defenders Office should develop procedures for challenging the detention decision; and the Legislature should develop and fund alternatives to detention for minority juveniles.

3. The Legislature, in cooperation with affected state agencies and local government, should develop and fund culturally specific programs for minority youth for both in-home and out-of-home placements which will emphasize the acquisition of skills most needed by minority juveniles in order to give them the best possible chance at rehabilitation and prevent their return to the juvenile justice system.

4. The Courts should use great care so as not to be influenced by the pre-adjudication determination in making a final disposition. This merits further study by the Juvenile Justice Task Force of the Supreme Court.

5. All appropriate state and local agencies should make significant efforts in the recruitment, training, retention, and promotion of minority personnel within the juvenile justice system. In particular, in the case of delinquency, minority probation officers are in a better position to understand the juvenile in the social context of his or her community and to make more informed recommendations on an appropriate disposition.

6. The Legislature should authorize and fund a task force to comprehensively study the issue of "gangs", including the concerns discussed above with input from all affected constituencies, including representative groups from communities of color, professionals in the juvenile and criminal justice system, law enforcement officials, and qualified social science experts.

ACCESS TO REPRESENTATION AND INTERACTION, AND GENERAL CIVIL PROCESS

In addition to the inability of many people of color to afford private attorneys to defend them in criminal matters, people of color in Minnesota also experience significant difficulties in obtaining access to representation in many civil legal areas. The civil legal needs of people of color often involve problems which directly affect their day-to-day lives: issues involving their homes, families, health and personal safety, and support for their children. Beyond the day to day barriers discrimination and bigotry create, making it difficult to secure employment, decent housing and basic services, there is a more subtle effect: the constantly reinforced feeling that the institutions on which our civic life depends, including the justice system, are inherently unfriendly and not to be trusted.

The issue of trust in the system is frustrated by the fact that there are still very few attorneys, judges, and other officers of the court who come from communities of color. Possible barriers to participation in the field of law for people of color are addressed in this chapter in sections on the Minnesota Bar Examination, hiring, promotion and retention of minority lawyers, Native American law and treaty rights issues, and how current judicial evaluation practices affect judges who are people of color.

ACCESS TO ADEQUATE REPRESENTATION & RELATED ISSUES

In 1992, Minnesota's coalition of legal service programs assisted 42,228 people, 9,483 of whom were people of color.[93] While keeping general statistics and information by race, legal aid programs generally do not keep racial data across the different case areas. Nearly 20,000 Minnesotans a year are turned down for service due to limited resources.[94] It is estimated that at least 5,000 of these are people of color.[95]

Legal aid programs have been successful in obtaining alternate sources of funding as well as very successful efforts to enlist the private bar in a large amount of pro bono work. Even with these and other resources, however, people of color continue to experience substantial barriers to obtaining representation in many civil matters.

The Attorney Questionnaire also asked attorneys to share any instances of racial bias or race related problems they had encountered or observed with respect to people pursuing legal careers in Minnesota.

The autonomy and jurisdictional issues raised by treaty law are complex and often misunderstood. The experience of attorneys who represent Native American issues in court has been that there is a profound lack of understanding about tribal courts and treaty rights. At present, Minnesota law schools and Minnesota CLE are not providing sufficient legal training in these areas of concern.

Findings

1. People of color experience a disproportionately large number of civil legal problems due to racial discrimination and poverty.

2. While making up only 6% of Minnesota's population, people of color constitute 23% of the people represented by legal aid programs.

3. The lack of resources for legal aid programs is a major barrier to access to representation for people of color.

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[93]Minnesota Legal Services Coalition Programs, Proposal for Funding from the Lawyer Trust Account Grant Program for the 1993-1994 Funding Cycle., Appendix F, p. 3 (April 1, 1993).

[94]Id. Appendix F, p. 4.

[95]Id. Appendix F, p. 6.

4. It appears that few employers take adequate steps to recruit, hire, retain, and promote minority attorneys.

5. Parties asserting Native American treaty rights encounter general hostility from non-Indian judges, attorneys and other justice system officials.

6. Tribal courts are often not recognized in court proceedings.

Recommendations

1. The Legislature should appropriate a higher level of funding to legal aid programs to enable them to increase legal representation for people of color, particularly with respect to family law, housing, public benefits, immigration, discrimination and education matters.

2. The Supreme Court, the Minnesota State Bar Association (MSBA), Minnesota Minority Lawyers Association (MMLA), other minority law associations, and legal aid providers should strengthen their commitment to motivating private attorneys to provide pro bono or reduced-fee services, or otherwise financially support representation to people of color.

3. A model recruitment policy and program for law firms and other employers to use in hiring and recruiting minority attorneys should be developed by the MMLA and other minority bar associations in conjunction with the MSBA.

4. The MMLA and other minority bar associations in conjunction with the MSBA should provide recruitment and hiring practices seminars and materials to assist law firms and other employers in adopting racially neutral hiring practices. These seminars should be CLE approved.

5. Law firms and other employers should internally review their mentor relationships and systems to make sure that adequate mentoring programs are available to minority attorneys.

6. Judges, justice system personnel and attorneys should receive specific training, on the Indian Child Welfare Act and Native American treaty rights issues.

MINNESOTA BAR EXAMINATION

We must recognize the extreme importance that bar examination passage has on minority access to the legal profession and commit ourselves to a thorough study of the bar examination process in order to ensure that it is free of bias.

Complaints and perceptions about the impact the bar examination has on minority involvement in the legal system have prompted other states to commission complete studies on this issue alone. New York, Florida, and California have all recently published reports

on this issue.[96] These reports found significant gaps in pass rates between people of color and white candidates.

Like most state boards, the Minnesota Supreme Court Board of Law Examiners does not presently keep statistics on passing rates by race of applicant. The Board's rationale for not previously collecting race-specific data has been a desire to avoid any question of racial or ethnic bias in the Minnesota bar examination process. A comprehensive study of the Minnesota State Bar Examination focussing especially on comparative pass rates between racial groups cannot be completed until we have gathered reliable data.

It is our sincere hope that a twin strategy of race-specific data collection and further study of the entire bar examination process will soon help us understand and successfully address any barriers that may be impeding the entry of talented applicants from communities of color into the legal profession.

Findings

1. There is insufficient information to determine how applicants to the bar from communities of color fare in comparison to white applicants with respect to pass/fail rates on the bar examination.

2. Common perceptions exist in the legal community that minority applicants are discriminated against in the test administration or grading process. These must be addressed through further study.

Recommendations

1. The Minnesota Board of Law Examiners should collect racial data on all bar exam participants using the least intrusive method possible in order to track pass/fail and repeater rates for all examinees. Comparisons by racial group, Minnesota law school graduates and other factors could be separated for analysis.

2. The Supreme Court should study the Minnesota bar examination process to determine if any of the following specific areas of concern affect pass/fail rates: English as a second language; unequal quality of education received prior to law school; financial status (i.e. needing to work during law school and during preparation for the bar); availability and/or efficacy of minority-focused tutoring programs; possible bias in some elements of law school curricula; possible bias in private bar preparation program curricula; the impact of poverty; the particular law school attended, LSAT scores, law school rank, etc.

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[96]Committee on Legal Education and Admissions to the Bar of the State of New York, Report on Admission to The Bar in New York in The Twenty First Century: A Blueprint for Reform, (1989); Special Subcommittee to Study Passing Rates, Report of the Committee of Bar Examiners of the State of California on Minority Passing Rates on the Bar Examination, (Sept. 17, 1988); Florida Supreme Court Racial and Ethnic Bias Study Commission, Where the Injured Fly for Justice, (Dec. 11, 1991).

3. The Board should make every effort to hire more minority graders and should continue to seek bar exam questions from minority law professors.

4. The Board should review the training of graders and include cultural diversity issues in its training. Graders' performance should continue to be reviewed for grading disparities.

JUDICIAL EVALUATION

Current evaluations surveys have at best created serious concerns about their validity and potential sources of bias. Moreover, the resulting perceptions of unfairness have been made even more pronounced when the survey authors make the "results" about specific judges public.

In addition to methodological flaws in regard to basic survey technique, an important issue exists regarding the potential for biases against female judges and judges who are people of color. Since such surveys primarily measure perceptions, they will tend to incorporate any gender and racial biases that are held by respondents. The Task Force found that minority judges face an often hostile and not very empathetic environment both on and off the bench.

To the extent that biases exist among attorneys and their clients regarding racial minorities on the bench, surveys soliciting the opinions of such people will tend to show results that adversely impact minority judges. In such a context, people who design, analyze and report on such surveys bear a special responsibility to be sensitive to this potential source of bias, to understand how it can be minimized through survey design, data analysis and reporting, and to inform readers of this potential problem.

Findings

1. The Hennepin County Bar Association Task Force on Judicial Evaluation and the Minnesota State Bar Association Judicial Administration Committee have performed judicial evaluations.

2. The Hennepin County bench has rejected the Hennepin County Bar Association Task Force model as critically flawed.

3. Published surveys evaluating the supposed performance of judges have not always satisfied commonly-accepted minimum standards of objectivity and quality.

Recommendations

1. The potential for unfair impact on minority judges is sufficiently strong that some guidelines to those doing such surveys are noted.

a. Responsibly-conducted surveys and resulting reports should comply with commonly-accepted standards of sound survey design and analysis.

b. Recognizing that such surveys simply measure perceptions, the authors need to be sensitive to the real potential for such racial biases in their results, take steps to minimize such bias in their surveys, and warn the reader about this possibility in their reports.

BUILDING CULTURAL DIVERSITY IN THE JUSTICE SYSTEM WORKPLACE

One consensus that emerged during the work of the Task Force is that in order to ensure that the system evolves toward elimination of racial bias, we need to make the system itself more culturally diverse through the hiring, promotion, and retention of people of color. Second, we need to ensure that judges, attorneys, court personnel, probation officers, law enforcement personnel, and others involved in the system receive *high quality* training designed to help them become more culturally sensitive to the people they serve. During a meeting of the full Task Force, one member said, "Providing training that will make people in the system more culturally aware is well and good, but we need to do better screening to make certain people who can't deal with culturally-diverse client loads and co-workers don't get hired in the first place."

The Task Force received many reports of the distrust and dread that many people of color feel when faced by an almost exclusively white system.

The predominantly white composition of the work force in police forces and the justice system, coupled with the meager training generally available regarding racial diversity, creates difficulties not only for people subject to the system, but for people of color who are justice system employees as well.

Findings

1. With a rapidly growing minority population and a disproportionate number of people of color subject to the court system, substantial proportions and sometimes a majority of case loads concern people of color.

2. Little emphasis is placed on providing predominantly white justice system employees with the training needed to help them understand and respond appropriately to the cultures and communities of the people of color with whom they are involved.

3. The poor representation of people of color and inadequate training combine with other systemic problems to create common instances of biased and insensitive treatment and patterns of adverse impact on minorities involved in the justice system.

Recommendations

1. The ability to work with and understand others in a culturally and racially diverse community should be considered an essential job skill and a requirement of all justice system professionals.

   a. Hiring. All job applications, tests and oral examinations should be modified to allow applicants an opportunity to demonstrate they possess this ability in addition to other job-related traits.

   b. Promotions. Similarly, candidates for promotion should be required and given the opportunity to demonstrate the ability to create and/or manage a culturally diverse workforce.

   c. Bilingual Skills. The ability to communicate in a foreign language should be considered a preferred or required qualification; which would depend upon community needs and agency resources.

   d. Networking. Expanding existing ties with the communities the justice system serves is essential. Community participation/leadership should be a preferred qualification for hiring/promotion at all levels. Involvement in minority communities is a plus.

2. Affirmative Action Programs. Various agencies/departments within the system should be required to have affirmative action programs as recommended in other sections of this report.

3. Cultural Sensitivity Training. Agencies and departments should be required to provide cultural sensitivity training as recommended in other sections of this report.

INTRODUCTION

The Task Force and Its Charge

Recognizing that actual bias and the perception of bias are severely damaging to the courts, the 1990 Minnesota Legislature and the Supreme Court undertook to examine the extent to which racial bias exists throughout the state's judicial system. In December 1990, Chief Justice A.M. (Sandy) Keith signed an order creating the Minnesota Supreme Court Task Force on Racial Bias.

The Task Force on Racial Bias was chaired by Justice Rosalie Wahl and was composed of 36 members, 8 of whom are judges. People of color comprised a significant percentage of the Task Force. The membership was also diverse along gender, age, and geographic lines.

The specific charge was to:

1. Explore the extent to which racial bias exists in the Minnesota state court system, by ascertaining whether statutes, rules, practices or conduct work unfairness or undue hardship on minorities in our courts.
2. Document, where found, the existence of discriminatory treatment of minority litigants, witnesses, jurors, and of discriminatory hiring and treatment of minority judicial, legal, and court personnel.
3. Recommend methods to eliminate racial bias in the courts including the development and provision of necessary judicial education, the passage of legislation, and the promulgation of court rules and policy revisions.
4. Report the findings of its investigation to the Supreme Court by April 30, 1993.
5. Monitor, thereafter, the implementation of approved reform measures and evaluate their effectiveness in assuring racial fairness in our courts' processes.

The term "bias" is very broad - so broad and nebulous that to have built an inquiry on whether or not there is "bias" against people of color in the justice system would likely have resulted in the subtle reinforcement of one of institutional racism's main bulwarks: denial. This is because, for many, "bias" requires by definition a conscious intent to discriminate against someone. But if the turbulent history of race relations in this country has taught us one thing, it is that no matter how subtle its manifestations may sometimes be, racism is such a basic part of the fabric of our national life that much of the great harm it does is often committed by people who have *no conscious, deliberate intent* to discriminate.

Like the countless, tiny springs and freshets that converge on a valley floor to make a river, it is the accretion of many individual acts: structures in one part of a system; policies in another, that often add up to profound systemic or institutional bias, even though viewed in isolation, they may seem quite benign. For instance, there can be no doubt that Minnesota statutes concerning the welfare of children spring from an earnest desire to act

in their best interest, yet Minnesota's Native American children are being removed from their homes and placed in non-Native American households or institutions today at a higher rate than the crisis level of 15 years ago that prompted the United States Congress to pass the Indian Child Welfare Act.

Institutional or systemic change can be hard to effect even when there is substantial agreement on problems and solutions. It follows then that it is much harder to make change in a system where there is disagreement on whether or not a problem exists, much less its basic shape and character. In addition to the subtle nature of much institutional bias, graphic examples of blatant, open racial bias also abound. The struggle for civil rights taught us that although we cannot change peoples' hearts through rules and legislation, we *can* change the procedures, policies and practices through which institutional bias perpetuates itself.

The Task Force's charge was to conduct an investigation into whether there are *specific* statutes, rules, practices or conduct that cause unfairness or undue hardship on people of color (African Americans, Hispanics, Native Americans, and Asians/Pacific Islanders) in our state court system, to provide documentation of discriminatory treatment and to recommend ways to eliminate it wherever it is found.

The inquiry involved substantive areas of law, procedural issues, personnel issues and issues which may arise in gaining access to court processes. The Task Force collected data on Minnesota court decisions and proceedings, administrative procedures, treatment of litigants and witnesses, and hiring and treatment of people of color within the court system. Committees of the Task Force were formed to focus on the broad areas of criminal, civil, and family and juvenile law.

Addressing problems facing the criminal justice system was of particular concern. The Criminal Process Committee was formed to look specifically at whether or not race affects arrests, detention on probable cause, charging offenses, bail, plea negotiations, jury selection, sentencing, the treatment of victims, and other related issues.

The Task Force also created a Juvenile and Family Law Committee charged with investigating whether or not there are race-related differences in the area of children in need of protective services (CHIPS), foster care policies and procedures, and issues related to juvenile delinquency.

The Task Force's Access, Representation and Interaction & General Civil Process Committee probed such issues as access to representation, especially in civil matters, access to the profession for people of color, including a look at the Minnesota Bar examination, and the hiring and retention of minority lawyers. The Committee also looked at judicial evaluation and the treatment of minority judges. A Law Enforcement Focus Group met under the aegis of this committee and began the process of charting possible directions for the future of community and law enforcement relations.

The methodologies used to collect this data included the commissioning of research studies, interviews, and public hearings at nine sites across the state. In addition,

questionnaires were sent to all 261 trial court judges and referees, over 4,000 attorneys, 860 victim services providers, and nearly 1,000 probation officers.[1]

The Task Force used the information gathered from these sources to develop findings and recommendations that will be used by the Court and the Legislature as a blueprint for action.

The problem of racial bias is often unrecognized by those not affected by it. Individuals can, however, be sensitized to its existence and effects through education. Minnesota has not had extensive judicial education on racial bias, nor has it conducted studies on either the nature or effect of race on judicial decision-making. The Minnesota judiciary has noted that the National Judicial College and the American Academy of Judges have both recognized the necessity of racial bias education programs. Further, the Minnesota judiciary has also watched with great interest as other state courts have begun to deal in a comprehensive way with identifying and rooting out bias in their judicial systems.

Racial bias task forces have been established by the Supreme Courts of 13 states. Michigan, Florida, New York, New Jersey, Hawaii and Washington have completed the data collection and analysis stages of their studies and all have concluded that racial bias does indeed exist in their judicial systems. Efforts of those states are now concentrated on education and legislation designed to increase awareness of the problem of racial bias and its eradication.

With the release of this report, a similar effort begins in Minnesota under the leadership of an Implementation Committee chaired by Justice Alan Page.

Funding for the Task Force was provided by the Legislature, private foundations, the legal community, the Red Lake Band of Chippewa Indians, and in-kind contributions from the Supreme Court. Once again, the Task Force wishes to extend its sincere thanks to everyone who supported this effort through financial support, participation on the Task Force, stepping forward to share vital information at focus groups and public hearings, or contributing to the unusually high response rate the Task Force received on the surveys sent to attorneys, judges, and probation officers. The work of the Task Force could not have been completed without this critical assistance.

[1]See Appendix B for complete summary of research methodologies.

Foreword

There is no single issue that Americans are more fearful, divided, angry, confused, inconsistent, hypocritical or loath to talk about than the issue of race. Part of the problem is that people with extremely strong feelings or positions on race "know what they know" and are as unlikely to budge from positions built and reinforced over a lifetime as people are unlikely to budge on other bedrock, emotion-laden issues like whether or not there is a God.

Trying to engage others who seem to *lack* strong, emotional feelings about race in a meaningful discussion about the subject can be just as difficult because the barriers posed by ambivalence, denial, ignorance, indifference, or "good intentions" borne of guilt are just as strong. This is especially true in a place like Minnesota - a state justifiably proud of the quality of its civic life and its long record of progressive leadership on many social issues.

Denial, which is always difficult to surmount, is complicated in this state by the phenomenon many refer to as "Minnesota nice." It is a phenomenon that, within the context of the current discussion, exists in large part because Minnesota is culturally and geographically removed from the historical battlegrounds where the volatile politics of race have been fought and defined.

Unlike the experience of southern and border states with African Americans; the southwestern states with Hispanic Americans, and the west and northwest with Asian Americans, there is no "blood on the soil" here, in terms of an historical struggle between the white majority and significant numbers of people from these principal "minority" groups to hammer out a mutually understood relationship with each other. It is that kind of history that teaches people "their place" and breeds the kind of hatred and overt racism which gets handed down from generation to generation.

Minnesotans should avoid any temptation to feel smug or superior over the relative rarity of this type of overt racism here. Besides, there is indeed "blood on the soil" in terms of white Minnesotans' relationships with Native American peoples, but these are peoples who have been arguably the least visible of America's "minority" groups. Still, in areas of the state where Native Americans *are* highly visible, open friction and racist attitudes are readily apparent. There are counties in northern Minnesota where the relationship between whites and Native Americans is reminiscent of the historical relationship between whites and African Americans throughout much of the deep south. On the governmental level, ignorance of and disregard for Native American sovereignty and treaty rights mars the history of the relationship of Native Americans with the state of Minnesota from the decades prior to statehood up to the present moment.

Citizens from the various communities of color can recount any number of specific instances of virulent racism committed against them here in Minnesota, many stemming from encounters with law enforcement. These communities, however, have generally been shielded from gross, overt racism until recent times by another dynamic of racism in this country: that *small* numbers of people of color can be accommodated with relatively little

friction. As minority populations rise, so does the level of social discomfort and confrontation.

According to the 1990 census, Minnesota's African American community grew by 78% during the decade of the 80's.[2] Minnesota's combined population of people of color grew by 72%, the fourth highest rate of increase in the nation.[3] During the same period, the state's small Asian/Pacific Islander population grew by nearly 195%, catapulting the Asian/Pacific Islander population into place as the second largest community of color (after African Americans).[4] The rate at which Minnesota's communities of color will grow in the 90's is not known - but they will grow.

How will Minnesota face the challenge of becoming a more culturally-diverse population? The commissioner of public safety reported a 38% increase in crimes reported as racially motivated from 1990 to 1991. Many Minnesotans expressed shock at the alarmist tone taken by elements of the media when, in 1989 and 1990, a number of stories appeared in print and on television regarding the movement of significant numbers of African Americans into the Twin Cities from Gary, Chicago, Los Angeles and Detroit. Other Minnesotans anxiously echoed these concerns and clamored for legislation that would amend welfare regulations in ways that would, they felt, discourage more such urban refugees from coming.

The issue of attempting to use legal means to limit certain choices or options for specific groups of people brings into sharp focus an extremely critical aspect of the dynamics of racism: that people who live in the midst of a culture, yet have been relegated to the status of permanent outsiders, must somehow be controlled. It appears that the more a racial/cultural group finds its members disproportionately *locked out* of equal economic and social opportunity by prejudice, the more it will find its members disproportionately *locked up* or otherwise under the direct control of state authorities. This is because maintaining a racial caste system, something we as a nation have always been loath to admit we have, *requires* a complex system of formal and informal "controls."[5]

In the specific case of African Americans, although the justice system is no longer made to enforce the ultimate social control of slavery or the complex codes of legal segregation that took its place, the justice system still finds itself being used as a powerful tool of the pervasive prejudice and the subtle, often elaborately camouflaged discrimination that still deeply scars our national life.

Nowhere in the system is this "control" dynamic more in evidence than in the interaction of communities of color with the police. One of the police chiefs who participated in the Law Enforcement Focus Group said, "Some communities are policed and

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[2]Minnesota State Demographers, Population Notes, p. 3 (Sept. 1991).

[3]Id. p. 1.

[4]Id. p. 3.

[5]See Derrick A. Bell, Race, Racism and American Law (1992); Lean A. Higgenbothan, Jr., In the Matter of Color: Race and the American Legal Process: The Colonial Period (1978).

other communities are served," thus underscoring a fundamental empathetic gap between many whites and people of color.

Whites, especially in more affluent communities, take for granted a certain level of benign service and protection. People of color, however, are confronted by a model of policing that police trainers and administrators themselves call "paramilitary" in nature. In direct contradiction to a judicial system that says defendants are innocent until proven guilty, this model assumes, in effect, that everyone is a suspect until they prove otherwise.

With great emotion and intensity, people of color testified before the Task Force in public hearings about how their negative interactions with the police profoundly affect their attitudes toward the entire justice system and undermine their faith in its ability or willingness to treat them fairly.

On a more positive note, if the Law Enforcement focus groups taught us one thing, it was that there are a number of police chiefs, administrators, and peace officers who want very much to get on with the business of serving communities. The problem is that police departments do not serve in a vacuum. They are an important "gate-keeper" institution in a society rife with racial bias from top to bottom, and police policies as well as the attitudes of a great many rank and file officers reflect this.

When police departments - and the courts - fail to root out the many, sometimes small ways that racial bias taints the manner in which its officers do their jobs, then the police and the courts contribute to a vicious cycle that keeps law enforcement and the courts in the de facto role of social program of last resort. This is a state of affairs that is dysfunctional and expensive in every meaning of the word for the individuals caught up in the system, and for society as a whole.

One key indicator that there is something amiss in terms of the process that determines who is arrested and who is incarcerated is that although African Americans comprise just under 13% of the U.S. population, African Americans comprise 46% of the nation's prison population.[6] When prisoners from the other communities of color are added in, the percentage grows to over 62%.[7] Many white Americans may shrug their shoulders at these figures because "everyone knows" that people of color commit vastly more crime. What our research indicates - what everyone *should* know - is that after examining similarly situated offenders convicted of the same offenses, people of color are *imprisoned* at grossly disproportionate rates.

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[6]Bureau of Justice Statistics, U.S. Dept. of Justice, Census of State and Federal Correctional Facilities, 1990, p. 3 (May 1992).

[7]Id.

In Minnesota, where people of color comprise 6% of the population,[8] they comprise 45% of the state's prison population.[9] Almost 15 years after the passage of the Indian Child Welfare Act, Native American children are still being removed from their homes at approximately *10 times* the rate that white children are removed.[10] These stunning figures are illustrative of a pattern of racial bias that the Task Force has found in a number of places throughout the justice system.

Despite the magnitude of numbers like these, they represent the aggregate result of many individual decisions and built-in prejudices across all parts of the system:

- It's the client who goes to jail, in part, because his public defender isn't adequately prepared due to his out-of-control caseload;
- It's the person who takes one look at the all-white jury assigned to his case and asks to plead guilty to a lesser charge because he doesn't believe the jury will treat him fairly;
- It's the Hmong woman who has her children removed from home because her worker has just realized an interpreter will be needed and for the moment, the worker "can't deal with it."

The search for bias in the justice system of this state has been a complex matter. Only some of the bias encountered fits the narrowest definition of *prejudice evidenced by repulsive comments or disrespectful displays by people who seek to harm others because of their race or ethnicity.*[11] The fact that bias is often hard to detect makes it no less treacherous or devastating. It is the part of an iceberg that is completely hidden from view beneath the waves that destroys a ship.

Some of the policies and practices that have the ultimate effect of impeding the dispensation of justice to people of color stem from well-intended, if naive, efforts to demonstrate that the system is "color blind." Others seem to result more from indifference than from outright malevolence. Whatever the initial cause or motivation, it has been the charge of the Task Force to identify problem areas that lead to the consistent denial of equal justice to communities of color, and to propose specific remedies.

After more than two years of research and study, one might assume that many of us have grown disillusioned. We have not. We come to the end of this part of the process full of faith and great hope that the recommendations found here will soon be implemented, as was the case with the Gender Bias Task Force Report that preceded our work in 1989.

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[8]Bureau of the Census, U.S. Dept. of Commerce, 1990 Census of Population and Housing, Summary of Population and Housing Characteristics, Minnesota, p. 85 (Aug. 1991).

[9]Interview with staff of the Information and Analysis Office, Minnesota Department of Corrections (April 8, 1993). Figures given represent actual percentages as of January 1, 1993.

[10]Minnesota Dept. of Human Services, Minnesota Minority Foster and Adoptive Care, 1989, p. 6 (Jan. 1991).

[11]Florida Supreme Court Racial and Ethnic Bias Study Commission, Where the Injured Fly For Justice, p. 3 (Dec. 11, 1990).

There is good reason for our optimism. The last two statewide judges conferences generated a great deal of positive inquiry and response. As of this writing, the chief judges have announced the coordination of an ambitious cultural diversity training program for all court employees. The response from the law enforcement community has helped ensure that, even though law enforcement issues could not be adequately covered in the work of this Task Force, there will now be a high level forum where new initiatives on community/law enforcement relations issues can be created. The Task Force has recommended to a responsive Chief Justice A.M. (Sandy) Keith during the preparation of this report the commissioning of a Community and Law Enforcement Relations Commission[12] that will keep alive the momentum generated during the Task Force focus groups.

As you read through this report, certain recurring themes will become obvious: the need to hire more people of color throughout our court system and to ensure that those we hire, whatever color, are culturally sensitive to all the people we serve; the need to begin systematically keeping race-specific records; the need for more and better training in cultural awareness/cultural diversity, and others. The findings and recommendations give the flavor and much of the detail of what changes are being *specifically* called for.

Taking these recommendations and turning them into complete directives, programs, or legislation is the job of the Task Force's Implementation Committee, which intends to mount a sustained effort to promote and monitor progress toward their full realization. A great part of the responsibility for effecting these changes rests with the Implementation Committee and the judiciary. The other part of the responsibility rests with people of good will across all areas of the bar, the state Legislature, law enforcement, and the general citizenry who are motivated by a strong desire to see to it that every man, woman and child in Minnesota has equal *access* to justice and can expect in full confidence to *receive* equal justice under the laws of this state.

Americans are continually called upon to rise to the unique challenges of their own times. We must press on with the still unfinished task of making America live up to its promise and its promises. As Minnesotans, the contributions we can make toward a profound national shift in attitude, behavior, and social policy regarding race begins here at home. This Task Force Report is an invitation to examine your own experience, attitudes and beliefs, then to roll up your sleeves and help other Minnesotans of good will do the work that must be done to ensure that equal justice under the law becomes a reality.

The ultimate intent of this Supreme Court Task Force on Racial Bias in the Judicial System, and the Supreme Court that established it, is nothing less than the systematic reform of the practices that have been found to impede the dispensation of justice to people of color in the state of Minnesota. This Report is the blueprint for the implementation of that process of reform. Some of the changes called for here can be effected very quickly; others will take more time and vigilance to achieve; still others may be the work of a lifetime, but, to paraphrase a powerful anthem of this country's civil rights era, we who believe in justice cannot rest until it comes.

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[12]This is a brand new initiative and the name may change.

CRIMINAL PROCESS

Introduction

In a secular society, the courts play a major role as interpreters and arbiters of a culture's moral, ethical, and philosophical underpinnings. The courts also are a critical part of the machinery through which government, in the pursuit of defending those underpinnings, is empowered to carry out the most dramatic interventions into people's lives that are imaginable — the power to take a person's property; a person's children; a person's liberty.

In a democracy, it is of the highest importance to zealously safeguard both the appearance and the reality of equal treatment under the law so as to protect the integrity of the system and the public perception that it is fair. Otherwise, democracy itself is undermined.

The public hearings held by the Task Force confirmed that among Minnesota's people of color there is a widespread feeling born of experience which echoes what is heard and felt in the rest of the nation: that people of color consistently receive unequal justice from the system compared to whites.

Despite the fact that racial discrimination in the courts is often subtle, its ultimate effects are anything but. One glaring signpost of the specter of racism in the disposition of criminal cases is the fact that although people of color comprise 6% of the state's population, they comprise 45% of the prison population.[1]

This section of the Task Force Report identifies problem areas throughout the system that have helped create the state of affairs of which this statistic is a symptom. The narrative progression of this chapter takes the reader through the "funnel effect", starting with arrest and charging and ending with sentencing, through which a disproportionate number of people of color get caught up in the system and a disproportionate number are eventually sentenced. The Task Force commissioned studies on many topics including misdemeanor processing, non-imprisonment sentences, and sentencing guidelines in order to gain an understanding of where and how discrimination enters into decisions made along the continuum of criminal case processing.

The Task Force also received a vast amount of useful information from public hearings, focus groups, and the responses to the questionnaires sent to prosecutors, public defenders and other attorneys, judges, victim advocates, and probation officers across the state.

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[1] Interview with staff of the Information and Analysis Office, Minnesota Department of Corrections (April 8, 1993). Figures given represent actual percentages as of January 1, 1993.

Because most counties do not keep thorough information on crimes, victims, and case dispositions by race, it was not possible to get as complete a picture of what is going on in our state as we would have liked, but it is anticipated that one of the effects of this Report's release will be that from now on, such records will be kept and the task of monitoring the elimination of racial bias in our system of justice will be greatly enhanced.

ARREST/CHARGING/FORFEITURE

Within the context of examining racial bias, the enormous power of law enforcement and the justice system to arrest and detain is an obvious flashpoint for confrontation and abuse of power. The consistent fairness of the use of this power, both in fact and in terms of public perception, is critical to ensuring the fairness of the justice system.

The process of arrest and charging was identified early on by the Task Force as a critical area for review. At public hearings, people of color stated that often they are arrested and charged for no apparent reason other than that they are people of color.[2] This sentiment is shared by some public defenders.[3] At least one Minnesota newspaper has published a major series on race in Minnesota which documented strong feelings in communities of color echoing this belief.[4] Yet another has published a series dealing specifically with racism in the justice system.[5]

One method of determining whether or not there is a pattern of racial bias in arrest and charging procedures would be to perform an analysis of population in each municipality, along with annual arrests, cases charged and dispositions, including a breakdown by race on all factors. These data are not available for Minnesota's rural counties and metropolitan Ramsey County. The Task Force did, however, have access to partial information for Hennepin County.

In Hennepin County, people of color are arrested in numbers that greatly exceed their proportion of the population. People of color represented approximately 11% of the Hennepin County population in 1990.[6] Since 1975, the percentage of people of color arrested in Hennepin County has steadily increased. People of color accounted for 18% of all Part II crime arrests in 1975 and 36% of the 36,631 Part II crime arrests in Hennepin

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[2]Public Hearing, St. Paul (Oct. 23, 1991).

[3]Public Hearing, Minneapolis (Nov. 13, 1991).

[4]Issues of Race, Minneapolis Star Tribune, Special Reprint, June 10-24, 1991 (see Paul Klauda, Dark Skin Perceived As A Crime Waiting to Happen, p. 28).

[5]Susan Stanich, Searching for Justice, Race & the Legal System, Duluth News-Tribune, March 21-25, 1993.

[6]Bureau of the Census, U.S. Dept. of Commerce, 1990 Census of Population and Housing, Summary Population and Housing Characteristics, Minnesota, p. 97 (Aug. 1991) (hereinafter "Census Bureau's 1990 Population Characteristics").

County in 1991.[7] This is an arrest ratio over *3 times* their percentage of the population.

One plausible explanation of such a skewed arrest ratio was discussed during a focus group meeting of public defenders. Some public defenders stated their belief that nuisance and trivial misdemeanor crimes are only enforced against people of color. Also stated was the belief that people of color are charged with more serious offenses than similarly situated white defendants, or are charged in situations in which white defendants would not have been charged.[8]

The issue of racial bias in the charging of criminal complaints is extremely difficult to analyze due to the great degree of discretion granted to prosecutors, and the dearth of data kept on the subject. However, when this question was posed in the surveys commissioned by the Task Force, a significant proportion of public defense attorneys (39%) and metropolitan area judges under 50 years of age[9] (33%) said that filing of criminal charges is more likely when the defendant is minority, all other factors such as present offense and criminal record being equal.[10]

In order to conduct a thorough investigation of charging procedures, an analysis of racial data on all felony, gross misdemeanor and misdemeanor arrests which were not formally charged, along with specific case data, is necessary. Unfortunately, this information is not available on a statewide basis. Information on arrest and dismissal rates was obtained, however, from Hennepin County. *A disproportionate dismissal rate for people of color may lend credence to the argument that they are more often arrested for insufficient cause than whites.*

For example, in Hennepin County there were 7,679 adult felony arrests for Part I index crimes in 1991.[11] Of those arrests, 4,069 or 53% were people of color and 3,610 or 47% were white.[12] In 1991 the Hennepin County Attorney's Office had 4,149 adult

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[7]Office of Planning and Development, Hennepin County, Hennepin County Crime Report 1991 Appendix, p. 79 (Aug. 1992). (hereinafter "Hennepin County Crime Report 1991 Appendix). Part II Crimes include simple assault, stolen property, other sex, driving while intoxicated, forgery and counterfeiting, vandalism, narcotics, liquor law, fraud, weapons, gambling, disorderly conduct, embezzlement, prostitution, and family/children, and all other offenses. See Office of Planning and Development, Hennepin County, Hennepin County Crime Report 1991 p. 85 (Aug. 1992).

[8]Public Defense Providers Focus Group, St. Paul (Aug. 14, 1991).

[9]Throughout this document, when references are made to the survey responses from "metropolitan" Judges and Probation Officers, metropolitan means Hennepin and Ramsey Counties.

[10]Wayne Kobbervig, Minnesota Supreme Court, Summary and Analysis of Criminal Process Data from Questionnaire and Research Projects, Task Force on Racial Bias in the Courts, pp. 5-7 (Nov. 23, 1992) (on file with the Minnesota Supreme Court); See also Minnesota Supreme Court, Judge Questionnaire Results, Task Force on Racial Bias in the Courts, p.20. (Nov. 1992) (on file with the Minnesota Supreme Court) (hereinafter "Judge Survey Results").

[11]Hennepin County Crime Report 1991 Appendix, supra note 7, p.5. Part I Index Crimes include murder and non-negligent manslaughter, forcible and attempted rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft and arson; See Office of Planning and Development, Hennepin County, Hennepin County Crime Report 1991, p. 35 (Aug. 1992)

[12]Hennepin County Crime Report 1991 Appendix, supra note 7, p. 5.

felony dispositions.[13] Those dispositions consisted of 2,155 or 52% of people of color and 1,994 or 48% white.[14]

Of the 4,149 total dispositions during this time period, 424 or 10% were outright dismissals. These cases were dismissed due to lack of evidence, witness problems and constitutional issues. Of those 424 outright dismissals, 279 or 66% applied to people of color and 145 or 34% applied to whites. For all cases that reached disposition, 13% of people of color had their cases dismissed compared to only 7% of whites.[15] Therefore, people of color were much more likely than whites to receive an outright dismissal.

A comprehensive study undertaken by the Task Force of all misdemeanor assault, theft, and prostitution offenses charged in Hennepin County during January 1989 through April 1992 found that people of color had higher dismissal rates in all offense categories when compared to whites.[16] The methodology of the study controlled for current offense and prior convictions of over 19,000 defendants. Results of the analysis indicated a statistically significant racial difference in the dismissal rates for assault and theft offenses.[17] People of color were significantly more likely than whites to have their cases dismissed for those offenses.

It must also be noted that this study, in addition to an extensive study conducted by the Hennepin County Bureau of Community Corrections, found strong evidence that racial differences exist in the *method* of charging defendants.[18] Both studies found that white defendants were more likely to receive a summons than people of color, thus allowing them to avoid arrest.[19] The study by the Bureau of Community Corrections examined over 1,000 defendants who had a first appearance on a felony or gross misdemeanor from November of 1989 through February of 1990.[20] Very noteworthy is the fact that this study controlled for the nine most prevalent offense types to receive a summons, and found that whites were significantly more likely to be mailed a summons (35% of whites versus 20% of African Americans). [21]

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[13]Hennepin County Attorney's Office, Case Disposition by Race for 1991 Dispositions, (on file with the Minnesota Supreme Court).

[14]Id.

[15]Id.

[16]Sharon Krmpotich, Minnesota Supreme Court, Hennepin County Misdemeanor Processing Analysis Report for the Task Force on Racial Bias in the Courts, pp. 11-12 (Jan. 28, 1993) (See Appendix D) (hereinafter "Hennepin County Misdemeanor Processing Analysis Report")

[17]Id.

[18]Id. p. 4; Letter from Mike H. Cunniff, Associate County Administrator, Hennepin County, Bureau of Community Corrections, to Sue K. Dosal for the Task Force on Racial Bias in the Courts, p. 4 (March 4, 1992) (on file with the Minnesota Supreme Court) (hereinafter "Cunniff letter of 3/4/92").

[19]Hennepin County Misdemeanor Processing Analysis Report, supra note 16 p. 4; Cunniff letter of 3/4/92, supra note 18 p. 4.

[20]Cunniff letter of 3/4/92, supra note 18 p. 1.

[21]Id. p. 3.

The issues concerning arrest and charging discussed thus far give indications that these are areas that should be targeted for especially close scrutiny by the Supreme Court Commission on Community/Law Enforcement Relations which is recommended elsewhere in this report. Due to the limits placed on the scope of study of the Racial Bias Task Force (i.e racial bias **in** the court system), there were not sufficient resources available to thoroughly examine arrest and charging issues to our satisfaction.

People of color have also expressed strong feelings that they are frequently abused by Minnesota's Forfeiture Law.[22] They state that their personal items, such as money, jewelry, and jackets are often confiscated by the police. Some say they are not given receipts, which makes it impossible to recover their property. Innocent bystanders complain that their personal property is also confiscated.[23]

> My phone and that of _____ rings every day, about half a dozen times, mostly from African Americans, occasionally from Native Americans, about the following situation and follows roughly the same scenario. I'm walking down the street and I'm stopped by the cops and they tell me I'm dealing drugs. "Give me your money." They take my money and if I have a ring they take that. Sometimes they leave a slip of paper, sometimes they don't. "Get on your way."
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> So ____ and I walk over to the Property Department. "Can we talk about the property you took from John Doe?" "What property? What guy?"
>
> Time and time and time again...You see all the marvelous publicity about forfeitures. I want to tell you there is an ugly side... Going into somebody's house, chasing an eighteen year old, having him spread-eagle on the bed. Taking money from his mother from a Social Security check she just cashed. That's the other side of forfeiture, and it's ugly, and it hits the minority communities — it hits them all. If you're poor you don't count...and if you're poor and a person of color, you *really* don't count. (Emphasis added) (White Metropolitan Chief Public Defender, Public Hearing, Minneapolis)

The Minneapolis police are the most aggressive of any law enforcement agency in the state in terms of pursuing criminal forfeitures, accounting in 1992 for the largest number by far of total forfeitures (384) and over half the forfeitures under $100 in value (110).[24] Sixty-four percent (64%) of the 1,035 criminal forfeitures reported in 1992 were of property

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[22]Minn. Stat. § 609.531-.5317 (1992); Public Hearing, Minneapolis (Nov. 13, 1991).

[23]Public Hearing, Minneapolis (Nov. 13, 1991)(Statement of Legal Rights Center Worker).

[24]Minnesota Office of the State Auditor, 1992 Criminal Forfeitures in the State of Minnesota, p. 5 (April 23, 1993).

and/or cash valued at less than $500.[25] Only 5% of the forfeitures involved amounts of greater than $5,000.[26]

Minnesota's Forfeiture Law requires claimants to rebut the presumption that their property is subject to administrative forfeiture.[27] Frequently their property is lost because few manage to battle through to the end the complicated and time consuming judicial procedure required to recover it. Often these people are not informed of their rights or do not understand their rights. In any event, it appears that private attorneys will not get involved in these cases and public defenders are unable to help as they are understaffed.[28] It should also be noted that currently the statute has no provisions which allow the automatic return of non-contraband property to those people who are arrested and not charged or for those who are charged and not convicted of an offense.

Similar practices are coming under fire in other states. Florida's forfeiture statutes, similar to our own, have been publicly criticized as abusive to people of color.[29] Statistics are not currently kept in Minnesota on the racial identity of people whose property is seized, giving the justice system no way to monitor the impact of forfeiture statutes on people of color in this state.

Findings

1. In Hennepin County, people of color are arrested and charged at levels far in excess of their percentage of the population. They are also much more likely to have their cases dismissed when compared to whites.

2. Prosecutors in Hennepin County are more likely to charge whites by summons than people of color, even when holding constant the type of offense charged.

3. No statistical information is available to determine if Minnesota's Forfeiture Law, as enforced, disproportionately impacts people of color. County attorneys do not keep records including racial data to allow for an objective study of forfeiture practices. Anecdotal evidence suggests, however, that the police abuse this power.

Recommendations

1. The Supreme Court, through a future Community/Law Enforcement Relations Commission, should conduct a statewide study of all law enforcement and county

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[25] Id.

[26] Id.

[27] Minn. Stat. § 609.5314 (1992).

[28] Public Hearing, Minneapolis (November 13, 1991) (statement of Legal Rights Worker).

[29] Donna O'Neal and Jeff Brazil, Panel to Probe Seizures, The 7-Member Group Named By Chiles Will Investigate Whether Police Agencies Are Abusing The Forfeiture Law, Orlando Sentinel, July 9, 1992 at p. A1.

and/or city attorney offices' arrest and charging policies and procedures to determine if people of color are disproportionately arrested and charged on an insufficient basis.

2. The Legislature should require that all law enforcement agencies, county and/or city attorney offices keep statistics regarding annual arrests by type of offense, with a breakdown by municipality, race, age, gender and dispositions.

3. The Legislature should require each county attorney's office to compile statistics concerning the race, age, and gender of citizens forfeiting property to the police. The State Auditor should publish this information in an annual Forfeiture Accounting Report.

4. The forfeiture statute should be amended to establish a $300 minimal threshold value of property to be forfeited as described in Minn. Stat. § 609.5314. Forfeited non-contraband property should be returned to those people who are arrested and not charged as well as to those people who are charged but not convicted of an offense.

VICTIM SERVICES

Minnesota, like many states, records little data regarding victims of crime. Moreover, the Task Force's statewide survey of victim service providers generated only a limited response. The reason for the low response rate, according to the state Office of Crime Victims Ombudsman, may be attributable to the deep distrust of the system harbored by victim service providers who typically are volunteers and former crime victims and are skeptical about the value of participating in data collection. Nevertheless, the data gathered about victims from communities of color offer ample evidence that the treatment victims receive is affected by their racial identity.

Minnesota Statute 611A (Crime Victims: Rights, Programs, Agencies) sets forth very clearly what rights are to be accorded to victims. They include the right to restitution, to be notified of any plea negotiations, and to be notified of the release of the offender.

Even with the statute in place there are several problem areas that prevent victims from being protected to the full extent the statute intends. One key problem is that the first contact, and sometimes the only contact victims have with the system, is with law enforcement — and that first contact is often a very negative experience. Female crime victims often feel powerless in these encounters and so do their advocates. Domestic violence and sexual assault workers told the Task Force that for many of the women they serve, involving the police ultimately makes them feel they have been victimized all over again. The events witnessed by these advocates or related to them by their clients were graphic and disturbing:[30]

- foreign-born women living silently with extreme, chronic abuse because they fear deportation if they charge their abusers;

- a woman who winds up in the hospital for internal bleeding long after an incident of abuse because, police said, "We can't see bruises on them (women of color);"

- women of color who try to defend themselves are sometimes arrested right along with the abuser, and if there are minor children, this will precipitate their removal to a juvenile facility for a 72 hour hold, which means the women will now have to deal with child protective services as well;

- a minority rape victim ordered to disrobe in a medical facility with several officers in the room;

- a minority assault victim being told while she is trying to report, "If you weren't such a _____ bitch, this wouldn't have happened."

[30]Hearing at Black, Indian, Hispanic and Asian Women in Action (BIHA) (Jan. 29, 1993).

Women's advocates report that, besides the gross insensitivity they often see, many police seem to be unaware of the Domestic Abuse Act[31] and what it requires of them.[32] Furthermore, victims generally are unaware that they *have* any rights. Even though law enforcement officers are required to provide victims notice of their rights,[33] this is not always done.[34]

Compounding the problem of generally inadequate victim assistance is a perception that white victims are more likely than people of color to be accorded their statutory rights. Over 60% of the metropolitan area judges under age 50 felt police were more likely to accord rights to white victims; 36% stated that prosecutors were more likely to accord rights to white victims; and 29% answered that probation officers were more likely to accord rights to white victims.[35] Corroborating evidence for these perceptions of differential treatment was documented in a recent Minneapolis Star Tribune article.[36]

The number of victim service providers is small. Much smaller still is the number of minority victim advocates. Only 11 counties out of 87 in the state of Minnesota have a system within their county attorney's office for ensuring that a victim is represented in the judicial process.[37] The Hennepin County Attorney's Task Force on Racial Composition of the Grand Jury reported a disproportionately high number of African American and Native American homicide victims.[38] The high number of victims from communities of color underscores the need for the added dimension more minority victim advocates can bring to the system — a higher level of cultural sensitivity and awareness that may make all the difference for many people of color who find themselves reaching out for help at a time of crisis to a system many of them distrust. The Task Force's survey of victim service providers indicates that fully half the victims served in 1991 were people of color,[39] even though people of color are only 6% of the state's population. By comparison, less than 15% of the state's volunteer advocates are people of color.[40]

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[31]Minn. Stat. 518B.01 et. seq.

[32]BIHA Hearing, supra note 30.

[33]Minn. Stat. § 611A.02, subd. 2(b) (1992).

[34]See, e.g Bruegger v. Faribault County Sheriff's Dept 486 N.W.2d 463 (Minn. App. 1992), rev. granted (Aug. 4, 1992).

[35]Judge Survey Results, supra note 10, p. 24.

[36]Mark Brunswick, Victims Board Not Reaching People of Color, Minneapolis Star Tribune, Jan. 12, 1992, p. 1B.

[37]Interview with Yvette House of the Minnesota Department of Corrections.

[38]Office of Hennepin County Attorney, Hennepin County Attorney's Task Force on Racial Composition of the Grand Jury, p. 28 (April 1992) (hereinafter "Racial Composition of the Grand Jury").

[39]Minnesota Supreme Court, Victim Service Provider Demographic Information for the Task Force on Racial Bias in the Courts, p. 3 (Jan. 14, 1993)(on file with the Minnesota Supreme Court).

[40]Minnesota Supreme Court, Victim Service Provider Survey Results for the Task Force on Racial Bias in the Courts, p. 1 (Jan. 1993)(on file with the Minnesota Supreme Court) (hereinafter 'Victim Service Provider Survey Results').

Eighty-two percent (82%) of those responding to the Victim Service Provider Survey indicated they had some cultural diversity training.[41] It is evident, however, that additional training is needed. Twenty-four percent (24%) of advocates indicated that even though they received training they felt it was inadequate.[42]

When asked on surveys if they had ever attended training on victim's rights, 75% of judges,[43] 91% of attorneys,[44] and 58% of probation officers[45] indicated they had never received victim's rights training.

Minority victims also are less likely than white victims to receive reparations, or more likely to receive a reduced reparation amount, based on police reports of the victim's contributory conduct. In 1990, for example, 27% of the African American victims seeking reparations in Hennepin County received reduced awards based on contributory conduct alleged by the police compared to 7% of white victims.[46]

From the surveys it seems that, in general, attorneys, judges and probation officers assign lesser importance to the race of the victim than the race of the defendant in the handling of criminal cases. The race of the victim is most commonly perceived as having an effect in the charging of criminal complaints, prosecutors' perceptions of the strength of the case, and sentencing in cases involving actual or threatened use of violence.[47] According to 40% of the metropolitan area judges under age 50 and 39% of public defenders, prosecutors are more likely to file charges when the victim is white.[48] Forty-four percent (44%) of public defenders and 40% of the metropolitan area judges under 50 said that prosecutors were more likely to perceive their cases as strong when the victim was white.[49]

Findings

1. Little data is kept on crime victims, and generally does not include race.

2. There is little public awareness of victims' rights.

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[41] Id. at p. 1.

[42] Id. at p. 2.

[43] Judge Survey Results, supra note 10, p. 28.

[44] Minnesota Supreme Court, Attorney Questionnaire Results for the Task Force on Racial Bias in the Courts, p. 23 (Nov. 18, 1992) (on file with the Minnesota Supreme Court) (hereinafter "Attorney Survey Results").

[45] Minnesota Supreme Court, Probation Officer Survey Results for the Task Force on Racial Bias in the Courts, p. 19 (Nov. 9, 1992) (on file with the Minnesota Supreme Court) (hereinafter "Probation Officer Survey Results").

[46] Interview with Marie Bibus of the State of Minnesota Crimes Victims Reparations Board (April 16, 1993).

[47] See generally Judge Survey Results, supra note 10, Attorney Survey Results, supra note 44, Probation Officer Survey Results, supra note 45.

[48] Judge Survey Results, supra note 10, p. 20; Attorney Survey Results, supra note 44, p. 17.

[49] Judge Survey Results, supra note 10, p. 21; Attorney Survey Results, supra note 44, p. 18.

3. There is inadequate awareness of victims' rights in the law enforcement community and throughout the justice system.

4. People of color who are crime victims often receive inadequate victim services compared to white victims.

5. Women of color who are crime victims often become victims of the justice system due to insensitive, inadequate service at every stage.

6. Given the disproportionately high number of people of color who are crime victims, there are too few minority victim service providers in the system.

Recommendations

1. The state should require a victim services program in every county, to be funded with state funds.

2. More minority victim service providers should be hired, retained and promoted within the justice system.

3. The Department of Corrections should monitor and enforce the compliance of victim service program affirmative action plans. The Department of Corrections should have the ability to take away funds from programs not making serious efforts to hire, retain and promote minority service providers.

4. The Police Officer Standards and Training (POST) Board should require all peace officers to have a minimum of four hours of skills-oriented victims' rights training. The training should incorporate concepts from cultural-diversity training to help peace officers approach minority victims supportively and communicate their rights to them effectively.

5. The Supreme Court should require all judges, court administrators, clerks, probation officers, attorneys and other court personnel to receive training on victims' rights as well as cultural diversity training.

6. The Legislature should amend the victims' rights statute to allow a right of action or other appropriate remedy against those who violate their statutory rights.

7. State law should require the collection of data on the race of victims in police incident reports and on the Sentencing Guidelines' worksheets.

BAIL AND PRETRIAL RELEASE

The rules governing both the setting of bail and conditions of release are provided by the United States Constitution[50], the Minnesota Constitution[51], and the Minnesota Rules of Criminal Procedure.[52] The Minnesota Rules of Criminal Procedure indicate a strong preference for pretrial release; particularly for misdemeanor cases.

The questions before the Task Force were whether bail and pretrial release decisions in felony and misdemeanor cases are biased against people of color; and whether the criteria used to determine bail and pretrial release are biased against people of color.

Setting Bail and Pretrial Release for Felonies and Misdemeanors

The public hearings held by the Task Force throughout Minnesota made clear that the perception of minority citizens is that court procedures, from the initial setting of bail, are biased against them. This perception was strongly expressed in public hearings throughout the metropolitan area as well as greater Minnesota. The perception of bias against people of color was echoed by professionals in the court system as well.[53]

> Why is bail set for my minority clients in an amount they can never afford? (White Chief Public Defender, Public Hearing, Minneapolis)

> Here's a comment about bail. My personal opinion is we've gotta limit this bail bonding. You don't have it over here in Wisconsin, you almost never have it in Federal Court. That's the true discrimination against minority people . . . Why can't they just put up 10% cash, and when the person makes all their appearances they get their 10% cash back? (White Chief Public Defender, Public Hearing, Duluth)

The perceptions of nearly three-quarters of the public defender attorneys across this state and 86% of the metro judges under the age of 50 expressed the opinion that minority defendants were more likely to remain in custody prior to trial.[54] Nearly one-third of prosecutors, private defense attorneys and probation officers agreed.[55]

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[50]U.S. Const. amend. VIII.

[51]Minn. Const. art. 1, § 7.

[52]Minn.R.Crim.P. 6.02, subd. 1.

[53]Attorney Survey Results, supra note 44, p. 31; Judge Survey Results, supra note 10, p. 37.

[54]Attorney Survey Results, supra note 44, p. 18; Judge Survey Results, supra note 10, p. 20.

[55]Attorney Survey Results, supra note 44, p. 18; Probation Officer Survey Results, supra note 45, p. 13.

> People of color are arrested more often, charged more often, bail is set higher, plea bargains are tougher, trials less fair and sentences far longer. Racism is pervasive in the courts in Minnesota. (White Metropolitan Area Public Defender, Attorney Survey)
>
> I believe that judges and occasionally prosecutors and defense attorneys are paternalistic and condescending in their dealings with minority defendants and victims. Further, in offenses involving defendants and victims of different races, the courts are more likely to keep the defendant in custody if he or she is a person of color. (White Metropolitan Area Prosecutor, Attorney Survey)

Several studies have now looked at the perceived disparities in the setting of bail and pretrial release. These studies indicate bias exists at a number of points in the setting of bail and the pretrial release process.

One such study, which involved a series of extensive analyses on bail and pretrial release criteria, was conducted by the Hennepin County Bureau of Community Corrections in 1992.[56] At the request of the Task Force, this group answered a set of specific questions regarding the relationship between race, pretrial release, and bail status.[57] To answer the questions of the Task Force, the research staff of the Hennepin County Bureau of Community Corrections analyzed a group of African Americans and whites who had a first appearance on a felony or gross misdemeanor for a three month period. Among the findings were the following:

- African Americans were significantly *less likely* to be released with no bail required. When individuals who posted bail prior to first appearance were excluded, race remained statistically significant.
- Whites were *significantly more likely* to be mailed a summons (26% for whites vs. 13% for African Americans). After controlling for offense type, whites were still significantly more likely to be mailed a summons (35% for whites vs. 20% for African Americans).
- Once bail was set, there was a difference in ability to post bail and be released. *African Americans comprised 65% of the detained population while 35% of the detainees were white.*

Perhaps the most noteworthy finding regarding those defendants who had bail set is displayed below. The graph displays the proportions of each racial group that were detained from first appearance through case resolution for each of four felony offense

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[56]Rebecca Goodman, Hennepin County Bureau of Community Corrections, Pretrial Release Study (Dec. 1992) (hereinafter "Pretrial Release Study").

[57]Cunniff letter of 3/4/92 supra note 18; Letter from Rebecca Goodman, Senior Statistical Analyst, Hennepin County Bureau of Community Corrections to Sharon Krmpotich, Minnesota Supreme Court (April 29, 1992) (on file with the Minnesota Supreme Court) (hereinafter "Goodman letter of 4/29/92).

categories. Within three of the four felony offense categories, the detention rates for African Americans are significantly higher than those for whites.

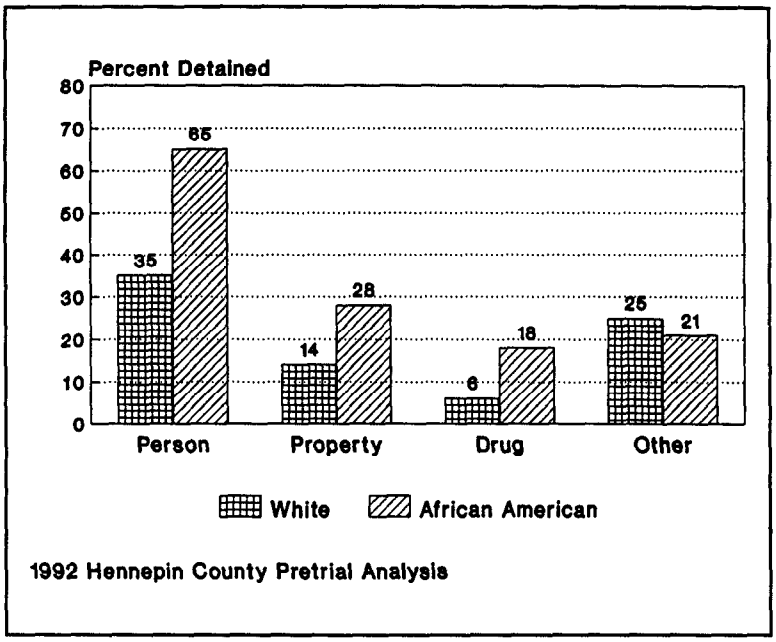

Figure 1. Detained Population, Felony Offense Types

For those charged with a felony against a person, 65% of African Americans were detained in comparison to only 35% of whites. Twenty-eight percent of African Americans who were charged with felony property crimes were detained in comparison to 14% of whites. While 18% of the African American defendants charged with felony drug offenses were detained, only 6% of white defendants were detained. Since average bail amounts did not significantly differ by race within offense categories, it appears that there was a racial difference in the ability to post bail and be released.

Another exhaustive study was commissioned by the Task Force regarding Hennepin County misdemeanor cases.[58] This study analyzed all misdemeanor assault, theft and prostitution offenses charged in Hennepin County from January 1989 through April 1992. Due to financial and time constraints, Hennepin County is the only county from which data was obtained. The study looked at the disposition of cases on nearly 19,000 defendants. The study found significant racial differences along with some marginal differences:

1. White defendants *were significantly more likely* than minority defendants to be released with no bail required (NBR status) even when offense and conviction history were held constant. This finding held true regardless of whether those who received a summons were included in the analysis or not.

[58]Hennepin County Misdemeanor Processing Analysis Report, supra note 16.

2. White defendants were *more likely* than minority defendants to receive a summons or ticket when offense type was held constant. Minority defendants were more likely to be arrested.

3. For those who had bail set, average bail amounts did not significantly differ by race of the defendant when offense and conviction history were held constant. Analysis was not done to determine if there was a racial difference in the ability to post bail and be released.

Findings

1. Many people of color and a significant percentage of prosecutors, judges, and public defense lawyers perceive the court system as biased against people of color in the setting of bail and pretrial release on a statewide basis.

2. Extensive studies have shown that *race of the defendant* is a statistically significant factor when offense severity level is held constant in the setting of bail and pretrial release in Hennepin County.

4. Racial disparity occurs at a number of points in the release process:

   a. Hennepin County prosecutors disproportionately use the summons more often for whites than for people of color on both felony and misdemeanor offenses.

   b. People of color are being held in custody prior to trial in Hennepin County at a rate disproportionately greater than whites on both felonies and misdemeanors when offense severity level is held constant.

Criteria (Standards) used by the Courts to Determine Bail and Set Conditions of Release

There are a variety of court staff, probation officers, investigators and social workers who perform bail evaluations.[59] These recommendations are a crucial part of the decision making process regarding pretrial release.[60] Although the Minnesota Rules of Criminal Procedure indicate a strong preference for pretrial release, particularly for misdemeanor offenses[61], over 40% of Minnesota's 87 counties reported that bail evaluations based on articulated, objective criteria are not conducted.[62]

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[59]Conference of Chief Judges, Criminal Justice Resource Management Plan Survey, Minnesota Trial Courts Summary of Bail Evaluation Function (Nov. 16, 1992) (on file with the Minnesota Supreme Court) (hereinafter "Criminal Justice Resource Management Plan Survey").

[60]Chief Judges of Minnesota Focus Group, St. Paul (Aug. 16, 1991) (hereinafter "Chief Judges Focus Group").

[61]Minn. R. Crim. P. 6.02, subd. 1; Minnesota Judges Criminal Benchbook, ch. 5, p. 17.

[62]Criminal Justice Resource Management Plan Survey supra note 59.

Throughout the public hearing testimony, survey result comments, and focus group comments, it was consistently reported that "bail evaluations" discriminated against people of color.[63]

Minnesota does not have uniform bail criteria guidelines. Throughout the state, judges rely on their own wisdom and court services criteria such as the VERA scale or other "objective" standards. The VERA scale was developed in the early 1960's in an attempt to assess the risk of failure to appear for criminal defendants. This scale was a product of the VERA Institute of Justice in New York and the Manhattan Bail Project, and was based upon a Manhattan defendant population.[64] Although the VERA scale was widely accepted and used as an objective tool to predict likelihood of failure to appear, the scale is not empirically derived and it utilizes an arbitrary weighing scale. Also, it does not contain an assessment of the risk of pre-trial crime.[65] Until recently, Hennepin County had been using a modified version of the VERA scale to conduct its bail and pre-trial release evaluations.

Several studies have been completed by the Hennepin County Bureau of Community Corrections to determine the validity of the pretrial release eligibility scale used in Hennepin County. Prior to 1986, the VERA scale had never been tested to verify its ability to predict failure to appear or pretrial crime in the Hennepin County defendant population. In addition, the Bureau of Community Corrections wanted to examine the relationship between detention, gender and race.

In a 1986 evaluation of the VERA scale, when the scale items were reviewed, there were significant differences in the scores of defendants from different racial groups on six items:[66]

1) Native Americans and Hispanics are less likely to get residence points than African American or whites;
2) Native Americans are more likely to score zero points on the employment item than Hispanics, African Americans, or whites;
3) Whites are less likely to lose points for being charged with a person offense than people of color;
4) About one-third of the whites receive two points for voluntary surrender. This is true only for 14% of the African Americans, 11% of the Hispanics and 5% of the Native Americans;
5) People of color, especially Native Americans, are more likely to lose points for prior bench warrants; and

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[63]Chief Judges Focus Group, supra note 60, Public Hearing, Duluth, (Oct. 16, 1991); Public Hearing, Minneapolis, (Nov. 13, 1991 & Jan. 23, 1992).

[64]2 Stephen Gottfredson and Don Gottfredson, Accuracy of Prediction Models in Criminal Careers and "Career Criminals" (Alfred Blumstein, et al. eds. 1986).

[65]Id.

[66]Constance Osterbaan, Hennepin County Bureau of Community Corrections, Pretrial Release Study, pp. 10-11 (Nov. 1986).

6) Native Americans are significantly more likely to lose points on the chemical dependency item than Hispanics, African Americans or Whites.

Some of the racial differences are compounded by the degree to which scores on certain scale items are correlated. For example, whites do better on both the employment and bench warrant items. Scores on these two items are also both positively correlated with voluntary surrender points. Thus, whites not only score more employment points and lose fewer bench warrant points, but, in so doing, also increase their likelihood of getting the two additional voluntary surrender points. These differences in scoring tendencies ultimately produce sizable differences in total scale scores. The average score for whites is significantly higher than that of all other races. The average score for African Americans is significantly higher than that of Native Americans, but not significantly higher than that of Hispanics.[67]

When release recommendations, based upon points and the subjective judgment of the evaluator are analyzed by race, there is a highly significant difference. *No bail required (NBR status) is recommended for nearly one-third of the whites and 21% of the African Americans, but only 8% of Native Americans and 13% of Hispanics.*[68]

In 1992, the Bureau of Community Corrections undertook another evaluation of the VERA scale. It was noted that inequalities can occur at a number of points in the release process. Five possible scenarios were identified:[69]

1) Certain groups may be disproportionately mailed summonses. (Prosecutorial discretion);
2) The VERA scale may indirectly favor certain groups by assigning points based on factors which are not significantly related to pretrial failure to appear and pretrial crime (Whites receiving more points for residential stability);
3) Regardless of the VERA score, evaluators may recommend no-bail release disproportionately to certain groups;
4) Despite the recommendation, judges may disproportionately release certain groups due to non-financial conditions; and
5) Bail amount may differ by race.

In addition to the bail criteria used to determine eligibility for bail and pretrial release, a major factor is the broad discretion of probation officers who conduct the evaluations. The 1992 Hennepin County Bureau of Community Corrections Pretrial Release Study found no significant differences in evaluator's recommendations for defendants of different races. For defendants who have similar scale scores, evaluators made the same

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[67] Id. pp. 11-12.

[68] Id. p. 16.

[69] Rebecca Goodman, Hennepin County Bureau of Community Corrections, Characteristics of the Detained Population, (March 5, 1992).

release recommendations regardless of the defendant's race.[70] However, the anecdotal information received by the Task Force through the Attorney Open-Ended Survey responses and the Victim Service Provider Survey results indicate that in the experience of many people within the system, if the defendant is minority and the victim is white, this results in harsher treatment for the minority defendant both in the setting of bail and in their treatment throughout the system.[71]

With regard to judges setting bail, testimony was given at the public hearings in Bemidji, Minnesota, that judges routinely set bail for Native Americans, even though they have employment and stable living conditions, because "they live on the reservation."[72]

Finally, the studies show that bail amounts did not significantly differ by race. Whites, however, were more likely to make bail.[73]

As a result of the extensive pretrial release study in 1992 conducted by the Hennepin County Bureau of Community Corrections, a new pretrial evaluation point scale which replaces the modified VERA scale was implemented in 1992. This new pretrial evaluation point scale eliminates many factors that directly correlated with race, but were not predictive of pretrial criminal activity or failure to appear.

Findings

1. Bail evaluations based on objective criteria are not conducted in over 40% of Minnesota's 87 counties, thus leaving these decisions to subjective criteria.

2. The modified VERA scale, formerly used in Hennepin County, has indirect bias within it that works against defendants who are people of color and, therefore, should not be used.

Recommendations

1. Prosecutors, judges and bail evaluators should be mandated to attend cultural diversity training as well as special skills training in the area of racially and culturally neutral bail determinations.

2. Prosecutors and police officers should be sensitized to the issue of summons/tickets being disproportionately sent to whites, and the criteria for being mailed a summons or ticket should be examined to ensure they are race neutral.

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[70] Pretrial Release Study, supra note 56.

[71] See generally Attorney Survey Results, supra note 44; Victim Service Provider Survey, supra note 40, pp. 4-5.

[72] Public Hearing, Bemidji (Oct. 2, 1991).

[73] Goodman letter of 4/29/92, supra note 57.

3. The Hennepin County Pretrial Services Point Scale should be used by prosecutors, judges, and bail evaluators as a model in developing neutral presentence tools *based* on factors which relate only to pretrial failure to appear and risk of pretrial crime.[74]

4. Each county should be required to conduct bail evaluation/supervisory release studies.

5. The Supreme Court Advisory Committee on Rules of Criminal Procedure should amend Rule 6.02 to *expressly* authorize the posting of a refundable ten percent (10%) of the face value of an unsecured bond to the court. This procedure would be consistent with the federal system and Rule 341(g)(2) of the Uniform Rules of Criminal Procedure (1987) and Standard 10-5.3(d) of the American Bar Association Standards for Criminal Justice (1985).

[74]See Appendix E.

PLEA NEGOTIATIONS

Plea bargaining, because of the number and complexity of variables involved in each case, is difficult to examine for clear evidence of racial bias. In addition, the concept of *prosecutorial discretion* protects a wide range of plea bargaining decisions from scrutiny. Nevertheless, national studies have found that the race of the defendant and the race of the victim can both influence the exercise of this discretion.[75]

Even though analysis is difficult, it is very important to consider the role of plea negotiations because such a large percentage of cases are resolved through this process. Statewide figures for 1991 show that of the most serious criminal cases disposed, only 3% of the gross misdemeanors and 4% of the felonies were tried.[76]

Some justice system professionals believe there is a pattern of racial disparity in plea bargaining. Twenty-seven percent (27%) of Hennepin/Ramsey judges under age 50 believe that white defendants get more favorable plea bargains.[77] Thirty percent (30%) of these judges believe that prosecutors give better deals in cases involving minority victims.[78]

Judges differ as to exactly how race influences plea bargaining, as can be seen by comparing the following responses from the Task Force surveys:

> ...if defendant is minority and victim is white...prosecutor believes he has a better shot at a jury conviction...defense attorneys agree and those cases resolve themselves by *quickening plea agreements.* (Emphasis added) (White Metropolitan Area Judge, Judges Survey)

> Black defendant-burglary and white victim = prosecutor *much less likely to plea bargain* — fear is of "bad press." (Emphasis added) (White Metropolitan Area Judge, Judges Survey)

Like judges, a substantial minority (19%) of all attorneys statewide and 37% of public defense attorneys believe that "prosecutors are more likely to make favorable plea offers when defendants are white."[79] While direct evidence in support (or against) these views is unavailable, a variety of factors suggest that the potential for bias is strong. One such factor is the very small representation of people of color working in the justice system. The Task Force estimates that out of 1,165 prosecutors, public defenders and legal services

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[75]Note, Developments-Race and the Criminal Process, 101 Harv. L. Rev. 1472, 1525-32 (1988) (hereinafter "Race and the Criminal Process").

[76]Office of Research and Planning, Minnesota Supreme Court, 1991 Trial Court Statistics (Feb. 1992)(on file with the Minnesota Supreme Court).

[77]Judge Survey Results, supra note 10, p. 20.

[78]Id.

[79]Attorney Survey Results, supra note 44, at p. 17.

attorneys statewide, only 26 are people of color.[80] Of the 18 public defender investigators in the state, only one is a person of color.[81] Only 11 of 87 counties even have victim advocacy programs, and their staffs are predominantly white.[82]

A second factor is the scarcity of cultural-diversity training. Of the attorneys responding to the Task Force's statewide survey, only 14% reported having received *any* such formal training.[83] In the last three years the Criminal Justice Institute and State Board of Public Defense have provided some cultural diversity training. The Bemidji Trial School has now begun to recruit more culturally diverse faculty. According to the state public defender, future course options will include training geared toward the development of specific skills that will improve the quality of interactions between attorneys and victims or defendants who are people of color.

Critics of prosecutorial discretion have suggested that multi-racial advisory boards be established to review charging and plea bargaining decisions to eliminate racial bias.[84] In Minnesota, neighborhood-based defense organizations like the Legal Rights Center have sought the participation of diverse community members in every phase of policy determination.

Other writers have suggested written guidelines for charging and plea bargaining.[85] Currently the only national standard which appears to prohibit racial discrimination is the A.B.A. Standards for Criminal Justice, Pleas of Guilty § 14-3.1 (c) (1986):

> Similarly situated defendants should be afforded equal plea agreement opportunities.

Currently in Minnesota, with some exceptions, such as Hennepin County, chief prosecutors rarely review written records of plea bargains by staff attorneys. Generally chief public defenders do not review records of plea bargains in such a way as to be able to tell if racial factors enter into negotiations.[86]

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[80]Wayne Kobbervig, et al Minnesota Supreme Court, Research Methodologies for the Minnesota Supreme Court Racial Bias Task Force Research Projects, p. 2 (Feb. 2, 1993) (See Appendix B). Supreme Court).

[81]Interview with John M. Stuart, Minnesota State Public Defender (April 26, 1993).

[82]Statement to the Task Force by a member of the State Office of Victims Ombudsman (Feb, 27, 1993).

[83]Attorney Survey Results, supra note 44, p. 31.

[84]Dwight L. Greene, Abusive Prosecutors: Gender, Race & Class Discretion and the Prosecution of Drug-Addicted Mothers, 39 Buf. L. Rev. 737 (1991).

[85]James Vorenberg, Decent Restraint of Prosecutorial Power, 94 Harv. L. Rev. 1521 (1981).

[86]Interview with John M. Stuart, Minnesota State Public Defender (Mar. 10, 1993).

Findings

1. Minority attorneys are seriously underrepresented in both prosecution and criminal defense offices across the state.

2. There are great differences in the size and organization of these offices in urban, suburban, and rural areas in Minnesota.

3. Investigative personnel, who influence attorneys' perceptions of the strength of their cases — on both sides — are predominantly white.

4. There is tremendous variation among victim advocacy services (where they exist at all) throughout the state. Variation, and in many cases, the complete lack of these services, affect charging, negotiation, and sentencing practices.

5. There is very little cultural-diversity training required of prosecutors, defense lawyers and investigators on both sides.

6. There is a lack of multi-cultural skills training in specific areas, for example, how to prepare a minority defendant or victim to testify as a witness.

7. Prosecutorial offices have few, if any, written standards on plea negotiation.

8. Ethical standards applicable to lawyers on both sides have generally been silent on issues relating to racial bias.

9. With some exceptions, such as Hennepin County, chief prosecutors rarely review written records of plea bargains by staff attorneys.

10. Generally chief public defenders do not review records of plea bargains in such a way as to be able to tell if racial factors enter into negotiations.

11. Some judges and attorneys believe that the race of the defendant and victim affect plea bargaining in Minnesota.

Recommendations

1. Prosecution and defense offices should take all necessary steps to improve the recruitment, retention, and promotion of people of color.

2. These efforts should extend to support personnel and victim advocates, whose views shape attorneys' perceptions of their cases.

3. Statewide organizations such as the County Attorneys Association, State Board of Public Defense, Criminal Justice Institute, and Bemidji Trial School should enhance

both general cultural diversity training and specific skills training that relate to participation in a culturally diverse criminal justice system.

4. Supervisors of prosecutors and defenders in every jurisdiction should discuss with their staff attorneys the potential for race influencing plea bargains.

5. Clear policies should be issued to lawyers on both sides that race should not be a factor in plea negotiations.

6. Prosecutors and defenders with management responsibilities should review plea bargains as part of their staff evaluations, with one goal being the elimination of racial stereotyping as a factor in plea negotiations.

JURIES

Minnesota jurors are selected for grand and petit juries by a random selection process from a source list. The source list is compiled from voter registration, drivers license, and Minnesota state identification card lists.[87] The selection process is intended to ensure that people are selected at random from the broadest cross-section of the county's population.[88] All the judicial districts in Minnesota are bound by the Minnesota Jury Management Rules, promulgated by the Supreme Court.

As amply documented elsewhere in this report, people of color are over-represented in the number of individuals arrested and prosecuted, as well as in the number of individuals who are victims. A random walk through the Hennepin and Ramsey county courts brings one face-to-face with how culturally diverse the state has become in recent years. People of color waiting for justice or judgment abound. Yet somehow, people of color on the *other* side of the courtroom — in the jury box — are very hard to find. In fact, jury pools rarely are representative of the racial composition of our communities.[89]

For example, in Hennepin County, people of color comprise 11% of the county's population.[90] However, since 1968, only 5% of Hennepin County's grand jurors and approximately 6% of the petit jurors have been people of color.[91] Public defenders testifying at the public hearings identified this disparity as a serious concern. For example, one Hennepin County defense attorney testified that:

> There are a lack of minorities on the jury panels and I think this is a very serious problem. In Hennepin County you are most likely to be tried by members...by people who live in Eden Prairie, not even people who live in Minneapolis...by very few minority members. I've never seen a Native American on a jury. The closest I ever get is someone who went out with a Native American and that person was struck by the prosecution. The number of blacks also are way too low. Hispanics don't appear very often either. (White Defense Attorney, Public Hearing, Minneapolis)

Although specific data on the racial composition of juries was unavailable from other counties,[92] over 40% of the attorneys[93] and 60% of the judges[94] responding to the Task

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[87]Minnesota Rules of Court, Jury Management Rule 806, p. 553 (West 1993).

[88]Minn. Stat. § 593.31 (1993).

[89]See Racial Composition of the Grand Jury, supra note 38, p. 28; See generally Van Dyke, Jury Selection Procedures (1977).

[90]Census Bureau's 1990 Population Characteristics, supra note 6, p. 97.

[91]Racial Composition of the Grand Jury, supra note 38, p. 25.

[92]Prior to 1993, data on the racial composition of jury pools was not systematically and continuously collected in any county of the state outside of Hennepin and Ramsey.

Force survey reported that people of color are sometimes, rarely or never adequately represented in jury pools or on jury panels.

Legal commentators have emphasized the importance of having the most representative and inclusive source list in obtaining racially balanced juries.[95] After a thorough examination of Minnesota's jury source list, the Hennepin County Attorney's Task Force on Racial Composition of the Grand Jury recommended the addition of tribal eligible voter lists and lists of recently naturalized citizens, among others.[96] Steps should also be taken to reach economically disadvantaged citizens, who might otherwise not appear on the voters or drivers license lists or may not receive a jury summons due to frequent changes in residence.

Anecdotal evidence of chief judges and district administrators indicate that efforts need to be made to encourage and enable people to serve when called to jury duty. A significant number of people fail to respond to the courts' summons for jury service. Among those who do respond, some are excused on the basis of economic hardship because they cannot afford the daycare costs which would be necessitated by jury service. Others are excused from trial service because employers fail to continue their employee's salary during jury duty.[97]

The data suggest problems not only with the inclusiveness of the source list and representativeness of the jury pool as a result of the failures to return the qualifications form and hardship excuses, but also with the likelihood that a minority in the jury pool will survive voir dire and be selected for trial service. Nearly one-half of public defense attorneys across the state[98] and 53% of metropolitan area judges[99] responded that prosecutors are more likely to use peremptory challenges against jurors who are people of color. Fourteen percent of the prosecutors agree.[100] One judge wrote:

> There are very few minorities who serve on grand or petit juries. Very few appear on the venire panel and usually they are stricken through peremptory challenges. I strongly suspect that attorneys exercising such challenges are motivated in part by racial cultural and ethnic stereotyping. (White, Metropolitan Area Judge, Judge Survey p. 51)

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[93]Attorney Survey Results, supra note 44, p. 27.

[94]Judge Survey Results, supra note 10, p. 32.

[95]See e.g David Kairys et al Jury Representativeness: A Mandate for Multiple Source Lists, 65 Calif. L. Rev. 776 (1977).

[96]Racial Composition of the Grand Jury, supra note 38, pp. 37-39.

[97]Interview with Sue K. Dosal, State Court Administrator, Minnesota Supreme Court (April 1993).

[98]Attorney Survey Results, supra note 44, p. 18.

[99]Judge Survey Results, supra note 10, p. 20.

[100]Attorney Survey Results, supra note 44, p. 18.

In April 1993, a Minnesota trial court judge, faced with a Batson[101] challenge, denied a prosecutor's use of a peremptory challenge against a male African American venireperson after determining that the prosecutor failed to provide adequate race-neutral grounds for the peremptory challenge.[102] A subsequent writ of prohibition brought by the prosecutor to prevent the district court from enforcing its order denying the challenge was denied by the Minnesota Court of Appeals.[103]

A number of commentators have discussed the impact of race on the criminal justice system and on juries in particular. It has been observed that juries in the United States are generally composed of white middle class people and that the ethnic, racial, and sexual makeup of juries affects the outcome of cases.[104] Conviction rates of African American defendants are higher, particularly when the victim is white.[105] There is a wide-spread belief throughout communities of color that the criminal justice system treats them unfairly.[106] The exclusion of people of color from juries can do nothing but perpetuate this belief, which in effect renders the whole justice system illegitimate in the eyes of communities of color.[107] This negative perception fosters feelings among communities of color that, in the eyes of the criminal justice system, their lives and safety simply don't matter as much as the lives and safety of others.

On the other hand, there is evidence that successfully finding ways to select jurors from diverse groups infuses the judicial system with community values and tends to legitimize the system in the eyes of the wider community as well.[108] The fact that this is a prevalent concern is evidenced by the fact that the vast majority of jury discrimination cases involve challenges to all white juries.[109] Studies have shown that people of color are more likely to feel they belong to the community if they are available or called as jurors.[110] Consequently, participation in the jury process by people of color has a profound impact on their attitude toward law and the system of justice in the United States.

Focusing on grand juries in particular, it is especially important that a fair cross-section of people be utilized because grand jurors are not challenged for potential bias

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[101]Batson v. Kentucky, 476 U.S. 79 (1986).

[102]State v. McCuiston, No. C6-93-794, slip op. at 4 (Minn. App. April 20, 1993); See also State v. Bowers, 484 N.W.2d 774 (Minn. 1992); and State v. McRae, 494 N.W.2d 252 (Minn. 1992).

[103]State v. McCuiston, No. C6-93-794 slip. op. at 4.

[104]Kenneth C. Vert, A Grand Jury of Someone Elses Peers: The Unconstitutionality of the Key-Man Selection System, 57 UMKC L.R. 505 (1989); Note, The Case for Black Juries, 79 Yale L.J. 531, 532 (1970)(hereinafter "The Case For Black Juries").

[105]See, Radelet and Pierce, Race and Prosecutorial Discretion in Homicide Cases, 19 L. & Soc'y Rev. 587 (1985); Baldus, et. al Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience, 74 J. of Crim. L. and Criminology 661-703 (1983).

[106]Sheri Lynn Johnson, Black Innocence and the White Jury, 83 Mich. L. Rev. 1611, 1635 (1985).

[107]The Case for Black Juries, supra note 104, p. 534.

[108]Race and the Criminal Process, supra, note 75, p. 1561.

[109]The Case for Black Juries, supra note 109, p. 537.

[110]Dale W. Broder, The Negro in Court, 1965 Duke L.J. 19, 26 (1965).

through peremptory challenges.[111] Greater representation of people of color can also check the influence of the prosecutor over the grand jury by facilitating discussion in important cases.[112] Without the broad range of social experiences that a group of diverse individuals can provide, juries often are ill-equipped to evaluate the facts presented. An all-white jury simply may not understand the language or context of facts involved in a case, and may act on this misunderstanding to the detriment of the process. Lack of understanding also creates an opening for unconscious prejudice.

As the late Justice Thurgood Marshall observed,

> When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable.[113]

Minnesota law provides that all first degree murder charges must be brought by grand jury indictment.[114] The vast majority of cases presented to the grand jury in Hennepin County are homicides, for which the county attorney seeks first degree murder indictments.[115] Of all of the homicide cases presented to the grand jury by the Hennepin County Attorney since January 1, 1990, 65% of the victims and 77% of the suspects have been people of color.[116]

Since a majority of homicides in Hennepin County involve people of color both as victims and suspects, it is likely that a significant number of witnesses in those homicide cases are also people of color.[117] In situations where there are minority witnesses and white grand jurors, inevitably there are challenges in intercultural communication that may ultimately have the effect of compromising justice.[118]

The judgment of the Hennepin County Task force on the Racial Composition of the Grand Jury was that a fair racial cross-section on the grand jury serves at least three important governmental and community interests:

1) decreasing the risks of miscommunication and racial or cultural bias in the process of receiving testimony and deliberation;

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[111] Racial Composition of the Grand Jury, supra note 38, p. 35.

[112] Charles E. Davis and Claude K. Rowland, Assessing the Consequences of Ethnic, Sexual and Economic Representation on State Grand Juries: A Research Note, 5 Just. Sys. J. 197 (1979).

[113] Peters v. Kiff, 407 U.S. 493, 503 (1972).

[114] Minn.R.Crim.P. 8.01.

[115] Racial Composition of the Grand Jury, supra note 38, p. 28.

[116] Id. p. 30.

[117] Id.

[118] Id. p. 31.

2) enhancing the perceived legitimacy and fairness of the grand jury; and

3) promoting greater cooperation between minority communities and law enforcement.[119]

Findings

1. People of color are overrepresented in the number of individuals arrested and prosecuted and imprisoned, as well as in the number of individuals who are victims and witnesses.

2. Jury pools rarely are representative of the racial composition of a community.

3. People of color have a general distrust of the criminal justice system and exclusion from jury service fosters that distrust.

4. The ethnic, racial and sexual makeup of a jury affects the outcomes of cases.

5. Juries are generally made up of white middle class people. Without the broad range of social experiences that a group of diverse individuals can provide, juries often are ill-equipped to evaluate the facts presented in cases that involve people of color.

6. Lack of understanding among whites creates an opening for unconscious prejudice and racial bias when evaluating the facts of a case concerning people of color.

7. Grand and petit juries need people of color to truly reflect the whole community if the jury's verdict is to reflect the community's judgment.

9. It is difficult to ascertain the exact nature of the problems that hinder the selection of higher numbers of minority jurors. Currently, courts keep insufficient statistics.

Recommendations

1. Jury Management Rules should be amended to require that source lists for juries be expanded to include tribal eligible voter lists and lists of recently naturalized citizens.

2. Statewide rules for public assistance should be amended to require all recipients to have either a Minnesota driver's license or a state identification card.

3. Public education programs should be promoted to increase awareness about the purpose and function of the grand and petit juries.

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[119] Id. p. 36.

4. The trial courts should educate themselves about the U.S. Supreme Court Batson[120] decision and related cases, with an eye towards strict enforcement regarding peremptory challenges. Because of the cultural diversity of our community and bias held by many members of the community, the lawyers should be given ample opportunity to inquire of jurors as to racial bias.

5. Measures should be adopted to decrease the impact of hardships on potential jurors. For example, judicial districts should pay for drop-in daycare for jurors who normally are not daycare users.

6. Chief Judges should ensure that jury commissioners collect racial information on people responding to the jury summons as required by the Jury Management Rules.

7. The Supreme Court should amend the Jury Management Rules to require jury commissioners to collect racial information on people granted excuses and deferrals, reporting for jury duty, selected for voir dire panels and seated on juries.

8. Judges and district court administrators should be provided annual demographic information for their districts so that they can compare their jury pools to their district population. The state court administrator should be required to set a minimum percentage of people of color for jury pools based on the racial composition of each district. These minimum percentages should be submitted annually to the Supreme Court for review.

9. The Minnesota Supreme Court should amend the Jury Management Rules to allow Hennepin and Ramsey County District Courts on a pilot basis to adopt new jury selection procedures that will guarantee minority representation on the grand jury equal to the percentage of the minority adult population of each judicial district as measured by the most recent census. This pilot project would allow jurors to be randomly selected as required under the current rules unless there are no people of color among the first 21 grand jurors selected.The selection process should continue until at least two out of the 23 grand jurors are people of color, thereby proportionately reflecting the minority population in Hennepin or Ramsey County. (In May 1993, the Fourth Judicial District, Hennepin County, overwhelmingly approved the adoption of the Grand Jury Pilot Project.)

10. The State Court Administrator's Office should undertake an analysis to determine the nature of problems that may be barriers to minority jury participation and propose appropriate steps to rectify them.

11. The Supreme Court should require that the juror summons and qualification form be written in simple English.

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[120] Batson v. Kentucky, 476 U.S. 79 (1986).

12. The State Court Administrator's Office should implement outreach programs for employers to encourage payment of employees' salaries during jury service.

TRIALS

The section of this Task Force Report dealing with Plea Negotiations reveals how remarkably few cases charged ever actually progress to the trial stage. The section on Juries makes it clear how consistent underrepresentation of people of color undermines faith in the ability of the system to deliver injustice that is truly colorblind. The survey responses of judges, attorneys and victim service providers clearly identified culturally insensitive behavior, as well as overtly demeaning conduct of judges as problems in the courtroom.

Forty-one percent (41%) of the metropolitan judges under 50 responded that judges sometimes display culturally-insensitive behavior and 21% of this group answered that judges sometimes make demeaning remarks or jokes about people of color in court or in chambers.[121] Attorneys in general perceived this problem as less prevalent than did judges,[122] but 21% of the public defenders reported that derogatory language is used toward minority defendants by judges often or sometimes.[123] Fifty-two percent (52%) of victim service providers identified cultural insensitivity on the part of judges as occurring often or sometimes, and 32% identified demeaning remarks or jokes as occurring often or sometimes.[124]

> Judge made disparaging remarks about minority plaintiff's three black witnesses who testified, but ignored impeachment of white witnesses. The court indicated that he believed the white witness' testimony over the black witness but gave no reason for it. (White Private Attorney's letter to Task Force, Fall 1991)
>
> After the sentencing the judge told the jury (from the next trial, who had to wait) that this was a major prob[lem] with "these people" not taking responsibility for their life. (White Metropolitan Area Attorney, Survey Responses)
>
> I personally appeared in conciliation court with a Chinese client who had trouble speaking English. The referee didn't try to understand — he just asked me to [repeat] everything. I had no trouble understanding the man and I speak only English. (White Metropolitan Area Attorney, Survey Responses)
>
> In one case, the judge referred to an Indian plaintiff's complaint under the Human Rights Act as a "blizzard of paper" and "much ado about nothing." (White Greater Minnesota Attorney, Survey Responses)

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[121] Judge Survey Results, supra note 10, p. 33.

[122] Attorney Survey Results, supra note 44, pp. 28, 29.

[123] Id. p. 24.

[124] Victim Service Provider Survey Results, supra note 40, p. 12.

> In a criminal case, the judge and prosecutor treated the defendant and minority witnesses so poorly — I was absolutely shocked. It made me embarrassed to be a part of the system. (White Metropolitan Area Attorney, Survey Responses)

> When I clerked for _____ county judge, he would casually and sarcastically mispronounce foreign names to the face of minority members appearing before the court. (White Metropolitan Area Attorney, Attorney Survey)

> There is one judge in the district that if I am defending a minority, I will remove that judge automatically. (White Greater Minnesota Public Defender, Attorney Survey)

Over 40% of public defenders also reported the use of derogatory language toward minority defendants by court personnel.[125] Forty-six percent of the victim service providers said that court personnel always, often or sometimes made remarks or jokes demeaning to people of color in court or in chambers.[126]

There are numerous accounts of openly disrespectful courtroom behavior on the part of prosecutors as well.

> [Lawyer said to opposing counsel representing Indian client that] all Indians get drunk, smoke, are lazy, do not work; simply live off the government. (White Attorney's Private Letter to Task Force, October 1, 1991)

> Their whole case was based upon the fact that this was a black woman who was unemployed. Now these are statements that were made continuously throughout the whole trial by the prosecutor...Now these were white men who were educated and came to court with their two hundred dollar suits. These are things that were comments by the prosecuting attorney..."Who are you to believe, the white men, or are we to believe this black woman?"
> (African American Public Hearing participant, Minneapolis)

The fact that public defender caseloads are so consistently heavy works to the detriment of people of color as well. People of color often report feeling that their public defenders care little about them and lack the time to give their cases the attention they require.

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[125]Attorney Survey Results, supra note 44, p. 24.

[126]Victim Service Provider Survey Results, supra note 40, p. 12.

At least one urban district is forced, due to budgetary constraints, to use law students to interview, make discovery and negotiate on behalf of clients, thus giving credence to the claim "I didn't have a lawyer, I had a public defender."

> I know that minorities who are defended by public defenders are left to sit for weeks at a time without seeing their public defenders to know what sort of defense is being organized on his or her behalf...My son has been sitting in jail for a month...Not once has his public defender come to see him, to let him know what is going on. My son is involved in a case which is a felony. They don't know the facts of the situation. (African American participant, Public Hearing, St. Paul)

> The public defender was totally inexperienced. (African American participant, Public Hearing, Minneapolis)

As noted earlier in this report, 53% of the metropolitan judges under 50 responded that prosecutors are more likely to use peremptory challenges to disqualify jurors when the defendant is a minority.[127] Forty-two percent (42%) of these judges indicated that prosecutors often or sometimes base their case strategy on racial stereotypes when the defendant is a minority.[128] The reality of racial bias against people of color in Minnesota courtrooms gives substance to their fear of not getting a fair trial in a Minnesota court. Eighty-seven percent (87%) of the surveyed judges[129] and 82% of the surveyed attorneys acknowledged the existence of racial bias in our courts.[130]

> If you go to trial and you have a white jury, white judge, white prosecutors, you're going to lose. Even talking to the Public Defender who represented this relative of mine, he came out and plainly said, "We're not going to trial because you're going to lose. We asked for lowering the bail and he said we couldn't do that because it would outrage the community. I questioned the sensitivity of the judges and the attorney told me 'they're not sensitive enough to your culture. In fact they don't know anything about your culture...'I was very frustrated over that and I hope that gives you a good idea of how frustrated members of the Hmong community are. People are afraid to go to court; they are literally afraid. If they have problems, they don't want to go to court. They'd rather solve them themselves. (Hmong participant, Public Hearing, St. Paul)

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[127] Judge Survey Results, supra note 10, p. 20.

[128] Id. p. 27.

[129] Id. p. 37.

[130] Attorney Survey Results, supra note 44, p. 31.

> We sat down to select a jury. I sat there with my client, my white co-counsel, the white judge, the white prosecutor. In walked the 36 potential white jurors. My client turned to me in his first degree murder case and he said, 'Can I plead guilty?' (White Public Defender, Public Hearing, St. Paul)

> It's very hard for people of color to go to trial. They believe the system is against them and as a result, plead out. Of the nine cases I tried this year as jury trials, only one person of color actually took his case to trial. And the only reason I believe he took it to trial is because the offer he had was so lousy he had nothing to lose by going to trial. (White Public Defender, Public Hearing, St. Paul)

Many attorneys responding to the Task Force survey reported that when people of color *do* go before juries, racial bias on juries often derails their hope of receiving equal justice.

> Criminal sexual conduct case — white victim, black defendant — although a not guilty verdict resulted, it was later discovered that a juror held out for hours because "I can't acquit a nigger." (White Metropolitan Area Attorney, Attorney Survey)

> It's hard to predict, but minority defendants never get a jury of their peers, so if a trial turns on credibility they often lose. I've never seen a minority defendant tried by 12 minority jurors, though I'd like to. (White Metropolitan Area Attorney, Attorney Survey)

> I defended a white person who was said to have stolen property from some Hispanic woman. I felt sure I would lose because of the hard facts, but there was an acquittal. The prosecutor commented after the trial that I never would have won had the victim been white. (White Metropolitan Area Public Defender, Attorney Survey)

> [It's] more difficult to make a jury understand and convict when dealing with minority victims, especially when the perpetrator is the same minority. This is further exacerbated when class, language or culture is different from the majority culture which juries necessarily reflect. (White Metropolitan Area Prosecutor, Attorney Survey)

Findings

1. Sometimes judges do not take minorities, defendants and non-defendants, seriously or treat them with respect.

2. Prosecutors sometimes make disparaging remarks about people of color in the presence of defendants.

3. Public Defenders, whose client loads are top-heavy with people of color, are sometimes seen by people of color as uncaring and disparaging, and often cannot give their cases the time and attention they require.

4. People of color often choose not to go to trial because of the perception that they will not receive a fair trial.

5. Racial bias on juries can result in defendants not receiving a fair trial.

Recommendations

1. The Supreme Court, through the Implementation Committee, should require cultural sensitivity training for judges, prosecutors, private defense attorneys, public defenders, law clerks, bailiffs and other court personnel.

2. Each office responsible for hiring prosecutors, public defenders, law clerks, court reporters and other court personnel should actively recruit and hire more people of color for these positions.

3. More minority judges must be appointed to the bench.

4. The state and counties should improve the public defender system by:

   a. Increasing the level of funding.

   b. Adopting and funding the ABA[131] or Spangenberg[132] caseload standards for attorneys representing indigent clients which provide that a full-time public defender's annual caseload should not exceed:

      i. ABA standards:
      150 Felonies or
      300 Misdemeanors or
      200 Juvenile cases

      ii. Spangenberg standards:
      3 Homicides or
      100-120 Felonies or
      250-300 Gross Misdemeanors or
      400 Misdemeanors or

[131] American Bar Association recommendation, 1985.

[132] The Spangenberg Group, Inc Weighted Caseload Study for the State of Minnesota Board of Public Defense, (Jan. 1991) (on file with the Minnesota Supreme Court).

80 Child Welfare or
175 Juvenile or
200 Other Cases

c. Hiring more in-house investigators, professionals and support staff (e.g. law clerks, dispositional advisors, community workers and paralegals) and clerical support staff.

d. Increase office budget for other necessary expenses (e.g. expert witnesses, outside investigators, computers).

5. Each district, through the efforts of the chief judge, should familiarize itself with the state court system's racial harassment policy[133] and disseminate this information to court personnel and others who come in contact with the court system.

6. The Supreme Court, through the Implementation Committee, should require all courts to be more vigilant on issues concerning race, including but not limited to the following:

a. Eliminating and discouraging racially disparaging remarks made in the courtroom and in chambers.

b. Batson challenges.[134]

7. The Supreme Court, through the Implementation Committee, should create a process to address complaints about issues of race involving the judiciary.

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[133]February 1993.

[134]Batson v. Kentucky, 476 U.S. 79 (1986); (Batson ensures that potential minority jurors are not excused through the exercise of peremptory challenges on the basis of race alone); See also State v. Bowers, 482 N.W.2d 774 (Minn. 1992); and State v. McRae, 494 N.W.2d 252 (Minn. 1992); State v. McCuiston, No. C6-93-794, slip op. at 4 (Minn. App. April 20, 1993).

PRESENTENCE INVESTIGATIONS

In Minnesota, presentence investigations are routinely ordered by judges in felony and misdemeanor cases when defendants plead or are found guilty. Presentence investigations are prepared by probation officers, who work directly for the court, to aid judges in formulating appropriate sentences. Sentences can consist of prison or jail time, chemical dependency treatment, restitution, community service, or any combination thereof. Judges rely heavily upon the probation staff to conduct background checks, contact victims, prepare sentencing guideline sheets, find appropriate treatment, assess amenability to non-prison sanctions, and assess the appropriateness of plea negotiations in any given case.

For this process to work fairly and in the best interests of both defendants and society, it is important that probation officers give accurate, objective, unbiased information and recommendations for judges to rely upon in appropriately assessing each defendant. However, there is a perception among some in the legal community that the recommendations of probation officers are not always racially neutral. Results of the judge and attorney surveys indicated that approximately one-third of public defense counsel[135] and metropolitan judges under age 50[136] believe that probation officers are more likely to recommend reduced sentences when defendants are white, after holding constant[137] the offense and criminal history of the defendant.

Corroborating evidence of this perception was found in a Minnesota Sentencing Guidelines report on intermediate sanctions imposed on felons who were sentenced in 1987.[138] Although the study did not control for type of offense, it found whites were *twice as likely* to be recommended by probation officers for stays of imposition of sentence than people of color.[139] A stay of imposition gives the offender an opportunity, if he or she completes probation, to have a felony reduced to a misdemeanor and a misdemeanor expunged from their record.

Of the 738 probation officers who responded to the probation officer's questionnaire distributed by the Task Force, 94% were white and 6% were people of color.[140] The majority of the probation officers who are people of color work in the metropolitan area of Hennepin and Ramsey Counties. There appears to be little movement towards hiring people of color as probation officers, especially in greater Minnesota where the probation staff are overwhelmingly white and serve a considerable Native American population.[141] In the

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[135]Attorney Survey Results, supra note 44, p. 18.

[136]Judges Survey Results, supra note 10, p. 22.

[137]The term "holding constant" refers to an analytical methodology of making factors equal or identical in order to neutralize their effect.

[138]Minnesota Sentencing Guidelines Commission, Report to the Legislature on Intermediate Sanctions, (Feb. 1991) (on file with the Minnesota Supreme Court).

[139]Id. p. 44.

[140]Probation Officer Survey Results, supra note 45, p. 2.

[141]Public Hearing, Minneapolis (Jan. 23, 1992).

Task Force's statewide survey of probation officers, 82% rated the recommendation of hiring more minority probation officers as an important step in improving judicial services to the minority community.[142]

It is important for probation officers to communicate and relate well to defendants and victims who come into the system. A large percentage of these are people of color. It is critical for probation officers to have both cultural sensitivity and knowledge about what appropriate diversion resources are available.

There has been much debate and study throughout the country on sentencing disparities between whites and people of color.[143] The Task Force commissioned a study on non-imprisonment felony sentences that employed some of the most rigorous and stringent statistical methodologies currently available to analyze sentencing data. The research methodology was able to hold constant several important legal and demographic factors related to sentencing outcomes, and isolate the direct effect race of the offender has on sentence.[144]

The findings of this study indicated that African Americans were more likely than whites to serve presentence jail time after controls were set for offense severity level, criminal history, gender, employment status, and several other factors.[145] In this same analysis, it was also discovered that Native Americans, Asian/Pacific Islanders, and Hispanics served significantly longer periods of time in jail than whites when presentence jail time was included in a measure of total jail time served.[146] The study concluded that presentence jail time was a source of differential treatment between whites and people of color.[147]

Turning to the area of diversion and treatment, it should be noted that there are 50 licensed residential chemical dependency treatment facilities in the twin cities metropolitan area, but of these, only five offer culturally-specific or sensitive programs for adults.[148] The term culturally specific refers to programs that are generally designed and run by professionals from a particular cultural group to meet the special culturally-based therapeutic issues that people from their community might find difficult to address in a mainstream clinical environment. Culturally sensitive programs are not designed exclusively for members of a specific racial/cultural group, but each features a culturally diverse staff and

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[142]Probation Officer Survey Results, supra note 45, p. 9.

[143]Terrance D. Miethe, and Charles A. Moore, Racial Differences in Criminal Processing: The Consequences of Model Selection on Conclusions About Differential Treatment, 27 The Sociological Quarterly 217 (1986); Marjorie S. Zatz, Race, Ethnicity and Determinate Sentencing: A New Dimension to an Old Controversy, 22 Criminology 147 (1984).

[144]Sharon Krmpotich, Minnesota Supreme Court, Non-Imprisonment Sentences: An Analysis of the Use of Jail Sanctions for Minnesota Offenders for the Task Force on Racial Bias in the Courts (Sept. 24, 1992) (see Appendix D)(hereinafter 'Non-Imprisonment Sentences').

[145]Id. p. 7.

[146]Id. p.15.

[147]Id. p. 18.

[148]Interview with staff of the Minnesota Chemical Dependency Division, St. Paul (March 17, 1992).

a clinical approach that takes into account the need for people of color to explore clinical issues that spring from their cultural experience. In the survey of probation officers, 91% responded that culturally-specific treatment programs were important to improving the delivery of judicial services to people of color.[149]

In greater Minnesota, the availability of such programs is even smaller. There are only six culturally-specific/sensitive programs to service the large Native American populations clustered throughout the rest of the state.[150]

Successful treatment relies on a profound and difficult process of self exploration. Since, for people of color, that process may be incomplete if it does not include opportunities to deal with racial identity issues or specific areas of culturally-based emotional pain, it is important that defendants who may benefit from such programs have access to them.

Rule 25 assessments[151] are also required before funding is available for chemical dependency treatment. The court contracts with 12 agencies to conduct these assessments. Only four offer a culturally sensitive approach. Administrative regulations governing publicly funded chemical dependency programs essentially require defendants to fail out-patient treatment before being referred to an in-patient program.[152] Moreover, the required evaluations cannot be completed quickly, and the defendants either sit idle or end up in jail pending an evaluation.[153]

All of the above facts point to bias in the system against people of color during presentencing.

Findings

1. Probation officers are disproportionately white in comparison to their clientele.

2. More training for probation officers on cultural sensitivity skills is needed.

3. There are not enough culturally-specific/sensitive treatment programs to meet the need.

4. There appear to be racial disparities in sentencing recommendations which may point to bias in the presentence process.

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[149]Probation Officer's Survey, Results, supra note 45, p. 9.

[150]Interview with staff of the Minnesota Chemical Dependency Division, supra note 148.

[151]Minn. R. 9530.6600-6655 (1991 & Supp. 2 1992)("Chemical Dependency Care for Public Assistance Recipients; General Provisions"). "Rule 25" identifies qualifications of an assessor, includes criteria establishing levels or types of chemical use problem, and identifies the appropriate level of care including placement criteria. Rule 25 also defines culturally exempt programs and other exemptions to placement levels.

[152]Id. p. 9530.6625-6650.

[153]Public Defense Providers' Focus Group, St. Paul (Aug. 14, 1991) (on file with the Minnesota Supreme Court).

5. There are racial disparities in the likelihood of serving presentence jail time, as well as in the length of total jail time served when pretrial jail time is included.

Recommendations

1. Counties should hire more probation officers who are people of color.

2. Probation officers must take part in cultural diversity skills training at least once, and preferably twice a year, designed to promote better communication between themselves and defendants as well as defendants and victims.

3. The Supreme Court should encourage the creation of more culturally-specific treatment programs, and probation officers and judges should be encouraged to divert appropriate people of color into such programs.

4. Counties should hire and encourage contracted service providers to hire more chemical dependency assessors who are people of color.

SENTENCING

The disparity of sentencing between people of color and whites has always been a focal point for evidence of racial discrimination in the criminal justice system. Nationally, African Americans are incarcerated at a rate more than six times higher than the rate for whites.[154] In Minnesota, African Americans are incarcerated at a rate more than sixteen times higher.[155]

Staggering numbers like these may seem to speak quite loudly for themselves, but sentencing is one of the most complex areas to analyze in the process of searching for clear evidence of racial bias. This is partly because sentencing represents, in a sense, the sum of all the parts of the criminal justice system. It is also because racial bias is inextricably woven together with cultural and socioeconomic bias.[156]

In May 1980, Minnesota established sentencing guidelines based on the over-arching principle that sentencing should be neutral with respect to the race, gender, social or economic status of convicted felons (hereinafter "Guidelines"). The enactment of determinant sentencing guidelines was intended to bring "equity in sentencing". Sentences for felons are based primarily on offenders' criminal histories and the seriousness of the crimes they have committed. A sentencing grid based on those two factors prescribes whether or not an offender should be incarcerated and, if so, for how long. The explicit objective of the guidelines is to eliminate the possible influence of inappropriate factors in sentencing.[157]

In allowing departures from the guidelines, Section II.D.1 of the Guidelines provides for factors that should not be used as reasons for departures:

> II.D.101. The commission believes that sentencing should be neutral with respect to offender's **race**, sex, and income levels. Accordingly, the Commission has listed several factors which should not be used as reasons for departure from the presumptive sentence, *because these factors are highly correlated with sex, **race**,* or income levels. Employment is excluded as a reason for departure not only because of its correlation with race and income levels, but also because this factor is manipulable — offenders could lessen the severity of the sentence by obtaining employment between arrest and sentencing.[158] While it may be desirable for offenders to obtain employment between arrest and sentencing, some groups (those with low income levels, low education levels, and racial minorities generally) find

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[154]Edna McConnell Clark Foundation, Overcrowded Times: Solving the Prison Problem, p. 6 (May 1991).

[155]Id.

[156]See Derrick Bell, Race, Racism and American Law (2d ed. 1980) Myrdal Gunnar, An American Dilemma: The Negro Problem and Modern Democracy (1962); Andrew Hacker, Two Nations: Black and White, Separate, Hostile, Unequal (1992); see generally Minnesota Rules of Court, Minnesota Sentencing Guidelines, pp. 279-320 (West 1993).

[157]Minnesota Rules of Court, Minnesota Sentencing Guidelines, pp. 279-320 (West 1993).

[158]Id. p. 291.

it more difficult to obtain employment than others. It is impossible to reward those employed without, in fact, penalizing those not employed at the time of sentencing.

Despite the intent of the Guidelines, the perception of minority citizens is that the court system is biased against them.[159] This general perception of bias against people of color is shared by professionals in the court system as well.[160] In response to the questionnaires that the Task Force sent to members of the bar and probation officers throughout the state, more than 75% of the judges, attorneys, and probation officers responded that bias against people of color exists in the court system.[161] Nearly 90% said the bias is subtle and hard to detect.[162] As to sentencing, however, there is a stark contrast between the attitudes of these same professionals.

Prosecutors perceive little difference in sentencing recommendations, stays of sentence or actual sentences regardless of race of defendant or victim.[163]

> I've had extensive experience with the worst types of crimes. Rape, robbery, murder, even before the guidelines. I never saw first hand, race to be an issue in sentencing or court proceedings... (White Metropolitan Area Prosecutor, Attorney Survey)

> I have not observed a difference. I believe officials must be sensitive to the racial overtones when handling either minority victims or offenders. (White Greater Minnesota Prosecutor, Attorney Survey)

In contrast, public defense lawyers and metropolitan area judges under the age of 50 are much more likely to perceive race-based differences. According to public defense counsel, prosecutors and probation officers are more likely to recommend reduced sentences when defendants are white and when victims are people of color,[164] and judges are more likely to stay imposition of sentence and make mitigating departures when defendants are white.[165] Judges are also more likely to make aggravating departures and impose severe sanctions for actual or threatened use of violence when defendants are minority and victims are white.[166]

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[159] See generally Public Hearing testimony.

[160] Attorney Survey Results, supra note 44, p. 31; Judge Survey Results, supra note 10, p. 37.

[161] Judges Survey Results, supra note 10, p. 37; Attorney Survey Results, supra note 44, p. 30; Probation Officer Survey Results, supra note 45, p. 23.

[162] Id.

[163] Attorney Survey Results, supra note 44, p. 20.

[164] Id. p. 18.

[165] Id. pp. 19, 20.

[166] Id.

> Minority defendants, particularly blacks, seem to be treated more harshly at every stage — arrest, bail setting, presentence investigation, sentencing — and seem more severely charged for same conduct than whites. Poor minority representation among police, jurors, probation officers seems to contribute. Race of victim seldom appears to be an issue... (White Metropolitan Area Public Defender, Attorney Survey)

> Black defendants on violent crimes generally experience a much more difficult time getting prosecution to reduce charges or to recommend dispositional departures. This is especially true if the victim is white. It in part may be the attitude of a white victim against a black perpetrator that results in the unwillingness of a prosecutor to recommend a more lenient sentence in crimes of violence. No, it's not overt. It's not expressed. It's just reflected at times in the way a case is charged, the type of plea negotiation you receive, the recommendation of probation... (White Metropolitan Area Public Defender, Attorney Survey)

> Due to stereotypes or ignorance, judges make assumptions about classes or races of people that adversely affect the rights of parties. eg. Indians are lazy drunks, blacks carry guns and are violent, etc. (White Metropolitan Area Prosecutor, Attorney Survey)

In dealing with victims of color, nearly one-third of victim service providers said that prosecutors are more likely to recommend intermediate sanctions in lieu of prison when defendants are white.[167]

The Task Force undertook a number of studies regarding sentencing practices. The analysis of the sentencing data gave the committee a more in-depth look at racial sentencing patterns.

Analysis of Sentencing Guidelines Departures and Imprisonment Rates

In 1990, 8,844 felons were sentenced in Minnesota, of which 1,729 (20%) were incarcerated in a state prison.[168] An analysis was undertaken to examine racial differences in dispositional and durational departures from Minnesota's Sentencing Guidelines as well as imprisonment rates for a select group of offenses: aggravated robbery, criminal sexual conduct, weapons offenses and second degree assault.

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[167]Victim Service Provider Survey Results, supra note 40, pp. 22, 23.

[168]Minnesota Sentencing Guidelines Commission, Summary of 1990 Sentencing Practices for Convicted Felons, pp. 4, 14 (June 1992).

Mitigated dispositional departures occur when a judge stays an offender's sentence even though the Sentencing Guidelines call for an executed prison sentence. Aggravated dispositional departures occur when a judge pronounces and executes a prison sentence when the Guidelines recommend a stayed sentence (no prison). A durational departure occurs when a prison sentence is pronounced that is either shorter or longer than the presumptive duration and range recommended by the Guidelines. As with dispositional departures, durational departures may be either aggravated or mitigated.

In the examination of mitigated dispositional departure rates by race for all 1990 cases that were presumptive commitments to prison, white offenders had the highest rate of mitigated departures at 35%, followed by African Americans at 31%, American Indians at 28%, and Other (predominantly Hispanics and Asian/Pacific Islanders) at 25%.[169] Although white offenders fared better than the other racial groups, the relationship between race and mitigated departures was not statistically significant.[170]

However, if we use the white mitigation rate of 35% for all people of color, 46 fewer people of color would have gone to prison. This approach converts to a *number* the minority offenders who, had they been treated exactly the same as whites convicted of the same crimes, would have been spared the consequence of prison time. Although some of the differences between whites and people of color are not statistically significant, certain patterns emerge which are of considerable import to the Task Force and its charge.[171]

To provide a long range view, five years of consolidated data for felons, 1986-1990, was subjected to the same analysis as the 1990 data.

The analysis of mitigated dispositional departure rates from 1986-1990 by race for all cases that were presumptive prison commitments indicated that Asian/Pacific Islander and Hispanic offenders (the "other" race category) had the highest rate of mitigated departures at 34%, followed by whites at 30%, American Indians at 29%, and African Americans at 24%. When all minority categories are combined, their departure rate is 26%, slightly lower than the white departure rate of 30%.[172]

For the five year period, if the white mitigation rate of 30% had been used, *128* fewer people of color would have gone to prison.

The analysis of aggravated dispositional departure rates by race for all 1990 cases that were presumptive stays (no prison recommended) found white offenders had an aggravated dispositional departure rate of 3%, while people of color were at 6%.[173] The relationship

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[169]Sharon Krmpotich, Minnesota Supreme Court, Analysis of Sentencing Guidelines 1986-1990: Imprisonment Rates and Departure Data for Minnesota Felons, p. i (Feb. 10, 1993) (see Appendix D) (hereinafter "Analysis of Sentencing Guidelines").

[170]When a relationship is statistically significant, it cannot be attributed to random chance.

[171]Analysis of Sentencing Guidelines, supra note 169.

[172]Id. p. 2.

[173]Id.

between race and aggravated departures was not statistically significant. However, if the white 3% aggravated dispositional departure rate had been used for minority felons, *38 fewer* people of color would have gone to prison in 1990.

In the examination of aggravated dispositional departure rates for all 1986-1990 cases that were presumptive stays (no prison recommended) we found white offenders had a departure rate of 4%, while people of color were at 6%.[174] Once again, the relationship between race and aggravated departures was not statistically significant.

However, if the 4% rate had been used for people of color, *128 fewer* people of color would have gone to prison.

The analyses of racial differences in the 1990 imprisonment rates for four specific offense categories, criminal sexual conduct, aggravated robbery, second degree assault, and dangerous weapons (all crimes that carried presumptive prison commitments), *found that people of color had significantly higher imprisonment rates compared to whites.*[175]

Figure 2 displays the differences in imprisonment rates between whites and people of color, but does not control for the criminal history of the offenders. In the offense categories of aggravated robbery, second degree assault, and dangerous weapons, there is a statistically significant association between race of the offender and imprisonment. *People of color had significantly higher imprisonment rates than whites.*

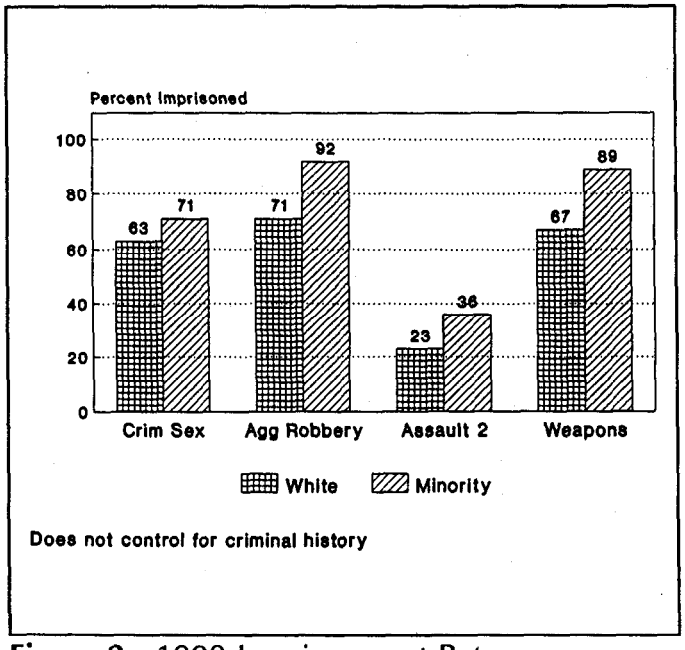

Figure 2. 1990 Imprisonment Rates

The argument can be made that the criminal history score of the offender should be irrelevant in these cases since all were offenses that carried presumptive prison commitments under Sentencing Guidelines. However, in reality, an offender's record may influence a judge's decision to commit the felon to prison. In order to determine if criminal history had an influence on the imprisonment rates of these offenders, additional analyses were conducted on these same cases which controlled for criminal history. Figure 3 displays the imprisonment rates

[174] Id. p. 4.

[175] Id. pp. 7-12.

for offenders with no criminal history.[176]

For those offenders with no criminal history, there are large differences in the imprisonment rates in three of the four offense categories. The largest discrepancies can be seen in the offense categories of aggravated robbery (a 24% difference) and dangerous weapons (a 32% difference). These two categories, along with second degree assault, indicate that people of color had significantly higher imprisonment rates in comparison to whites. A lack of criminal history was much more beneficial to whites than minorities in avoiding prison for convictions in these offense categories.

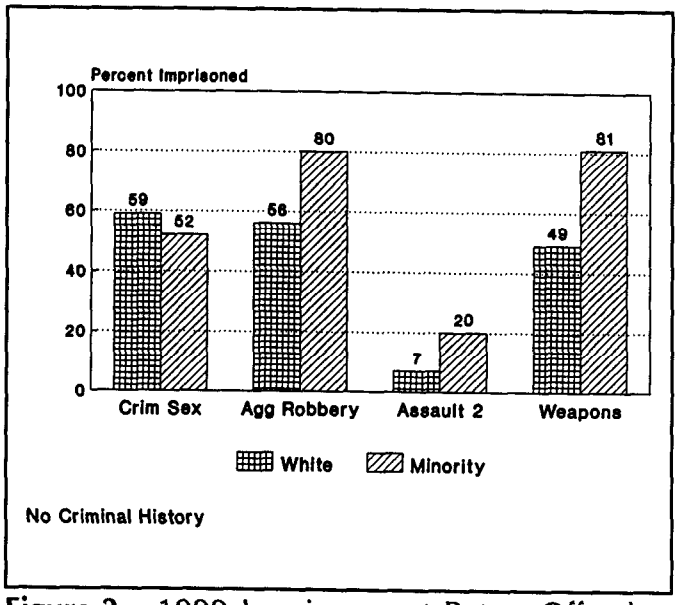

Figure 3. 1990 Imprisonment Rates, Offenders with No Criminal History

The analysis of offenders with some criminal history again found some large racial differences in imprisonment rates. People of color had higher rates in all four offense categories examined (See Figure 4.) [177]

People of color were imprisoned at a rate that was at least 12% greater than the white imprisonment rate for convictions of aggravated robbery, criminal sexual conduct, and weapons offenses. Since all of these offenders were classified as presumptive prison commitments, white offenders received more lenient treatment than minority

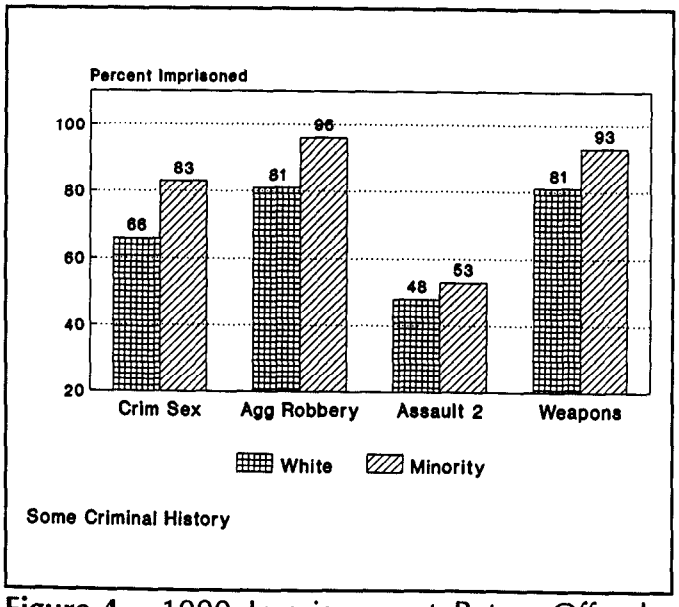

Figure 4. 1990 Imprisonment Rates, Offender with some Criminal History

[176] Id.

[177] Id.

offenders who were similarly situated under Sentencing Guidelines.

These imprisonment analyses were repeated for the identical offense categories for felons who were sentenced over the five year time frame of 1986 through 1990 to assure a long-range view of sentencing practices. Again the findings indicate that people of color had consistently higher imprisonment rates when compared to whites.[178]

In three out of the four offense categories analyzed over the five year time frame, there was a statistically significant association between race of the offender and imprisonment while holding criminal history constant. Minority offenders with a criminal history who were sentenced for aggravated robbery or criminal sexual conduct were significantly more likely to go to prison than white offenders in those same categories. For the offense of second degree assault, minority offenders with no criminal history were significantly more likely to go to prison than whites with no history.[179]

The results of the 1986-1990 analysis are similar to the findings of the 1990 analysis. There were distinct racial differences present in the imprisonment rates of three specific offense categories. People of color had consistently higher imprisonment rates than whites in these "person offense" categories which carried presumptive prison commitments.

Although Sentencing Guidelines recommends prison terms for all of these offenders, *the judicial system treats white offenders more leniently.*

When comparing 1986-1990 durational departure rates in executed sentences for whites and people of color, it appears that people of color had a slightly higher rate for both aggravated (8% of people of color, 7% of whites) and mitigated (17% of people of color, 16% of whites) durational departures.[180] However, these were not statistically significant.

Analysis of Non-Imprisonment Sentences

As previously discussed in the presentence section of this report, an analysis of non-imprisonment sentences for felons was undertaken to determine what role, if any, race played in the use of jail as an intermediate sanction for felons who did not receive executed prison sentences. This study analyzed two factors: *the likelihood of serving time in jail and length of jail time served.*[181] The analysis employed some of the most rigorous and stringent statistical methodologies currently available to analyze sentencing data. The research methodology was able to hold constant several important legal and demographic factors related to sentencing outcomes, and isolate the direct effect race of the offender has on sentence.[182]

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[178] Id. pp. 7-13.

[179] Id.

[180] Id.

[181] See Non-Imprisonment Sentences, supra note 144.

[182] Id.

African American racial status was found to be a significant factor in predicting the likelihood of a stay in jail *when pretrial jail time is counted as a stay in jail.*[183] This finding held true even when offense severity, criminal history, and several demographic factors were held constant. If a white and an African American offender have the same criminal history score, offense severity level, gender, employment status, age, and method of conviction, the African American offender is still more likely than the white to do jail time. The findings also indicate that Native Americans and the Hispanics and Asian/Pacific Islander group both served significantly longer jail terms than whites *when pretrial jail time was combined with post-disposition jail time.* African Americans did not serve significantly longer jail terms than whites.

Another study was commissioned to determine if any racial differences exist in the handling of misdemeanors in Hennepin County.[184] The offenses of assault, theft and prostitution were specifically examined. It was found that whites were more likely to receive a fine when compared to people of color, and people of color were more likely than whites to have a jail sentence imposed even though they were convicted of the same offense and had similar criminal histories.[185]

Drug Offenses and Sentencing Policy

The most contentious criminal justice policy affecting the minority community in recent years has been the arrest and sentencing practices of the state regarding drug offenses. The decade of the 80's saw a pronounced shift in law enforcement philosophy and tactics toward arresting users rather than focusing primarily on dealers as part of the "war on drugs." In Minnesota the number of arrests of African Americans for narcotics crimes rose 500% between 1981 and 1990, almost 17 times as fast as the rise in arrests of whites. By way of comparison, the African American population grew by 78% in that same period.[186]

Between 1987 and 1990 alone, the percentage of African Americans among all drug offenders sentenced in Minnesota rose from 10% to 26%. The proportion of whites sentenced dropped from 84% to 67%.[187] In 1989-1990, the number of narcotics arrests involving whites decreased by 13%, while the number of African American arrests increased by 99%.[188]

In the summer of 1990, Judge Pamela Alexander, at the trial court level, ruled that the state's third degree controlled substance possession statute violated the constitutional

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[183] Id. at p. iii; see also Constance Osterbaan and Michael Zimmerman, Hennepin County Bureau of Community Corrections, Sentencing Equity, Race, Sex and Pretrial Custody Effects in Hennepin County (Aug. 1987).

[184] Hennepin County Misdemeanor Processing Analysis Report, supra note 16.

[185] Id. pp. 13, 14.

[186] Minnesota Sentencing Guidelines Commission, Report to the Legislature on Controlled Substance Offenses (Feb. 1992); David Peterson, State Agency Reports Increase in Number of Black Drug Arrests, Minneapolis Star Tribune, July 9, 1992 at pp. 1A and 16A.

[187] Id.

[188] Id.

guarantee of equal protection under the law. The law imposed a harsher penalty for the possession of certain amounts of crack cocaine than for the same amounts of powdered cocaine. This distinction was noted to have a disproportional impact on African Americans because a very high proportion of convicted crack offenders were African Americans and a high proportion of convicted powdered cocaine offenders were white.

The Minnesota Supreme Court, in an opinion written by Justice Rosalie Wahl, affirmed the trial court decision.[189] The Legislature quickly acted to correct the unconstitutional law.

The Minnesota Sentencing Guideline Commission held hearings on the crack "proportionality" issues and reported their findings to the Legislature. The Commission findings were similar to those of the trial court and the Supreme Court; that it was not clearly established there is a significant or appreciable difference between crack cocaine and powdered cocaine.[190]

Hennepin and Ramsey Counties (metropolitan Minneapolis and St. Paul) have begun programs to divert more drug offenders into treatment rather than branding them as criminals. The number of people of color being diverted is not known at this time.

The Sentencing Guidelines Commission is looking once again at the possibility of implementing the "day/fine" concept. Simply put, the concept alleviates pressure on chronically overcrowded jails by allowing eligible offenders to pay fines in lieu of jail time. The idea was rejected by the Hennepin County Board when it was proposed by Hennepin County Attorney Tom Johnson on the grounds that it would have a disparate impact on people of color.

Findings

1. There is racial bias in sentencing in Minnesota.

2. Certain criminal legislation has had a disparate impact on people of color.

Recommendations

1. Judges and probation officers should be mandated to attend cultural diversity training as well as special skills training in the area of racially and culturally neutral sentencing determinations.

2. The Minnesota Sentencing Guidelines Commission should more completely and routinely analyze and summarize information on sentencing practices by race and highlight this information in an annual report.

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[189] State v. Russell, 477 N.W.2d 866 (Minn. 1991).

[190] Report to the Legislature on Controlled Substance Offenses, supra note 186.

3. The Minnesota Sentencing Guidelines Commission should prepare a report regarding the possibly disparate impact on people of color of the "day/fine" concept prior to any implementation of such a program.

4. Each judicial district should implement a continuing program for diversion of first time drug offenders into treatment. For people of color, when possible, the treatment be culturally specific/sensitive. Monitoring should be done by the chief judge of the judicial district with periodic reporting to the chief justice.

5. The appropriate legislative committee(s), where practicable, should review legislation for any differential treatment which could result from enforcement. Without such review for discriminatory impact, unintended but nevertheless racially biased outcomes can result.

6. The Minnesota Sentencing Guidelines Commission should continue to monitor and compare sentencing practices on cases involving powder cocaine versus crack cocaine.

7. The State Court Administrator's Office in conjunction with the Sentencing Guidelines Commission, should study and evaluate sentencing disparities in order to identify and recommend ways to eliminate those based on race.

CRIMES MOTIVATED BY BIAS

As related elsewhere in this report, Minnesota is rapidly becoming more culturally diverse. The 1990 Census shows Minnesota's minority population grew by 72% during the decade of the 80's. The occurrence and reporting of bias crimes appears to be increasing.[191] In its 1991 bias-motivated crime summary, the Minnesota Department of Public Safety Office of Information Systems Management found a 38% increase in bias offenses reported for January through December, 1991 (425) when compared to the same time period in 1990 (307).[192] As examples, during 1992 the Ramsey County Attorney's Office received convictions in a bias-motivated first degree murder where the African American victim was killed because he was "in the wrong (white) neighborhood", and in a terroristic threats case where a white student threatened to "eradicate" an African American college professor because of his "liberal teachings" regarding racial issues.

Various provisions of the Minnesota Criminal Code of 1963, as amended, either criminalize or provide enhanced penalties for bias-motivated crimes, i.e. those motivated by the victim's race, color, religion, sex, sexual orientation, disability, age or national origin.[193] While these provisions have not been constitutionally challenged and few prosecutions under these provisions have occurred, their continued viability is uncertain in the aftermath of the decision by the U.S. Supreme Court in R.A.V. v. City of St. Paul,[194] where a unanimous Court struck down St. Paul's anti-bias crime ordinance as an unconstitutional restriction on free speech.

Minn. Stat. § 626.5531 (1992) requires peace officers to report "every violation of chapter 609 or local ordinance *if the officer has reason to believe, or if the victim alleges, that the offender was motivated to commit the act*" because of the victim's race, religion, national origin, sex, age, or sexual orientation. Additionally, existing legislation mandates the development of training courses in bias-motivated crimes. Those provisions include Minn. Stat. § 8.34 (1992), which requires the Attorney General, in cooperation with the Peace Officer Standards and Training Board (POST Board), the Minnesota County Attorney's Association and the Department of Human Services to create a six hour course (minimum) in prosecuting bias-motivated crimes which must be presented at least once a year until December 31, 1993; and § 626.8451, subd. 1 (1992) which requires the POST Board to prepare a training course to assist peace officers in identifying and responding to bias-motivated crimes.

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[191] Office of Information System Management, Minnesota Department of Public Safety, Minnesota Crime Information 1991 pp. 141-142 (1992).

[192] Id. at 141.

[193] See, e.g., Assault, § 609.2231, subd. 4(a); Criminal Damage to Property, § 609.595, subds. 1a and 2(b); Trespass, § 609.605, subd. 3; Intrusion on Privacy, § 609.746, subd. 3; Obscene or Harassing Telephone Calls, § 609.79, subd. 1a; and Letter, Telegram, or Package; Opening; Harassment, § 609.795, subd. 2(a); Reporting of Crimes motivated by Bias, § 626.5531; Training in Identifying and Responding to Certain Crimes, § 626.8451, subd. 4; Crime Victims: Rights, Program, Agencies, § 611A; Bias-motivated Crime Prosecution Training, § 8.34, subds. 1 and 2.

[194] ____ U.S. ____, 112 S.Ct. 2538 (1992).

Since 1991, 227 county attorneys have received training on prosecuting bias motivated crime.[195]

Findings

1. Racial bias incident reports have increased faster than reports of any kind since 1988 when records started being kept.

2. Minnesota currently has statutes in place that provide for enhanced penalties for certain crimes motivated by bias.

3. The enhanced penalties are seldom utilized.

4. Even though the POST Board is required to offer a course on identifying and responding to bias-motivated crimes, peace officers are not required to take it.

5. The POST Board and the Attorney General's Office are required to offer a course on prosecuting bias-motivated crimes, but prosecuting attorneys are not required to take it.

Recommendations

1. The Legislature should extend the time period during which the Attorney General and the POST Board must provide bias crime training to prosecuting attorneys on a continuing basis.

2. The Legislature shoudl require mandatory yearly attendance by prosecuting attorneys, peace officers, and victim services personnel at bias crime reporting or prosecuting training.

3. The appropriate supervisory authority should subject law enforcement personnel to discipline where they fail to follow the notification requirements of Minn. Stat. § 611.A et seq.

4. To the extent permissible by law, the Minnesota Sentencing Guidelines Commission should amend the sentencing guidelines to recognize bias motivation as an aggravating factor in felony prosecutions.

[195]Letter to the Task Force on Racial Bias in the Courts from Gina Washburn, Executive Director, Minnesota County Attorneys Association (April 30, 1993).

LAW ENFORCEMENT

Anger, fear, and mistrust characterize public discourse on police-community relations. A very common perception among the communities of color is that the justice system is either unable or unwilling to vigorously investigate and prosecute, where appropriate, assaults committed against people of color by the police. The testimony of citizens regarding police relations with minority communities strongly supports this.

> ...I don't understand why the officer shot the two boys just like an animal. Think about it...I am a hunter. If I see a deer, I have a permit to hunt a buck but if I kill by mistake a doe, I get a $100 violation fine. But the officer shot these two children and he got no suspension or violation or punishment. In this country I see there is no fair[ness]. They just see us like animal, shoot in the front, shoot in the back, whatever they want. (Hmong participant, Public Hearing, Minneapolis [relative of one of the adolescents slain by police during an attempted arrest for car theft])

> As [my stepson] stepped out with his bag, he was turned around against the wall, asked to put his bag down, and he was thoroughly checked out. His ID's were checked, because they were fitting him against the description of the two Indian males that were sought. The description of the Indian males that were sought was about 5'10", [they] had long dark hair, past [their] shoulders; it was very, very descriptive in the report...My stepson weighs 350 pounds and stands 6'2". He does not have long shoulder length hair; he has short curly hair. He came within no means the description that was identified. And this is happening every time a crime is committed where the assailants are not apprehended here in the Duluth area, that Indian males are harassed by our police department. (Native American participant, Public Hearing, Duluth)

> I think that racial discrimination exists in Hennepin County at every single level. In all the courts and from initial police contact all the way through to sentencing and incarceration. Minorities are more likely, I believe, than non-minority people to be arrested in Hennepin County...Even middle-class clients...who are minorities have told me that they do not feel safe in Minneapolis at night, that being a minority person being out on the street, no matter how you're dressed, no matter how you look, you are much more likely to be stopped by the police and possibly even arrested than if you are a white person. (White Public Defender, Public Hearing, Minneapolis)

The perception that police often treat people of color in a biased manner is not limited to members of minority communities. For example, the Task Force found in its statewide surveys that 41% of responding public defense attorneys throughout the state and 47% of judges under fifty years of age in Hennepin and Ramsey Counties believe that minority defendants are more likely to be physically mistreated during custody.[196] Fifty-five percent (55%) of public defense attorneys and 61% of judges under fifty in Hennepin and Ramsey Counties believe that white victims are more likely to be accorded statutory rights by police.[197]

Other supportive evidence comes from the Task Force's Juvenile Exit Survey. While 25% of white juveniles reported having been treated in a rough or violent manner by the arresting officer, 42% of minorities reported such treatment.[198] In addition, 21% of minority respondents reported verbal racial insults when taken into custody.[199]

The Task Force realizes that there is an urgent need for minority communities and representatives of law enforcement agencies to join together to reduce the mistrust, and to restore confidence among people of color that our law enforcement system will treat them fairly. The Task Force is encouraged that some members of the law enforcement communities in Minnesota also recognize the need for innovation and reform and have taken the initiative to become part of the solution to the tensions which presently characterize police-community relations. Under the auspices of the Task Force, a Law Enforcement Focus Group was formed and held a series of five meetings to explore ways to improve the delivery of police services to minority communities. Although originally convened to address the specific problem of the absence of translation resources for police officers (and others) interacting with non-English speakers, the members of the Focus Group ultimately took the initiative to discuss a broader range of police-community issues. This group was comprised of police chiefs from both the Twin Cities and greater Minnesota, police supervisors, law enforcement educators, and peace officers, including union officials. The Law Enforcement Focus Group ultimately embraced a fundamental premise: the need to change the model of law enforcement from its para-military origins to a more public service oriented community-police model. The Focus Group recommended that a forum be created to keep the momentum of this promising initiative alive and to ensure that its recommendations lead to action.

However, anyone familiar with the present state of police/minority community relations knows full well how difficult and challenging it will be to improve them. It was apparent from the beginning of the Task Force's work that the subject of police-community relations demands more focused attention than could be provided in the context of an overall examination of racial bias in the justice system. Nevertheless, because concerns

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[196]Kobbervig, supra note 10, p. 8.

[197]Id. p. 15.

[198]Minnesota Supreme Court, Juvenile Exit Survey for the Task Force on Racial Bias in the Courts, p. 2 (June 1992) (on file with the Minnesota Supreme Court).

[199]Id.

about law enforcement were continually raised to this current Task Force on racial bias in the judicial system, a few basic issues were addressed.

One such basic issue that clearly emerged from the work of the Task Force was the lack of cultural diversity within law enforcement agencies. In October 1992, the St. Paul Pioneer Press reported that Minneapolis had one of the worst records of hiring African American police officers among the country's 50 largest cities.[200] Although 13% of Minneapolis' population is African American, the percentage of the police force that is African American is only 6%.[201] The St. Paul Police Department has a better record — 6% from an African American population of 7% — but the department's record is not as good when it comes to hiring other minorities.[202] Hispanics make up 4% of St. Paul's population, but only 2% of the police force.[203] Worse still, Asian/Pacific Islanders fill only 1% of the police department's ranks, although 7% of the city's population is Asian/Pacific Islander.[204] An aggressive hiring plan designed to address this disparity is now being implemented by St. Paul Police Chief William Finney.[205]

The picture of minority hiring in greater Minnesota counties that have substantial minority populations is bleaker. Native Americans comprise 16% of Beltrami County's population,[206] but the county sheriff and the city of Bemidji together employ only four Native Americans (as jailers), which represents only 5% of the combined city and county forces.[207] Kandiyohi County, which has a Hispanic population of 4%,[208] has an all-white force, as does Willmar, the county's largest city.[209] St. Louis County, which has a minority population of 3%,[210] employs only one minority officer in its sheriff's department, which represents less than 1% of the force.[211]

When the Task Force sought information about the racial composition of local law enforcement agencies, the information was not readily available and had to be gathered

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[200]Richard Chin, Minneapolis Low in Hiring Black Police, St. Paul Pioneer Press, Oct. 8, 1992, at p. 1A, 6A.

[201]Id.

[202]Id. p. 6A.

[203]Id.

[204]Id.

[205]Interview with William Finney, St. Paul Police Department (April 28, 1993).

[206]Census Bureau's 1990 Population Characteristics, supra note 6, p. 86.

[207]Letter from Bemidji Police Department to Racial Bias Task Force (Sept. 11, 1992)(on file with the Minnesota Supreme Court).

[208]Census Bureau's 1990 Population Characteristics, supra note 6, p. 126.

[209]Letter from Todd A. Miller, Willmar Police Chief to Racial Bias Task Force (March 30, 1992)(on file with the Minnesota Supreme Court)(On March 30, 1992, Chief Miller indicated there was one Hispanic officer in the Willmar police force. Currently, the force is all-white); Law Enforcement Focus Group (Jan. 13, 1993)(hereinafter "Law Enforcement Focus Group").

[210]Census Bureau's 1990 Population Characteristics, supra note 6, p. 126.

[211]Memorandum from Captain Beaulieu, St. Louis County Sheriff's Department to the Task Force on Racial Bias in the Courts (Sept. 28, 1992)(on file with the Minnesota Supreme Court).

piecemeal by the Task Force. No state law requires the filing of such information with the Minnesota Board of Police Officer Standards and Training (POST) Board or any other centralized agency. Moreover, the Task Force learned that municipalities, since 1989, have been exempt from the affirmative action mandates of the state.[212] While the state *encourages* affirmative action and a few jurisdictions have enacted their own ordinances to ensure affirmative action in hiring,[213] state law no longer requires affirmative action by municipalities. As a consequence, there is little incentive to develop affirmative action goals or to maintain adequate records regarding hiring, retention and promotion practices.

On a positive note, the POST Board does require schools which are certified to offer professional peace officer education to file an affirmative action plan for recruitment and retention of minority students and women.[214] In addition, the POST Board has mandated a complaint procedure for use when students believe they have been discriminated against.[215] Failure of the school to follow these mandates may result in disciplinary sanctions, including revocation of the school's certification.[216]

A second basic concern is the lack of cultural sensitivity training for peace officers. POST Board rules govern initial and continuing education requirements for peace officers.[217] The 1991 Learning Objectives developed by the POST Board for peace officer training include training on cultural awareness, but none of the rules mandate continuing cultural-diversity training. State law, however, requires training in bias-motivated crimes.[218]

The need for police officer training in cultural issues was specifically cited by members of the public who testified before the Task Force at its hearings.[219] The law enforcement focus group similarly recognized the need for such training. This group noted the importance of the chief's creating a culture in which racial bias is not tolerated. It also recommended training that is "real world" oriented, rather than classroom bound. Training through participation in community projects, particularly projects in the schools, was viewed favorably as a means of cultural-diversity training. The idea of "externships" with police working in community agencies for periods of up to several months was also promoted as a long-term strategy aimed at helping the transition, as one police chief said, "from policing to *serving* the communities where we work."[220]

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[212]See Act of June 1, 1989, ch. 329, art. 9, § 27, 1989 Minn. Laws 2548-49.

[213]See, e.g., Minneapolis Code of Ordinances § 139.70 (1992) (all city departments must develop plans for the hiring, promotion and retention of minorities).

[214]Minn. R. 6700.0300, subd. 6B (1991).

[215]Minn. R. 6700.0401 (1991).

[216]Minn. R. 6700.0400, subd. 5 (1991).

[217]Minn.R. 6700.0300-0900.

[218]See Minn. Stat. § 626.8451, subd. 2 (1992).

[219]Public Hearing, Albert Lea (Nov. 6, 1991); Marshall (Oct. 30, 1991); St. Paul (Oct. 9, 1991).

[220]Law Enforcement Focus Group, supra note 209.

Lack of cultural sensitivity training directly affects the conduct of law enforcement in its dealings with communities of color. In response to a survey question about incidents of racial bias, judges throughout the state frequently identified law enforcement officers as a source of racist conduct ranging from illegal stopping of defendants solely because of their color to excessive use of force and use of racial slurs.[221] Education through sensitivity training, especially making use of new models like the kind just discussed, may represent the best means of changing such conduct.

Another bias concern identified by the Task Force is the lack of clear procedures for filing a complaint against an officer. POST Board rules contain only a very general outline of procedures for complaints filed with law enforcement agencies against officers.[222] Essentially the rules permit local agencies to develop the details of their procedures on their own.[223] Copies of the procedures must be available to the public, but only on request.[224]

The Task Force heard from many hearing participants of their frustrations in attempting to lodge complaints about police officer conduct. An attorney representing victims of police misconduct told the Task Force about the difficulties he encounters simply trying to locate information about an incident because of the lack of adequate record keeping by police.[225] Because procedures for filing complaints are not widely known, many people do not avail themselves of them. Moreover, because data on race, gender and age are not uniformly collected, and because complaint data are destroyed after three years, it is virtually impossible to detect patterns of conduct that may exist for individual officers.

A final concern is the unmet need for interpretive services within law enforcement agencies. The need for interpreters in the legal system begins when officers first make contact with members of a community. As a participant at a public hearing put it, officers need information sufficient to help them identify the specific language for which an interpreter is necessary and need to know how to access an interpreter's services quickly.[226]

Findings

1. Law enforcement agencies in Minnesota employ very few minority officers. Those that do, do not employ minority officers in proportional numbers to the demographics of the communities they serve.

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[221]Minnesota Supreme Court, Judges Open-Ended Responses for the Task Force on Racial Bias in the Courts, pp. 42-50 (Nov. 17, 1992) (on file with the Minnesota Supreme Court).

[222]See Minn. R. 6700.2000-.2600 (1991).

[223]Id. at .2200 (1992).

[224]Id. at .2400 (1992).

[225]Public Hearing, St. Paul (Nov. 19, 1991)(statement by white attorney).

[226]Public Hearing, Albert Lea (Nov. 6, 1991).

2. Law enforcement personnel records are not summarized in a form that enables the observer to determine the extent to which the law enforcement agency hires, retains and promotes minority officers.

3. State law does not require affirmative action efforts by local law enforcement agencies and no state agency monitors their affirmative action efforts.

4. Cultural-diversity training is not presently required to meet continuing education requirements for maintaining certification as a peace officer.

5. Law enforcement management is not presently required to receive training in cultural diversity, affirmative action, or other issues to assist management in hiring, retaining and supervising minority officers.

6. Citizens across the state perceive that the procedures for making complaints against law enforcement officers are inaccessible, difficult to understand or nonexistent.

7. Records of complaints against officers are not required to indicate the race, gender and age of the parties involved.

8. The hiring, initial training, and continuing education of police officers does not effectively provide officers with the communication skills and cultural awareness to serve diverse Minnesota citizens effectively.

Recommendations

1. The Supreme Court should establish and the Legislature should fund an initiative to develop long-term plans to address problems in minority community-law enforcement relations. The initiative should include the funding of the proposed Community/Law Enforcement Relations Commission.

2. To ensure that law enforcement agencies aggressively pursue plans for hiring, retaining and promoting minority officers, the state human rights law should be amended to require local law enforcement agencies to adopt affirmative action plans. The amendment should require local law enforcement agencies to familiarize themselves with the demographics of the communities they serve and set appropriate hiring goals on that basis. The law should also require local law enforcement agencies to maintain records of employee hiring, retention and promotion by race, gender and age. The Department of Human Rights should monitor compliance with these affirmative action plans.

4. Police recruitment, education and in-service training must be reoriented to ensure that officers have the skills needed to interact effectively and supportively with the diverse minority communities whom they serve. Innovative "real world" rather than classroom bound programs to provide officers with the experiences necessary to interact effectively with minority communities should be developed.

5. The Legislature should require that a significant percentage of forfeiture funds be used to fund programs, such as summer jobs in law enforcement, to encourage minority youth who are interested in pursuing law enforcement careers.

6. The POST Board should develop cultural diversity training programs and make them available to all Minnesota law enforcement agencies. The Board should require annual cultural-diversity training as part of the continuing education requirements for peace officers and should assist local law enforcement agencies in developing skills-oriented training opportunities such as community projects, participation in which would qualify officers for continuing education credits.

7. The Legislature should authorize the POST Board to withhold state funds from jurisdictions that do not comply with these policies.

8. The POST Board should develop programs in management training on diversity issues for supervisory personnel which specifically address recruiting and managing a culturally diverse workforce and assuring that law enforcement services are delivered fairly and equally throughout a culturally diverse community.

9. The Legislature should authorize the POST Board to develop a simple and easy-to-use complaint form for statewide use. Law enforcement agencies located in communities with non-English speaking minorities should make translations of the complaint form available.

10. POST Board rules should require that records of citizen complaints against officers be maintained by race, gender and age.

INTERPRETERS

Introduction

The Task Force found that throughout much of the country, despite constitutional and common law guarantees, the needs of many people of color for adequate legal translation are poorly served. Federal and state laws make clear the belief that accurate, high-quality translation is a fundamental requisite of due process.

This extremely important and fundamental issue has been allowed to become a "stepchild" of the justice system: understudied, underfunded, and in terms of its ultimate impact, little understood. The Task Force has found that in Minnesota, notwithstanding the existence of a strong statute governing the management of this issue, and despite recent attention from the Conference of Chief Judges, there is much to be done and a long way to go before full compliance with existing law can be achieved. This section spells out some specific procedural and policy changes that should be implemented in order to bring our system closer to the level and consistency of service that the law intends.

Toward Better Interpreter Services for Minnesota

Minnesota has sizable and growing Hispanic and Southeast Asian populations whose primary language is not English. The significant increase in the size of Minnesota's non-English speaking populations has resulted in an increased demand upon the court system to meet the needs and protect the rights of people handicapped by language. The existence of racial bias impedes the administration of justice. The problems inherent with such bias are exacerbated by an inability to communicate directly with people who cannot read, speak or understand English, a difficulty that affects every phase of the judicial process.

Victims who cannot speak English may be hesitant or embarrassed to report crimes to the police. Statements of dubious accuracy are taken from non-English speakers by police and used to support criminal charges. Legal documents which contain crucial information cannot be read. Parties are unable to converse with their attorneys about the most important matters that affect their liberty and property. People who cannot speak English cannot state their positions or provide explanations directly to the judges or jurors who will decide their fate.

> It is very difficult to judge credibility in an interpreter case.
> (White Metropolitan Area Judge, Judges Survey)

People who speak little or no English cannot explain their feelings at sentencing directly to a judge who might equate embarrassment or silence with lack of remorse. They cannot communicate directly with probation officers who closely monitor strict compliance with technical requirements of probation. They cannot take full advantage of treatment programs that are unable to accommodate non-English speakers.

The availability of competent foreign language interpreter services is crucial. Testimony received at the public hearings further illustrates the nature and scope of the problem:

> The interpreter problem...it is a very large problem. There are not enough interpreters out there that we can draw from to help these people out. (White Public Hearing participant, Marshall)
>
> I do see the need for improvement in access for interpreters for migrants and the non-English speaking populations. I think we have to increase accessibility for these people to the courts. (White Public Hearing participant, Moorhead)
>
> I don't always get involved in cases from the very start, so I have noticed in cases that I've investigated that we have problems sometimes in the arrest stage with having qualified interpreters available, especially if a person is being interrogated. Oftentimes, we have to go back and try to assess the damages to a particular party. (White Public Hearing participant, Moorhead)
>
> There is a need for the court system to have their interpreting resources up to date, and there is a need for funding to pay for certified professional interpreters. Up until two years ago I took calls at my home from law enforcement who would call and say, "Look, we need an interpreter," and I'd go...or my staff would go.
>
> Finally, I said, "No more!" We are enabling the court system. They are not paying for bilingual people. They are not paying certified professionals, assumably, what they are worth, to interpret. My question is, if the volunteer staff people of the migrant agencies are not even to go, then what happens? Is it dropped then? Can the court system and law enforcement then say, "Well, we tried, but they weren't available?" ... So, we have language barrier problems. (Hispanic Legal Services provider, Public Hearing, St. Paul)
>
> I've also had experiences with clients who aren't able to speak English, and as such need interpreters. Unfortunately we have problems getting interpreters much of the time. This week I had a jury trial where there was a Hmong woman and there weren't enough interpreters so instead of going to trial that day, we had to reset it for a future date in January. I've had cases where they couldn't find a Spanish interpreter for a person who was being held in custody. So what they did instead of trying harder to find one or having one available, they just held that

person overnight one more night. (White Attorney, Public Hearing, St. Paul)

Responses to the attorney survey indicate that only one-third of attorneys in the metro area and one-half of the attorneys in greater Minnesota say that interpreters are available always or often.[1] As things stand, often a defendant's or plaintiff's family member must translate for them. Emotional ties to the case and unfamiliarity with judicial procedures may frustrate the goal of accurate translation. The statute requiring the availability of such services is clear:

> **It is hereby declared to be the policy of this state that the constitutional rights of persons handicapped in communication cannot be fully protected unless qualified interpreters are available to assist them in legal proceedings. It is the intent of sections 611.30 to 611.34 to provide a procedure for the appointment of interpreters to avoid injustice and to assist persons handicapped in communication in their own defense.[2]**

A "person handicapped in communication" means a person who "...because of difficulty in speaking or comprehending the English language, cannot fully understand the proceedings or any charges made against the person, or the seizure of the person's property, or is incapable of presenting or assisting in the presentation of a defense."[3]

In general, an interpreter is used to "transmit a spoken or signed message from one person to another without any additions, explanations, corrections, or interjection of opinion."[4] In Minnesota trial courts, interpretive services are provided by per diem interpreters who serve as needed. While a few per diem interpreters work on a regular, almost full time basis in the same court, most work part-time on an as-needed basis.

The requirement for the appointment of interpreters is applicable in civil and criminal cases.[5] In criminal cases the statute requires that an interpreter be made available at the earliest possible time at the place of detention.[6] The duties of the interpreter in criminal proceedings include assisting law enforcement with an explanation of the charges and procedures relating to detention and release; and assisting throughout interrogation and the taking of a statement.[7]

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[1]Minnesota Supreme Court, Attorney Questionnaire Results for the Task Force on Racial Bias in the Courts, p. 25 (Nov. 18, 1992) (on file with the Minnesota Supreme Court) (hereinafter 'Attorney Survey Results').

[2]Minn. Stat. § 611.30 (1992).

[3]Minn. Stat. § 611.31 (1992).

[4]Hennepin County Task Force on Interpretive Services Report, p. 14 (1992) (on file with the Minnesota Supreme Court).

[5]Minn. Stat. § 611.34 (1992); Minn.R.Crim.P. 26.03, subd. 16; Minn.R.Civ.P. 43.07.

[6]Minn. Stat. § 611.32, subd. 2 (1992).

[7]Id.

The statute also provides that an interpreter shall be appointed in civil actions in which a person handicapped in communication is a litigant or witness.[8]

In April of 1992, the Conference of Chief Judges recognized the problem of interpreter availability and promulgated a uniform interpreters policy aimed at organizing the use of interpreters in each judicial district.[9] This policy provides that each judicial district administrator's office shall keep a central list of foreign language interpreters. If a court administrator is unable to locate an interpreter when needed, the court administrator can call the central office to locate an interpreter in a neighboring county. The policy also contains a code of ethics for interpreters and provides a uniform statewide policy regarding various interpretation techniques used in court.

Despite this effort, interpreter availability is still a problem. The existence of this problem has lead to extra efforts by the court system which would not be necessary if an effective system was in place.

> Approximately two years ago I started taking Spanish lessons myself so that we didn't have to depend on having the interpreter available for the day. So I've been endeavoring to learn some Spanish, and I've found if I use a few Spanish words — I'm not to the point where I can converse, but I think I can say a few things — and I use a few Spanish words, even if I wish them good luck, or whatever I can.
>
> He tried explaining in what English he knew, what was happening, and I could get a clear enough feeling that I thought we could proceed, so I wrote the date that he had to reappear, and I explained to him that he would have to come back and on that day we would have an interpreter. What happened was, once the interpreter realized what the problem was, that interpreter was able to get someone else...[so] we ended up having two interpreters, and we resolved the matter.
>
> ... I've actually, in one case, helped out the interpreter because the interpreter did not know...the Spanish word for the word "fine." (White Greater Minnesota Judge, Public Hearing, Marshall)

The Chief Judges also recognized the problem of inadequate translation of basic court forms and documents. Initial efforts have been made to identify and translate the most commonly used forms and explanatory brochures and make them available statewide.

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[8]Minn. Stat. § 546.43, subd. 2 (1992).

[9]Conference of Chief Judges, Uniform Interpreter Policy (April 1992)(on file with the Minnesota Supreme Court).

In addition, the policy does not address the more pressing problem of ensuring that the interpreters used in the courts are qualified.

> **No person shall be appointed as a qualified interpreter...unless said person is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the officials before whom the proceeding is taking place.**[10]

An interpreter is subject to the Rules of Evidence relating to qualifications as an expert and the administration of an oath or affirmation to make a true translation.[11] The interpreter must be qualified as an expert by knowledge, skill, experience, training or education.[12]

The Public Hearing testimony clearly indicates that despite these guidelines, there are substantial problems with the quality of interpreters used in Minnesota courts.

> I think it is a big issue, it is a big problem. I run across interpreters — Hmong interpreters, especially — who are, I would say incompetent, who do not know the English language well, who have a very limited English vocabulary and who do not subscribe to the "ethics" that we are forced to abide by. That is a big problem. I hear from the Public Defender's Office that several of the cases which use interpreters are going to appeal. Right now I finally feel that the interpreting program is inadequate and we need more well-trained interpreters, I don't know about other languages, but Hmong especially. Right now I seem to be the only one that the filing office uses. I'm sure there are others, too, but it's a big problem and we need to address and resolve this for there are people who are getting hurt, and I see it every day.
>
> There should be entrance exams — tests — that people have to take. When I came to Ramsey County District Court, there was no questions to what kind of person I was, my background, my references, my qualifications. I came there and I said I wanted to interpret. "Okay. Fill this out." Before I knew it, I was on the job. I ran into several interpreters, Hmong interpreters in general, who I thought shouldn't be there. I ran into a person who was serving for six years. They put me on the job training with her and I was absolutely appalled by what she did. I don't want to get into details, but...there has to be a screening

[10]Minn. Stat. § 611.33, subd. 1 (1992).

[11]Minn.R.Evid. 604.

[12]Minn.R.Evid. 702.

> process for Hmong interpreters...Many of the interpreters I run into don't know much about the justice system...or American culture in general. If a person does not know about American culture, they have to know about American law. (Hmong Interpreter, Public Hearing, St. Paul)

> Another thing has to do with the quality of interpretation services in the court. As far as I know, there hasn't been any certification. I'm not sure what the other terms are, but there is no certified interpreter for my language group (Hmong) in the court system, so what the court ends up doing is having a list of available people — whoever is available will be providing the services. And I believe that unless you can provide a quality service to all of the people who are coming to your court, then you have not serviced these people at all. You are doing them a disservice. And I think that many times if there is a problem, the court will tend, instead of looking at the problem and trying to solve it, they will blame it on the interpreter instead — that the interpreter is not doing a good job. In fact, the interpreter has not been trained by the court to do their job right. (Hmong Interpreter, Public Hearing, Minneapolis)

There is no certification process or testing procedure to determine the competency of interpreters. Courts must base the decision to utilize an individual interpreter on word of mouth from attorneys, judges or other court personnel, as noted in the judges' survey by a judge from the suburban area. Judges, attorneys and court personnel are, for the most part, monolingual and cannot adequately assess the competency of interpreters. Without adequate training even competent interpreters can be unsure about their responsibilities.

> I know when those people come up on Tuesday morning to traffic court and you meet them in the hallway and talk to them...I try to explain to them when I'm talking to them and giving them their rights what's been going on in the courtroom, and that if a man is telling the truth, then that's expediting things. They say "What's happened?" I tell them they'll be treated fairly and that in my experience they have been in the cases I've been involved with — admittedly it's only been traffic court and other misdemeanor offenses. (Interpreter, Public Hearing, Marshall)

The states of Massachusetts, California, New York, New Jersey, and New Mexico and the federal court system require competency based testing for interpreters and training in interpretive techniques and legal terminology. Information received by the Task Force points to a need for such training and testing here in Minnesota.

Training about the use of interpreters for all personnel within the court system is clearly indicated. Strict compliance with established law and procedures must also be required of police officers. The use of incompetent interpreters, or police officers serving as interpreters, must not be permitted when statements are taken from non-English speakers for use in a criminal prosecution. The law is clear in this area:

> **Following the apprehension or arrest of a person handicapped in communication for an alleged violation of a criminal law, the arresting officer, sheriff or other law enforcement official shall immediately make necessary contacts to obtain a qualified interpreter and shall obtain an interpreter at the earliest possible time at the place of detention...Prior to interrogating or taking the statement of the person handicapped in communication, the arresting officer, sheriff, or other law enforcement official shall make available to the person a qualified interpreter to assist the person throughout the interrogation or taking of a statement.**[13]

The Supreme Court in State v. Mitjans,[14] stated as follows: "We do not believe the legislature contemplated that a bilingual police officer should serve as an interpreter...." The Court went on to say that:

> The police could have or should have done three things to insure the subsequent admissibility of defendant's statements: they should have complied with the requirements of the statute relating to the appointment of an independent interpreter; they could have tape-recorded the interrogation of defendant, thereby making an accurate record of what was said; and they could have reduced the ultimate statement to writing in the defendant's own language, thereby enabling defendant to determine for himself what he was signing. In the future, prudent police investigators who wish to reduce substantially the risk of subsequent suppression of statements taken from suspects with language handicaps are advised to comply with the statutory requirements and to consider seriously the use of either or both of the two other techniques.[15]

Much has been written and a substantial amount of material has been submitted to the Task Force with regard to two criminal cases which involved the use of Hmong interpreters.[16] The case of State v. New Chue Her[17] is still in appeal at this writing. State v. King Buachee Lee[18] has now been considered by both the Court of Appeals and the Supreme Court. The Supreme Court reversed the decision of the Court of Appeals and

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[13]Minn. Stat. § 611.32, subd. 2 (1992).

[14]408 N.W.2d 824, 829 (Minn. 1987).

[15]Id. p. 831.

[16]See Ruth Hammond, Lost in Translation, Twin City Reader, March 1992, pp. 1, 8-11.

[17]No. CO-91-608, 1992 WL 3652 (Minn. App. March 9, 1993).

[18]491 N.W. 2d 475 (Minn. 1992).

reinstated the convictions of Lee on three counts of criminal sexual conduct in the third degree.[19] This case raises several troubling matters not all of which were addressed by the Court. In addition to the use of cultural stereotyping and appeals to cultural prejudices, it also involved the incorrect use of interpreters and inaccurate translations of key portions of testimony.

As the Supreme Court has stated, "Translation is an art more than a science, and there is no such thing as a perfect translation..."[20] While perfection may not be possible, court systems which require interpreters to pass a rigorous examination like the federal court system before they may interpret certainly achieve a standard closer to perfection than the trial court system. Our appellate courts must set a standard of excellence in this area by condemning prejudice in any form and by insisting upon proper procedures and competent interpreters in our courts. The stakes are too high to settle for mediocrity or for less than what is provided in the federal system.

Findings

1. Citizens with limited English speaking skills have the same rights and protections as any other citizens involved in the court system in either civil or criminal matters. It is imperative that these individuals understand fully their rights and responsibilities.

2. Currently there are no uniform standards for the training of language interpreters.

3. Minnesota does not have a certification process to ensure that the interpreters used in our courts are competent and translating accurately.

4. Judges, attorneys and court personnel are not trained in the proper use of interpreter services.

5. Most legal documents are only in English.

6. Sometimes the interpreters used are family members who may have emotional ties to a given case and may not interpret accurately.

7. There are very few court support staff who are multilingual and can determine if non-English speaking litigants, witnesses or victims are given adequate services.

8. Public defenders and county attorneys do not have adequate interpreters available to assist them with non-English speaking defendants, victims and witnesses.

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[19] Id.

[20] State v. Mitjans, 408 N.W.2d 824, 832 (Minn. 1987).

9. Minnesota's state statute uses the term "qualified interpreter", but there is no adequate definition of this term. A "qualified interpreter" should be defined as someone who is properly trained, tested and certified to work in the court system.[21]

Recommendations

1. The Supreme Court should recommend and the Legislature should establish and fund a State Board for Interpretive Services to propose standards and procedures for the training, professional conduct, certification, qualification, testing and adequate compensation of certified interpreters. In establishing standards and qualifications, the Board should consult with the affected communities. If such a Board is not recommended or established by the Legislature, the Supreme Court should establish an equivalent board.

2. The Legislature should define the term "qualified interpreter" to be a person who is certified by the state board for interpretive services.

3. The Supreme Court should define the qualifications of appropriate bilingual and bilingual/multicultural court support personnel and should adopt policies to ensure that services delivered by court support personnel to people in need of interpreters are linguistically and culturally appropriate.

4. The Chief Justice should recommend that the Higher Education Coordinating Board designate several public institutions of higher education as centers for (1) training court interpreters and legal translators, (2) equipping people preparing for employment in internal or external judiciary support services with cultural fluency and optional, ancillary interpreting and translating skills, and (3) developing the requisite skills of court personnel who are presently employed as interpreters, legal translators, or providers of bilingual/multicultural support services.

5. The Supreme Court should require continuing professional education of current and future personnel who provide court interpreting, legal translation, bilingual and bilingual/multicultural court support services. This includes attorneys and other individuals who represent clients in need of interpreters.

6. The Supreme Court should adopt canons of ethics binding upon all people who interpret or translate in or for the courts.

7. The Supreme Court should recommend and the Legislature should establish a comprehensive statutory basis for providing adequate court interpretation and legal translation services for all people in need of interpreters. (Existing statutory provisions for the deaf and hearing impaired may serve as a model.)

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[21]Mass. Gen. L. ch. 221C, §§ 1-7 (Supp. 1993); 28 U.S.C. § 1827.

8. The Supreme Court should adopt uniform standards to govern all phases of all interpreted court proceedings and determine responsibilities for paying the related costs.

9. The Supreme Court should ensure effective organization and efficient administration of court interpreting, legal translating, and bilingual and bilingual/multicultural court support services at the state and local levels.

10. The Supreme Court should adopt policies which will attract, employ and retain sufficient numbers of qualified court interpreters, legal translators, bilingual and bilingual/multicultural court support personnel.

11. The Supreme Court should adopt a policy that requires all judicial forms and documents used by people involved in court proceedings to be drafted in easily translatable English and be translated into such additional languages as the state court administrator approves. All such translations are to be made by approved legal translators, and all such translations should be printed at levels of quality equal to that of the corresponding English versions.

12. The Supreme Court should adopt a program of informing people in need of interpreters about the judiciary and its services and should establish a procedure to enable people in need of interpreters to seek redress for allegations of unprofessional performance or unequal access.

13. The Supreme Court should adopt policies and programs to orient and sensitize all court personnel who deliver services to people in need of interpreters with regard to the importance and complexities of communicating with people of diverse linguistic and cultural backgrounds. This orientation should include instruction regarding techniques for working with a court interpreter as well as how to develop a better "ear" for communicating with people whose English may be heavily accented.

14. The Chief Justice should recommend that the state's law schools and continuing legal education providers offer instruction to attorneys and legal personnel on how best to provide effective services which are sensitive to the diverse backgrounds of people in need of interpreters, as well as how to work with a court interpreter.

15. In light of the findings and recommendations of this Task Force, the Chief Justice should recommend that all justice system agencies make public notice of the accessibility of their services to people in need of interpreters.

JUVENILE AND FAMILY LAW

Introduction

Minnesota has followed a "best interests of the child" standard since the state legislature adopted its first juvenile justice legislation in 1905. For many years, juvenile justice was officially "colorblind". It was thought that justice for children should not be dispensed on the basis of the child's racial or ethnic background, but on the basis of need. It was not until the late 1970's, following several studies conducted by the federal government[1], that it became clear that both nationally and statewide, justice was not in fact colorblind.

The strongest impetus for change came when it was revealed from a study of child placement that Indian children were being removed from their parental homes at a rate *at a rate from 2 to 22 times greater than that of non-Indian children.*[2] In 1978, the federal government enacted the Indian Child Welfare Act (ICWA)[3] and adopted regulations for its implementation. It was at this point that the myth that justice was "colorblind" was abandoned, and the justice system was required to consider the child in a more complete context, as a person not only with a nuclear family, but also an extended family and a community with which the child could identify and which in turn could provide nurturing and care that was more appropriate to the child and more in the child's best interest than a "colorblind" system could be.

Despite the shift in philosophy the ICWA helped engender, Minnesota's Native American children are being removed from their homes today at a rate 10 times greater than the rate at which white children are removed from their homes.[4]

It is also quite clear from an initial examination of the data that minority youth are over-represented within the juvenile justice system. Although people of color comprise 8% of the state's juvenile population, 22% of juveniles processed as delinquent are people of color.[5]

The Task Force sought to determine whether such over-representation was the result of bias. Additionally, the Task Force was interested in whether minority over-representation continued throughout the delinquency hearing process to determine if detention and

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[1]Hearings on the Indian Child Welfare Program Before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, 93rd Cong., 2d Sess. (1974).

[2]James Abourezk, The Indian Child Welfare Act of 1977, S. Rep. No 597, 95th Cong., 1st Sess. pp. 48-49 (1977) (reprinting portions of the American Indian Policy Review Commission, Report on Federal, State and Tribal Jurisdiction (1976) which studied foster care data from 1973-1976).

[3]25 U.S.C. §§ 1901 et seq.

[4]Minnesota Department of Human Services, Minnesota Minority Foster and Adoptive Care, 1989 (Jan. 1991)(hereinafter "Minnesota Minority Foster and Adoptive Care, 1989").

[5]Minnesota Criminal Justice Statistical Analysis Center, Minorities in the Juvenile Justice System, At-a-Glance, p. 5,9 (Oct. 1991) (hereinafter "Minorities in the Juvenile Justice System").

dispositions involving removal of the juvenile from the home were the result of continuing systemic bias. The issue of the justice system's response to youth gangs is also raised here.

CHILDREN IN NEED OF PROTECTION AND SERVICES

Problems and distrust begin at the earliest contact between minority families and the justice system. From the very beginning the system often fails to provide even fundamental information as it acts to intervene in a minority family.

Because of the broad discretion vested in courts and social services, identification of a single factor which controls a decision to remove a child in any particular case is difficult. Failure to include, collect and maintain information with regard to race throughout the whole continuum of juvenile case processing made examination of court cases to identify and isolate particular factors in the removal decision beyond the financial and temporal limitations of the Task Force. Even the Department of Human Services, which is required by law to collect such data, found in at least one study of its handling of minority children that the race of the child or the family had been misidentified in at least 6% of the cases.[6]

In addition, the method of eliciting and including racial or cultural identification data sparked a vigorous discussion within the Task Force itself. Arguments against collecting such data include that it could be easily misused, that it would reinforce stereotyping, especially among peace officers, and that peace officers, court or social service personnel would be making such identifications based upon personal stereotypes and beliefs. Arguments favoring the collection of such data involved the importance of accurate identification of racial bias within the justice system and the consequent ability to meaningfully intervene in cases where racial bias does arise as a factor. In addition, if we recognize the importance of treating children within a racially or culturally appropriate setting, then the need to conduct complete relative searches, to completely identify tribal affiliations as defined by the ICWA, and to assess race prior to placements is vital.

The examination of cultural or racial bias in the juvenile justice system began with the federal government. By adopting the ICWA, the government attempted to restrict the use of those placement factors which clearly resulted in the disproportionate placement of Indian children outside of their homes.[7] Minnesota incorporated the federal mandate by adopting the Minnesota Indian Family Preservation Act (MIFPA)[8] and enhanced the protection of the federal act by requiring earlier notification of tribal authorities and tribal social services when a Native American child is involved in juvenile court proceedings.

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[6]Minnesota Department of Human Services, Monitoring of Hennepin County Compliance with Laws Respecting Cultural Heritage, p. 14 (Jan. 1991)(hereinafter "Monitoring Compliance").

[7]25 U.S.C. §§ 1901-1923; 44 Fed. Reg. 67589-67595; Minn. Stat. § 257.35 -.3579 (1992); See also Southern Minnesota Regional Legal Services, The Indian Child Welfare Act and The Indian Family Preservation Act: Laws to be Ignored? (Dec. 1991)(hereinafter "Laws to be ignored"); Public Hearing, St. Paul (Nov. 19, 1991) (Statement by Jan Werness).

[8]Minn.Stat. § 257.35-.3579 (1992).

In 1983, the Minnesota Legislature extended the protection of the ICWA and the Indian Family Preservation Act to other racial or cultural minorities by adopting the Minnesota Minority Heritage Act (MMHA),[9] in which "the policy of the state is to ensure that the best interests of children are met by requiring due consideration of the child's race or ethnic heritage in foster care placements". In addition, the legislature enacted the Minority Family Heritage Act (MFHA)[10] which required private placement agencies to report minority child placement data to the Department of Human Services. The MFHA also created a minority recruitment specialist in the department.[11]

In 1988, the MHPA gave a broader meaning to the term "relative" to include "members of a child's extended family and important friends with whom the child has resided or had significant contact"[12] in recognition of the extended nature of many minority families. In 1992, the legislature created offices for ombudspersons for each of the communities of color, and recognition was given to the relationship known as "compadrazago," which recognizes the godparents of a child as "co-parents" of the child, a significant relationship within the Hispanic community.[13]

Nevertheless, while the federal government was espousing the value of protecting the racial and ethnic heritage of minority children, its funding mechanism tended to undermine the achievement of that goal. In part, the disproportionate removal rates have been caused by federal funding aimed largely at providing and licensing foster care, *despite the stated goal of trying to avoid placing children in foster care.*

In 1990, for example, the Department of Human Services spent $78 million on out-of-home placements compared to $14 million on family-based services, an allocation fully consistent with federal guidelines for use of the money.[14] Compliance with such guidelines is a necessary part of receiving the funding. Part of the impetus to remove is based upon availability of services. At present, few family-based services, especially those which are appropriate to the racial and cultural background of minority families, appear to be available.[15] Changes are being sought and won at the federal level, and the Minnesota Legislature has authorized grants of Title IV-B and IV-E[16] monies to be used to develop in-home or family-based services. Deep frustrations were expressed in the open-ended

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[9]Minn. Stat. § 260.181, subd. 3 (1983).

[10]Minn. Stat. § 257.072, subd. 8.

[11]Minn. Stat. 257.072, subd. 3.

[12]Act of April 28, 1988, ch.689, art. 2, § 218, Minn. Laws 1435-36.

[13]Minn. Stat. § 257.076 (1992). Unfortunately, the recognition is given only in the definition section of the ombudsperson statutes and this statute is not incorporated by any reference to the Family Preservation Act, nor does any other statutory language cross-reference that cite to give it legal significance beyond the definition.

[14]Communities of Color Concerned about Child Protection, Recommendations to the Child Protection Study Commission of the Minnesota Legislature, p. 2 (Jan. 1991) (hereinafter "Recommendations to the Child Protection Study Commission").

[15]See, Id.; Spanish Speaking Affairs Council, Child Protection Legislation, A Hispanic Initiative (Jan. 1991) (hereinafter "Child Protection Legislation: A Hispanic Initiative").

[16]Minn.Stat. § 256F.05.

responses to the questionnaires by both attorneys and judges over the unavailability of home-based services.[17] Over 75% of the judges with some basis for judgment recommended that family-based services be increased.[18]

The statutory scheme which Minnesota has developed has recognized the importance of racial and cultural background in determining the best interests of the child. Primary emphasis within the overall statutory scheme, as outlined by the Minnesota Family Preservation Act (MFPA), is that the child be retained in the home, or if removed, be returned as soon as possible.[19] If the child is removed, the courts are to give legal custody or guardianship to a relative, or if that would be detrimental to the child or a relative is not available, someone who is of the same racial or ethnic heritage as the child. If that is not possible, placement should be with someone who is knowledgeable and appreciative of the child's racial or ethnic heritage, absent good cause to the contrary.[20]

Over 30% of the metropolitan area judges[21] and over 40% of the public defenders[22] say that removal from the home is more likely for families who are people of color, while for white families programs allowing the child to remain in the home and help parents cope with child abuse or neglect problems are more readily available.

Initial data from the Department of Human Services indicated to the Task Force that minority children were vastly over-represented within the foster care system. For example, although people of color represent 6% of the state's total population, [23] children of color represent 36% of all out-of home placements.[24] 1990 Hennepin County data shows that African American children represented approximately 39% of children in substitute care, while Native Americans, Asian/Pacific Islanders and Hispanics respectfully represented 17%, 3% and 1% of children in out-of-home placements.[25] These numbers are staggering when

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[17]Minnesota Supreme Court, Attorney Questionnaire Open-Ended Responses for the Task Force on Racial Bias in the Courts (Nov. 1992) (on file with the Minnesota Supreme Court) (hereinafter "Attorneys Open-Ended Response"); Minnesota Supreme Court, Judges Questionnaire Open-Ended Responses for the Task Force on Racial Bias in the Courts, (Nov. 1992) (on file with the Minnesota Supreme Court) (hereinafter "Judges Open-Ended Response").

[18]Minnesota Supreme Court, Judges Questionnaire Results for the Task Force on Racial Bias in the Courts, p. 13 (Nov. 1992) (on file with the Minnesota Supreme Court) (hereinafter "Judge Survey Results").

[19]Minn. Stat. §§ 256F.01 et seq. (1992).

[20]Minn. Stat. § 260.181, subd. 3 (1992).

[21]Judges Survey Results, supra note 18, p. 12.

[22]Minnesota Supreme Court Attorney Questionnaire Results Task Force on Racial Bias in the Courts, pp. 10-11 (Nov. 1992) (on file with the Minnesota Supreme Court) (hereinafter "Attorney Survey Results").

[23]Bureau of the Census, U.S.Department of Commerce, 1990 Census of Population and Housing, Summary Population and Housing Characteristics, Minnesota, p. 85 (Aug. 1991)(hereinafter "Census Bureau's 1990 Population Characteristics").

[24]Minnesota Department of Human Services, 1991 Substitute and Adoptive Care Report (April 1, 1993) (preliminary draft report on file with the Minnesota Supreme Court)(hereinafter "1991 Substitute and Adoptive Care Report").

[25]Hennepin County, 1984-1990 Children in Substitute Care, p. 11 (July 8, 1991) (on file with the Minnesota Supreme Court).

considering the fact that people of color make up approximately 11% of Hennepin County's total population.[26]

In a 1991 report, the Minnesota Department of Human Services also concluded that minority children, indeed, are "heavily over-represented among foster care children".[27] In reaching this conclusion, the agency compared population estimates broken down by race with the number of foster care placements by race. The result was that children of color were over-represented by 3 to 12% of their representation in the general population.[28] For Native American children in particular, their over-representation in out-of-home placements exceeded white children by over 10 times.[29]

This data is especially alarming considering the fact that statewide over a five year period of time, there has been a downward trend in out-of-home placements for white children (from 69% of all placements in 1987 to 64% in 1991); a constant trend for American Indian children (11% in 1987 to 11% in 1991); and a steadily increasing trend of out-of-home placements for African American children (from 9% in 1987 to 18% in 1991).[30] Hennepin County data also shows a downward trend in out-of-home placements for white children and an upward trend in out-of-home placements for minority children. See Figure 1.

Given the removal data, the Task Force found sufficient evidence to believe that some bias must exist and sought to examine a sample of cases in various courts. However, because race-specific data is not collected and maintained in the case file or in the court information system, this study could not be performed. The Task Force had to rely upon existing reports and data already collected and on studies completed by the Department of Human Services on its operations. It also conducted focus group meetings with various groups, conducted public hearings, and surveyed attorneys and judges to seek further insight into the process.

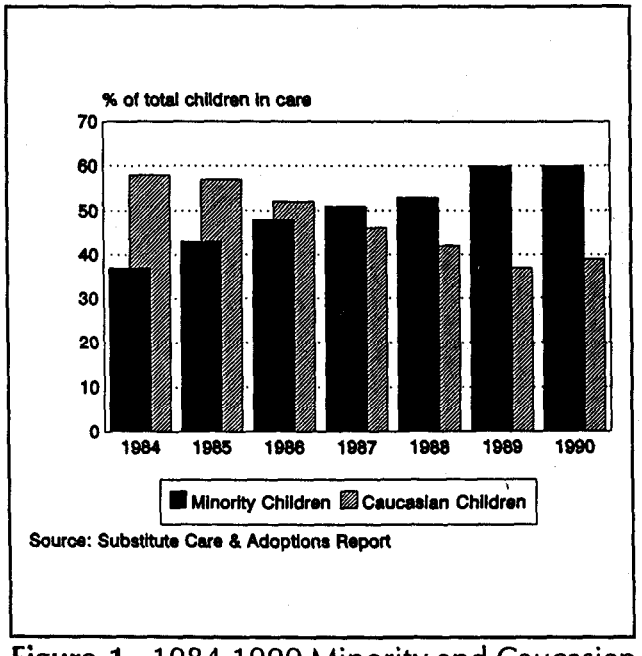

Figure 1. 1984-1990 Minority and Caucasian Children in Substitute Care at End of Period

[26] Census Bureau's 1990 Population Characteristics, supra note 23, p. 97.

[27] Minnesota Minority Foster and Adoptive Care, supra note 4, p.6.

[28] Id.

[29] Id. White children were "over-represented" in the system .70% compared to 11.67% for American Indian children.

[30] 1991 Substitute and Adoptive Care Report, supra note 24.

This data demonstrated clearly the tension between local communities of color and the state and its agencies, including the judicial system, in defining what is in children's best interests, as well as the failure of the state to recognize cultural interrelationships of significance within communities of color. In the attorney surveys, one attorney wrote:

> I have observed, particularly from [guardians ad litem] and B.O.S.S. (Hennepin County Bureau of Social Services) social workers, an alarming ignorance and seeming fear of minority (usually African American) culture. For example: African Americans are more likely than Anglo-Americans to live with extended family. I see this as often beneficial and desirable, especially for children. G.A.L.s and B.O.S.S. social workers almost cringe when we bring up such a family for possible relative placement. I think they view extended family homes as promiscuous, ill-kept, and poor. They also seem to believe that unless the family meets white suburban class standards, the children are "at risk".[31] (White Metropolitan Area Attorney, Attorney Survey)

As indicated, the law provides a series of priorities and preferences to be considered in the removal and placement of a child, but it does not provide a rigid set of guidelines in making those determinations. Rather, it relies upon the system as a whole to act "in the best interests of the child". There is a balancing of the policies of the system with the autonomy of the decision-maker in reaching a determination. Problems can arise when a system that is largely white, with middle-class values, is called upon to evaluate cultural and racial norms which are neither white nor necessarily middle-class. A serious degree of social and political polarization between communities of color and the larger community over the application (or misapplication) of existing state law exists. A legal service attorney observed that:

> ...the misapplication or nonapplication of the I.C.W.A. is appalling. Fourteen years after passage, county workers are still culturally ignorant at best and racist at worst. Guardians ad litem have demonstrated, in most the of the I.C.W.A cases I have worked with, hostility toward Indian families which results in recommendations contrary to the spirit and letter of the law. The courts are unpredictable: some know and apply the laws, some don't. The courts are sometimes less than respectful towards tribal representatives. (White Greater Minnesota Attorney, Attorney Survey)

It is of the utmost importance to note that ICWA, the MIFPA and the MHPA are not merely "placement" laws. They require government agencies to make "active efforts" to keep families from communities of color together.

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[31] See also, Child Protection Legislation: A Hispanic Initiative, supra note 15.

Long after the passage of these Acts, judicial familiarity and compliance with them leave much to be desired. Only a limited number of court personnel, including judges, understand even the basic requirements of the ICWA, the MIFPA or the MHPA. Twenty-six percent (26%) of all attorneys and approximately 40% of public defenders responding to the Task Force survey report that judicial decisions sometimes, rarely or never apply the ICWA or the MHPA.[32] Some judges, themselves, agree. About 20% of all judges and 26% of metropolitan area judges under age 50 say that judicial decisions sometimes, rarely or never apply the ICWA or the MHPA.[33]

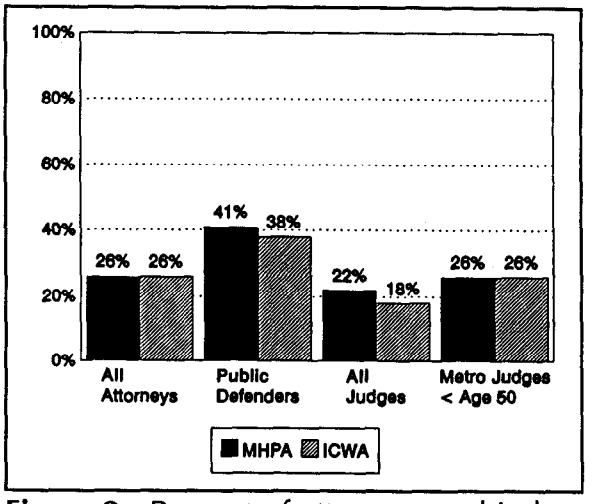

Figure 2. Percent of attorneys and judges saying that judicial decisions sometimes, rarely or never apply the provisions of the MHPA or ICWA.

Moreover, more than 30% of all attorneys and about 50% of public defenders believe that social workers and court-intake personnel are sometimes, rarely or never knowledgeable about the provisions of ICWA and MHPA.[34] More than a quarter of all judges agree.[35]

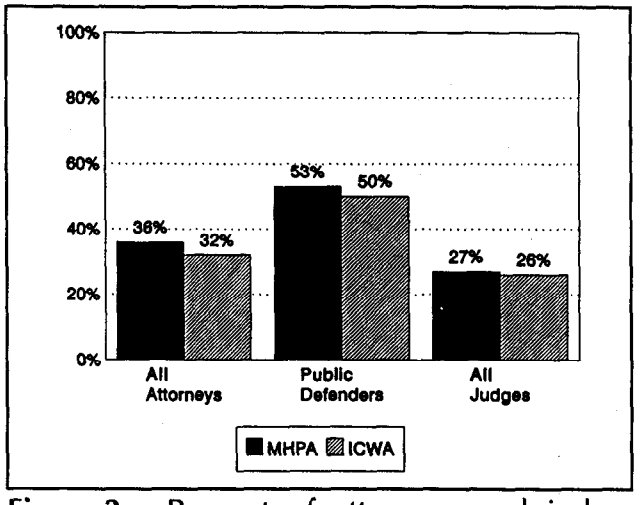

Figure 3. Percent of attorneys and judges saying that social workers and court intake personnel are sometimes, rarely or never knowledgeable about the MHPA or ICWA.

[32]Attorney Survey Results, supra note 22, p. 8.

[33]Judge Survey Results, supra note 18, p. 9.

[34]Attorney Survey Results, supra note 22, at p. 9.

[35]Judge Survey Results, supra note 18, p. 10.

Attorneys, too, report an astounding ignorance of these important laws.[36] (See Figure 4.)

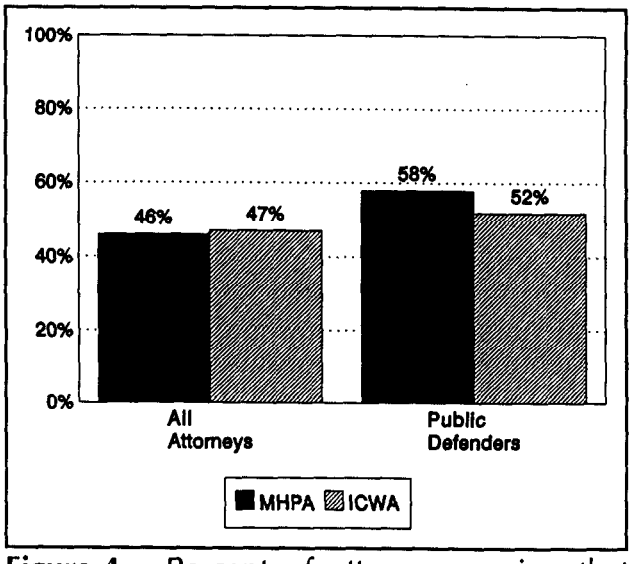

Figure 4. Percent of attorneys saying that attorneys sometimes, rarely or never understand the provisions of the MHPA or ICWA

A survey conducted by Southern Minnesota Regional Legal Services, Inc., although the sample was very small, reveals some of the problems and frustrations felt by Native American parents and relatives when dealing with Social Services and/or the courts.[37] Almost half of the respondents stated that no inquiry was made about tribal membership.[38] Only one of the survey respondents claimed to have received written notice of rights under the ICWA as required by the Act.[39] Of the other rights in the Act, only a few knew of their right to an appointed attorney, their right to postpone the hearing for up to thirty (30) days, the right to have their case transferred to tribal courts, the right of the tribal court to intervene, or that they had the right to read all documents given to the judge.[40]

The survey also indicated that only a small number of families were notified when their children were moved in placement and that in most cases, child protection workers neglected to even ask about the presence of relatives.[41]

This information echoes the experience of attorneys working with Native American children and families who find that tribal representatives are treated only as "interested advocates" without an understanding of the separate laws of Indian children and Indian governments.[42]

Some people of color being brought into the system do not have an understanding of basic American legal concepts, rights, or even more fundamentally, the English language. One public defender, dealing with a case involving a Hmong girl, recorded that a Hmong interpreter was not routinely provided in the case. Eventually the non-English speaking parents no longer appeared. Notices were also served only in English even when the

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[36] Attorney Survey Results, supra note 22, p. 8.

[37] See Laws to be Ignored? supra note 7.

[38] Id. p. 5.

[39] Id. p. 6.

[40] Id.

[41] Id. p. 7.

[42] Attorney Survey Results, supra note 22.

recipient was known not to speak, much less read English.[43] Another attorney related an instance where a social worker explained important concepts to a non-English speaking Hmong family in English with no interpreter.[44]

Such problems are compounded by the fact that most interactions with the judicial system involve, to a great degree, contact with white judges, guardians ad litem, social workers, and other personnel. As a result of past and continuing racial or ethnic bias, there is a perception of helplessness among people of color coming into the system. In addition, there is a recalcitrance on the part of many people of color to openly discuss matters with white people based upon a perception that they will not sympathize nor understand. That perception has strong basis in fact. Instances of cultural insensitivity toward people of color were reported by most judges and attorneys. Two-thirds of metropolitan area judges[45] and over half of public defense attorneys[46] report that cultural insensitivity is demonstrated at least sometimes by social workers, guardians ad litem, attorneys, and judges. As one judge wrote in the judges' open-ended responses of the judges' survey:

> What I see in many cases is that relationships between our white system and families of color are strained and unproductive. I think this stems more from unrecognized "white" behavior on our part and from distrust (sometimes, sadly, justified) that we will be fair and/or helpful than from overt racism. (White Metropolitan Area Judge, Judges Survey)

Many of the problems that may lead to the removal of a child arise because white social workers or caregivers are not a part of the minority community and do not engage the minority community in placement decisions.[47] They may not recognize or be sufficiently sensitive to the fact that the child exists in a community beyond the nuclear family in which they find him or her. From the comments at the public hearings, focus groups, and the narrative responses to the questionnaires, this failure is systemic.[48]

> Social service agencies are quick to remove children from Native American homes for things they perceive as neglect, but are instead normal steps in Native American child rearing. I have done C.H.I.P.'s cases where all court and social service personnel have not even known of the existence of the Indian Child Welfare Act. (White Metropolitan Area Legal Services Attorney, Attorney Survey)

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[43]Attorneys Open-Ended Response, supra note 17, p. 94.

[44]Id. p. 95.

[45]Judges Survey Results, supra note 18, p. 11.

[46]Attorney Survey Results, supra note 22, p. 10.

[47]Attorney Survey Results, supra note 22; Judge Survey Results, supra note 18, p. 10; Attorneys Open-Ended Response, supra note 17, pp. 90-93.

[48]Attorneys Open-Ended Response, supra note 17, pp. 90-93.

Some of these problems could be alleviated by increasing the presence of minority personnel throughout the system. In Hennepin County, for example, less than 10% or 8 out of 84 child protection workers are people of color as compared to 60% of the client population which is minority. Similarly, minority juvenile court services workers account for 12% of the staff while 65% of the client population are people of color.[49]

In response to the questionnaire, over two-thirds of all judges rated increasing the number of minority court and protectiona agency workers to reflect client populations as important, while over 80% of the metropolitan area judges felt it was important.[50] (See Figure 5.)

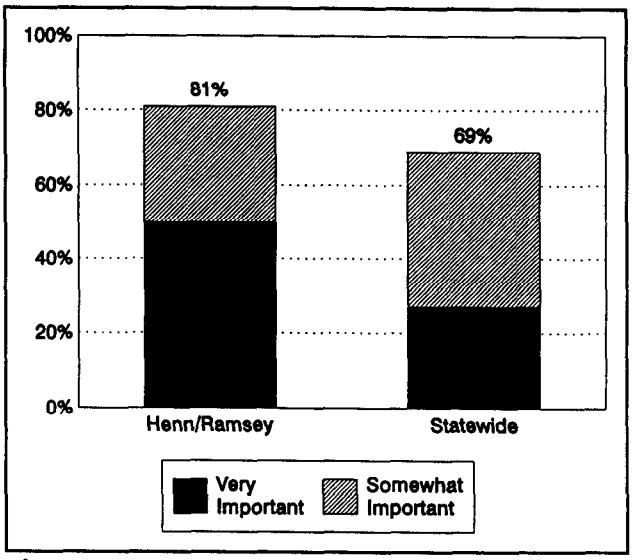

Figure 5. Percent of judges responding that increasing the number of minority personnel to reflect population served is important to improve the delivery of judicial services

Clearly, the delivery of all services could be enhanced if agency personnel from the appropriate minority community are available, speaking the same language and familiar with the community and background of the family. Such personnel could also serve as resources for sensitizing white personnel to racial, cultural and ethnic issues.

Some provision is made for the involvement of people of color in Hennepin County child custody cases through the Minority Advocate Program. The minority advocates have been successful in identifying and locating relatives in cases where there is limited or no family involvement and provide an oversight capability to assist in the development of policy. However, there are insufficient advocates to meet the demand and advocates are required by policy to agree with the prosecuting attorney and social worker when presenting a placement recommendation to the court.[51] Again, judges overwhelmingly recommended the availability of effective and independent minority advocates as an important step toward improving the delivery of judicial services to communities of color.[52] (See Figure 6.)

The state has, to some extent, also undertaken to involve communities of color more fully in minority custody cases. In 1992, it authorized the creation of the office of

[49]Interview with staff of the Hennepin County Bureau of Social Services.

[50]Judge Survey Results, supra note 18, p. 13.

[51]Attorneys Open-Ended Response, supra note 17, p. 93.

[52]Judge Survey Results, supra note 18, p. 13.

ombudsperson for families to operate independently but under the auspices of each of the following groups: the Indian Affairs Council, the Spanish-Speaking Affairs Council, the Council on Black Minnesotans, and the Council on Asian-Pacific Minnesotans. The ombudsperson has the authority to investigate decisions, acts, and other matters of an agency, program, or facility providing protection or placement services to children of color.[53]

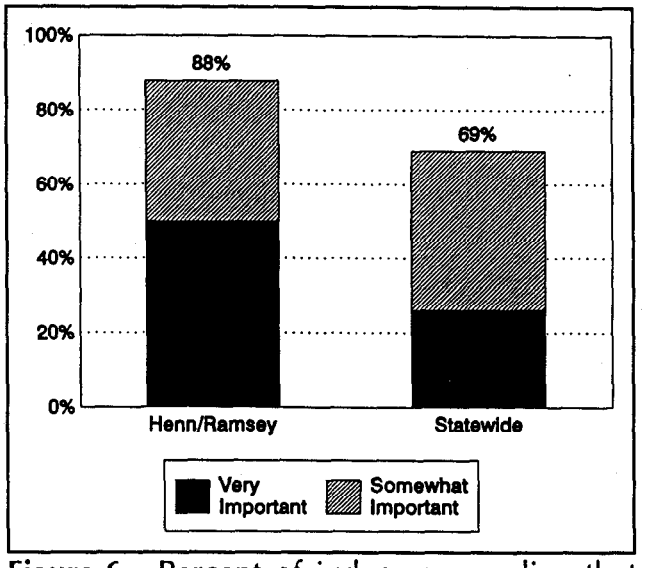

Figure 6. Percent of judges responding that minority advocates are important to improving the delivery of judicial services

The position requires interaction between the ombudsperson, the appointing council, and the various agencies concerned with protection or placement of children. The ombudsperson is to work with local state courts to ensure that court officials, public policymakers, and service providers are trained in cultural diversity; that experts from the appropriate community of color, including tribal advocates, are used as court advocates and are consulted in placement decisions that involve children of color; that guardians ad litem and other individuals from communities of color are recruited, trained, and used in court proceedings to advocate on behalf of children of color; and that training programs for bilingual workers are provided.[54]

The state has also funded the Minority Recruitment Specialist Office in the Department of Human Services. This person is required to develop materials for use by agencies in training staff; to conduct in-service workshops for agency personnel; to provide consultation, technical assistance, and other appropriate services to agencies wishing to improve service delivery to minority populations; to conduct workshops for foster care and adoption recruiters to evaluate the effectiveness of techniques for recruiting minority families; and to perform other duties as assigned by the commissioner to implement the Minority Child Heritage Protection Act and the Minnesota Indian Family Preservation Act.[55]

Although these statutes represent laudable attempts to give people of color a voice in a largely white system, clearly much remains to be done in this area.

In addition to increasing the number of personnel from communities of color within the system, it is necessary that judges, attorneys, social workers, guardians, and other court personnel increase their knowledge and understanding of state legal provisions regarding

[53]Minn. Stat. § 257.0755 (1992).

[54]Minn. Stat. § 257.0762, subd. 1 (1992).

[55]Minn. Stat. § 257.072, subd. 3 (1992).

the protection of race or ethnic heritage and their sensitivity to cultural and racial issues through education and training. For example, there is a record of one trial court judge who stated that finding relatives under the ICWA is just "hoops" to jump through.[56] The ICWA regards finding relatives as a first priority goal, not hoops to jump through. This misunderstanding and disregard of the law are far from unusual. Another practitioner stated:

> A Human Services official told me over the phone when I called regarding the receipt of the Home Study that the ICWA was getting in the way of this case.[57]

Many judges who expressed an opinion about the ICWA in the judges survey were fairly positive, but there is clearly a great deal of hostility among some judges and court personnel as it relates to Native American foster care placement. For example, one practitioner reported that a judge, although reluctantly signing an order, stated "in another words, counselor, when an Indian child is involved, our hands are tied".[58] Other open-ended responses of judges are illustrative.

> Eliminate it. Is unconstitutional.
> (White Greater Minnesota Judge, Judges Survey)

> An earlier CHIPS action had resulted in the boy and his brother's being placed in a white home, with no Indian Child Welfare Act compliance in evidence. When I asked the boy's probation officer what, if anything, had been done to respond to the boy's interest in his tribe's culture and spiritual beliefs, as evidenced by his fond recollections of his grandfather, who talked with the boy about such things, the probation officer chuckled and said, "yeah, he does talk about those things, but we know the reality, which is that the grandfather was just an old drunk". (White Metropolitan Area Judge, Judges Survey)

Both judges and attorneys report cultural insensitivity on the part of social workers and court-intake personnel in CHIPS cases. One-third of all judges and nearly 70% of the metropolitan area judges say that these employees demonstrate cultural insensitivity sometimes, often or always in working with minority families.[59] Nearly 50% of all attorneys and over 60% of public defenders agree.[60]

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[56]Trial Court Memorandum, In the Matter of the Welfare of M.S.S., (Nov. 19, 1991) (on file with the Minnesota Supreme Court).

[57]Letter from Christine Raven Kerry, Foster Care Coordinator, Jackson County Human Services Department to Ester Hoffman, Interstate Compact Coordinator (July 30, 1991) (on file with the Minnesota Supreme Court).

[58]Report from Susan Cochrane, Southern Minnesota Regional Legal Services to the Racial Bias Task Force (Nov. 18, 1991) (on file with the Minnesota Supreme Court).

[59]Judges Survey Results, supra note 18, p. 11.

[60]Attorney Survey Results, supra note 22, p. 10.

Nearly 25% of all judges and 63% of Hennepin and Ramsey County judges report that judges, also, demonstrate cultural insensitivity always, often or sometimes in working with minority families.[61]

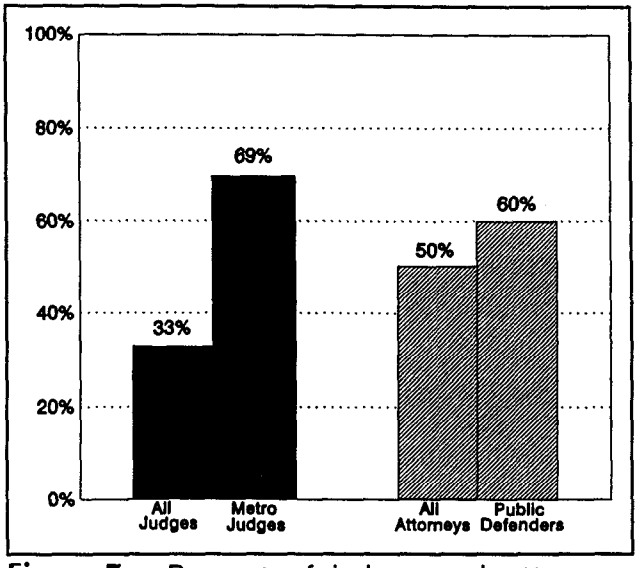

Figure 7. Percent of judges and attorneys responding that social workers and court-intake personnel sometimes, often or always demonstrate cultural insensitivity in working with minority families

The Minnesota Department of Human Services monitored Hennepin County's compliance with the cultural heritage laws in January, 1991.[62] In its study of placement with relatives, it found that case records did not adequately reflect the efforts that were made to find relatives for a first placement.[63] Efforts were also apparently minimal in 48% of the cases, and there was a lack of consistent effort to meet the placement preference requirements once a first placement was made. There was greater noncompliance in cases involving Native Americans than other people of color.[64]

As the study noted, lack of documentation in this area is of particular concern because this information affects any future placement of the child. Some judges expressed concern over what they view as "serialized relative searches" in which a child is placed with a relative and, if that placement fails, a subsequent relative is found, delaying placement of the child in a permanent home.[65] Many legal service providers contend that many white social workers are indifferent to cultural differences and hostile to application of the ICWA.[66] Other communities of color had similar experiences with the justice system, including the failure of a "white system" to recognize specific functional relationship groups, particularly extended families, and kinships not currently recognized like the Hispanic tradition of "*compadrazago*," (godparents) mentioned earlier. It does not necessarily involve a blood relationship.[67] Eligibility criteria for Aid to Families with Dependent Children recognize only kinship based upon blood.[68]

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[61] Judge Survey Results, supra note 18, p. 11.

[62] "Monitoring Compliance" supra note 6.

[63] Id. p. 15.

[64] Id. p. 21.

[65] Judges Open-Ended Response, supra note 17, p. 24.

[66] Attorneys Open-Ended Response, supra note 17, p. 90.

[67] Child Protection Legislation: A Hispanic Initiative, supra note 15, Appendix.

[68] See, Minnesota Department of Human Services, Bulletin #92, The Placement of Children With Relatives and the Payment for Their Care, p. 5 (Nov. 1992) (on file with the Minnesota Supreme Court) (hereinafter "Bulletin 92").

In addition, the willingness of relatives to accept placement is also problematic. Relative placements pay less than foster care placements, although relatives may be licensed as foster care homes, if the home complies with licensing requirements. When a relative placement is made, availability of relative foster care payments are often not disclosed to the person receiving the child.[69]

There is a need for specific procedures for social services and the Department of Human Services to follow when the agency places a child in the home of a relative. If such a placement is legally desirable, both an explanation of the availability of funding and funding of the placement should follow automatically. The Task Force understands that the Department of Human Services is currently drafting procedures to aid social workers in making relative placements and encourages them in this undertaking.[70]

If a relative placement is not available, then a foster care placement must be sought. These placements represent the greatest challenges to our legal philosophy and to the communities of color which are affected by them. Minnesota state law places a significant value on "permanency planning".[71] Minn. Stat. § 256F.01 requires the juvenile justice system to make an early determination whether to help the child and the family maintain the family unit or to remove the child and make a permanent placement with another caregiver. The purpose of making the determination as early as possible is to minimize the emotional and psychological damage a child can suffer by not being afforded a permanent nurturing and predictable environment. Studies indicate that children who enter the foster care system have serious emotional and psychological difficulties later.[72] Efforts are currently being made to reassess the long-term benefits of substitute care.

Availability of and utilization of same-race foster care is a critical issue in minimizing trauma to children of color and is a priority among all communities of color.[73] If family-based services are not readily available yet, then it is essential that community-based services be provided.

The federal funding policies of the past have, unfortunately, created a foster care system that has a vested interest in maintaining the status quo.[74] Recent publicity has been

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[69]Public Hearing, St. Paul (Oct. 9, 1991).

[70]Bulletin #92, supra note 68; Minnesota Department of Human Services, Guidelines for Approval of Relative Foster Homes, (Nov. 1992) (on file with the Minnesota Supreme Court).

[71]See Minn.Stat. § 256.01-.07.

[72]Hearings on the Indian Child Welfare Program Before the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs, 93rd Cong., 2nd Sess. (1974) (Statement of Dr. Joseph Westermeyer, University of Minnesota); Hearing on S. 1214 Before the Senate Select Committee on Indian Affairs, 95th Cong., 1st Sess. (1977) (Statements of Drs. Carl Mindell and Alan Gurwitt, American Academy of Psychiatry).

[73]See, Recommendations to the Child Protection System Study Commission, supra note 14; Hennepin County Community Services Department, Placement Review Committee's Report on the Out-of-Home Placement of African American Children in Non-Same Race Homes (March 1991) (on file with the Minnesota Supreme Court) (hereinafter "Out of Home Placement of African American Children").

[74]See, e.g., Allen Short and Paul McEnroe Licensed to Abuse, Minneapolis Star and Tribune, Dec. 13 and 14, 1992.

given to the abuse of children within the foster care system. While this is an issue which transcends racial bias and affects all such children, children from communities of color are affected in greater numbers because they are over-represented in the system.[75]

The lack of community involvement in placement decisions and the lack of community-based services was raised many times at the public hearings. In some cases, the basis on which licensure (including relative placements) was denied was the inability of the proposed licensee to provide hardware, such as fire extinguishers or smoke detectors, or to have water testing done, items which could have been easily provided, but which may not have been readily affordable by otherwise qualified minority applicants.[76]

It should be recognized that legitimate reasons may exist for a placement outside the community, even if resources within the community may appear to exist. For instance, a family may be interested only in a particular age group or sex of children, a family may choose to only accept children who do not have special needs while others may limit their care to only those children with significant special needs, and a family may choose not to accept any children but yet maintain their licensed status.[77]

Recently, Minnesota has made efforts to see that African American and Native American children are placed in same-race families. Hennepin County, for instance, has substantially increased the number of licensed African American facilities.[78]

But the Department of Human Services noted that 105 African American children were placed in different race foster family homes at a time when 144 same race vacancies existed.[79] Nevertheless, the Department noted that in many cases where a child was placed in different race foster homes, one of the following conditions existed: "good cause" documentation was not substantiated, same-race foster care was not documented as having been fully explored, or same race foster care was shown to be unavailable but placement with relatives did not appear to have been fully explored.[80] Although Minnesota statute requires that different race foster homes be "appreciable and knowledgeable"[81] of the race and culture of the child, no assessment tools on what is "appreciative and knowledgeable" as it relates to cross-cultural foster parenting exist.

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[75] Id. The Task Force recommendations impact on this issue as follows: (1) emphasis on keeping in the home and the provision of in-home services reduces the number of children in need of foster placement with strangers; (2) intensifying the search for relatives for placement where in-home services are not immediately appropriate allows the child to remain within the family group; and (3) expanding the outreach effort to recruit minority families for foster care increases the number of available qualified homes.

[76] Meeting of the Indian Child Welfare Council (Jan. 8, 1992).

[77] Monitoring Compliance, supra note 6, p. 10.

[78] Id.

[79] Id.

[80] Id. p. 17.

[81] Minn.Stat. § 260.181, subd. 3(c).

In order for the court to properly render its decision it is essential that the court require full documentation of the placement efforts, including reasons for a removal decision, conduct of relative searches, same race foster care availability, and the adequacy of the basis for any different race placements that might occur. This process must not be regarded as a "hoop" to jump through, but as an integral part of protecting the welfare of children from communities of color by the justice system.

Findings

1. The failure of the justice system to keep sufficient and accurate race-specific data permits a biased system to operate free from effective scrutiny, wrongly shifting the burden of proving bias exists to the people of color the system processes.

2. The juvenile justice system fails to elicit data on the racial and cultural background of children brought into the system, which thwarts the proper application and enforcement of laws designed to protect the heritage of such children.

3. Children from communities of color are grossly over-represented in the foster care system.

4. The percentage of minority personnel working in the juvenile justice system is disproportionately low in comparison with the larger minority client population served.

5. Communities of color are distrustful of the juvenile justice system and that distrust is based upon actual and perceived bias, including the absence of minority personnel within the system itself. Many people of color perceive white system personnel as indifferent or hostile to cultural differences.

6. Social workers and court personnel demonstrate cultural insensitivity in working with minority families.

7. The lack of minority personnel helps to perpetuate cultural insensitivity toward people of color.

8. A significant percentage of attorneys, judges and court personnel are unfamiliar with the Indian Child Welfare Act and the Minority Heritage Preservation Act.

9. Many people of color being brought into the judicial system do not understand nor do they receive an adequate explanation of their rights and resources available to them, e.g., in the case of Native American Families, the availability of counsel, the right to know the child's placement, the right to relative placement, and the right of their tribes to intervene.

10. There is an urgent need for family-based services to prevent the disproportionate removal of minority children from the home.

11. There is a systemic failure to comply or to document compliance with laws regarding protection of racial or cultural heritage.

12. There is a failure to engage affected communities of color in the placement process, including a failure to recognize functional and significant relationships within their families.

13. There is a significant lack of community-based services to address the needs of children of color who are removed from their homes.

Recommendations

1. The Supreme Court should require courts to collect accurate race-specific data on all people being brought into juvenile court.

2. Because a child's racial background may often not be visibly apparent, rules should be adopted by appropriate bodies, including the Supreme Court and the Department of Human Services, that will allow the complete elicitation of racial and ethnic or cultural affiliations from the child who is the subject of the data or people related to that child, and that such elicitation be done at the earliest opportunity in a manner that is noncoercive, in order that the legal philosophy of protecting the racial, ethnic, or cultural affiliations of the child is enhanced.

3. The Department of Human Services should develop a written notice of rights in appropriate languages that social services workers must provide to parents or custodians at the earliest possible time, such as the initial meeting or at an emergency removal, which will explain to the family their legal rights, and also refer the family to the appropriate ombudsperson and any other appropriate service or agency. In the case of Native Americans, this must include the right to have the tribe intervene and the right to have the matter brought to a tribal court.

4. All current judges, attorneys, social workers, guardians ad litem, and other court personnel should receive education and training to increase their sensitivity to cultural and racial issues, including training in the provisions of the ICWA.

5. All state and local agencies should make significant efforts in the recruitment, training, retention, and promotion of minority personnel within the juvenile justice system. These efforts should be directed toward providing personnel in proportion to the client community, and not be based solely upon demographic representation of communities of color in the population at large.

6. The Legislature should develop and fund full-time, culturally-specific independent minority legal advocacy programs statewide, such as the Indian Child Welfare Center.

7. The Legislature should develop and fund models for conducting relative searches. Such models should provide for complete documentation of relatives found, and continuing placement efforts. Such documentation should be made a part of the case

file and used by the court in its review of placement decisions. In addition, the Supreme Court should amend the Rules of Juvenile Court to require that full and complete documentation of application of "good cause" reasons justifying non-same race placements be made and included within the case file.

8. The Legislature should amend statutes to recognize specific functional relationships, particularly extended families and other kinships not currently recognized, and these relationships should be included in the relative search and recognized for purposes of receiving funds.

9. At the earliest possible time, the licensing worker or child protection worker who has inquired of Native American status of the child and has found there to be Native American status, should be required to inquire into tribal membership and, if applicable, the child's tribe should be asked to intervene or allowed full jurisdiction.

10. The Courts should more actively pursue recruitment and retention of minority guardians ad litem on a statewide basis, and all guardians should be adequately compensated.

11. The Supreme Court, the Legislature, and the Department of Human Services should seek further changes in federal law to provide additional monies for family-based services.

12. The Legislature should redirect state resources from out-of-home placement programs to family and community based programs, including culturally specific placement alternatives, to the greatest extent possible without endangering the ability of the state to appropriately meet the appropriate needs of children.

13. The Department of Human Services should increase recruitment and licensing of foster care families within communities of color and state aid should be available to bring relative placement homes into compliance with state licensing requirements, where denial is based upon grounds other than personal fitness.

14. The Legislature should establish foster care associations, independent of, but under the auspices of, the various minority councils within each community of color. Such associations should include foster care providers and serve as part of the licensing, recruitment and review process of the Department of Human Services. Adequate state funding should be provided for such associations.

15. The councils and/or the foster care associations should recruit and certify people as community experts under the ICWA or the Family Preservation Act, and the Supreme Court should amend the Rules of Juvenile Court to provide such community experts the legal standing to represent the interests of the child and the community in any proceeding involving the child.

16. The Supreme Court should amend the Rules of Juvenile Court to require whenever non-same race placements are made that such cases be closely monitored by the trial court, including seeking same race placements on a continual basis.

17. The minority councils and the Department of Human Rights should develop assessment tools on "appreciative and knowledgeable" as it relates to cross-cultural foster parenting, including training of foster parents, education of child placement agencies and criteria for selecting and licensing foster care placements for each community of color.

18. The Legislature should enact meaningful sanctions and penalties to be imposed against public and private social service agencies for failure to follow the requirements of the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and the Minnesota Minority Heritage Act.

JUVENILE DELINQUENCY

The lack of race-specific information on juvenile delinquency case processing in most counties of the state frustrated efforts to comprehensively examine this critical part of Minnesota's judicial system. In 1990, for example, 64% of the juvenile adjudications statewide did not carry any data on race. Fortunately, Hennepin County, which has the greatest number of minority youth, did record race-specific data in nearly 80% of its cases. Of the 8,432 juvenile cases filed and processed statewide in 1990 in which race data was collected, 77% involved whites, 12% involved African Americans, 9% involved Native Americans, and 2% involved other racial groups. These data confirm that people of color are over-represented in proportion to their numbers in the general population in this area of the law as well.[82]

Evidence of differential treatment in Minnesota of juveniles based upon race has been well documented in the research of Professor Barry Feld of the University of Minnesota Law School. Professor Feld has undertaken extensive analysis of Minnesota's juvenile justice system using, among other sources, State Judicial Information System (SJIS) data.

To examine the existence of differential processing of juvenile cases based on race, the Task Force undertook an in-depth examination of juvenile data which was available. Hennepin County and fifteen greater Minnesota counties were selected for analysis using SJIS data collected from 1987 through 1991.[83]

Two separate, but identical, analyses were conducted. The study was divided between Hennepin County and the greater Minnesota counties, as Hennepin's case data (10,000+ cases) was larger than all the greater Minnesota counties combined (8,000+ cases) and the racial composition of the samples was significantly different. The Hennepin sample was 61% white, with African Americans being the largest minority group. The outstate sample was 78% white. Its dominant minority group was Native American.[84]

It should be noted that the sample was not random, so it cannot be assumed that the findings are representative of the entire state. Also problematic is the fact that the data that SJIS does collect provides only legal variables. It does not provide information on socio-economic status, family situation, or school background. The Task Force heard several comments in public hearings, focus group meetings, and the open-ended responses to the questionnaires that such variables may have a greater influence than race in predicting the outcome of juvenile court proceedings. Since the juvenile justice system is mandated to provide for the "best interests of the child," it may be taking such factors into account. While this individualized approach may be consistent with Minnesota's legal philosophy,

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[82] Minorities in the Juvenile Justice System, supra note 5.

[83] Sharon Krmpotich, Minnesota Supreme Court, Juvenile Case Processing Analysis for the Task Force on Racial Bias in the Courts (April 28, 1992) (See Appendix D) (hereinafter "Juvenile Case Processing Analysis").

[84] Id. p. 2.

the evidence the Task Force examined revealed that *race is a significant, independent variable* that influences decisions on both pretrial detention and out-of-home placement.[85]

The Task Force also conducted an exit survey of juveniles involved in the juvenile justice system in the 10 counties across the state having the highest proportion of people of color based on the 1990 U.S. Census in order to collect data on their perceptions of the juvenile process. A total of 801 surveys were completed.[86] The Task Force felt such an exit survey would provide some of the data that was not available in court files.

Assertions that minority youth are certified for trial as adults more often than their white counterparts were initially examined, but due to the small number of certification cases, quantitative analysis was not possible. In the greater Minnesota sample of 15 counties, approximately 1.7% of all white juvenile delinquents were certified, while 2.2% of all minority youth were certified.[87]

Complete data was unavailable for the entire state. The Task Force was able to review juveniles certified as adults for the 15 greater Minnesota counties and Hennepin County. From 1987 through 1991 there were 183 juveniles with identifiable race who were certified as adults in these counties.[88] Eighty-five (46.4%) of them were people of color and 98 (53.6%) were white. Given the relatively small number of cases and the complexity of the certification decision, it is not possible to say these numbers prove a pattern of racial bias in this area, but the disproportionate ratio raises a red flag and cries out for closer scrutiny. Many members of the bar concur. Slightly less than one-third of both public defenders and judges in the metro area say that juveniles are more likely to be certified as adults when they are minority.[89]

In examining the data, it was necessary to control for both the present offense for which the juvenile was charged and whether the juvenile had been petitioned for offenses prior to the present one, as these factors influence how the juvenile will be handled following arrest.[90] These factors were selected because there appear to be differences between the ways juveniles are handled between urban areas and rural areas, independent of race.

Professor Feld suggests that geographical differences exist in the processing of juveniles which are based upon the differences in social structure between metro areas and

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[85]See Juvenile Case Processing Analysis, supra note 83.

[86]Carol Westrum, Minnesota Supreme Court, Exit Survey of Juveniles in the Court System, Methodology Report for the Task Force on Racial Bias in the Courts, p. 1 (Sept. 9, 1992) (see Appendix D).

[87]Juvenile Case Processing Analysis, supra note 83 at p. 4.

[88]Id. The racial distribution of the combined samples of Hennepin County and the 15 outstate counties was 67% white and 33% people of color.

[89]Attorney Survey Results, supra note 22, p. 5; Judge Survey Results, supra note 18, p. 5.

[90]Juvenile Case Processing Analysis, supra note 83.

rural areas.[91] In rural areas, homogeneity and uniformity of beliefs foster informal social controls; the court is more willing to rely on the social background of the youth as a member of the community in reaching its decision. Metropolitan areas are more heterogeneous, with greater population density and anonymity. As a result, in metropolitan areas, the court places greater reliance on formal structure and procedure. Such a structure places a greater emphasis on legal factors, especially the present offense and prior record, in the handling of a juvenile offender than on the social factors. Professor Feld forcefully supports this hypothesis by citing a number of case studies.[92] Minnesota census data suggest that the concept of rural homogeneity must be taken into account since nearly two-thirds of all minorities live within the two counties of Hennepin and Ramsey.

Using this data and other evidence gathered by the Task Force through its public hearings and surveys, the Task Force examined the juvenile process from the time of the initial stop, to the arrest or petition through adjudication.

The greatest source of delinquency petitions (90%) is from law enforcement. Over-representation of minority youth within the juvenile justice system starts here. According to Bureau of Criminal Apprehension statistics, people of color accounted for 20% of all juvenile arrests made in 1990.[93],[94] The initial contact between law enforcement and juveniles generally involves an investigatory stop, followed by a decision to release or arrest. Metropolitan probation officers, metropolitan judges, and public defenders statewide indicated their belief that juveniles are more likely to be released after a stop if they

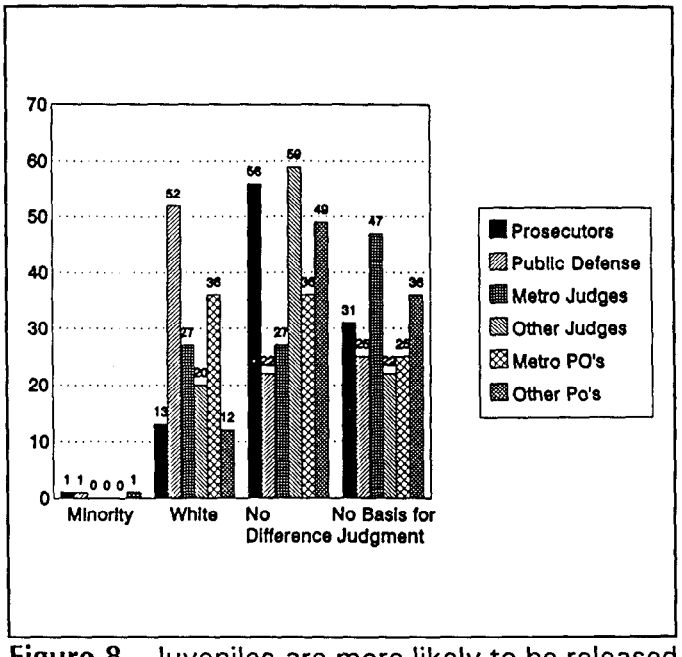

Figure 8. Juveniles are more likely to be released by police following a stop when they are:

[91] Barry Feld, Justice by Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration, 82 J. of Crim. L. and Criminology 156 (Spring 1991).

[92] Id. pp. 158-160.

[93] See Minorities in the Juvenile Justice System, supra note 5, p. 7.

[94] It must be emphasized that arrest decisions are not subject to the direct control of the court system. The debate within the Task Force as to whether to include an examination of the law enforcement process was resolved in a decision not to explore this area as it was not subject to judicial system control. However, the Task Force felt that the data which was collected and the findings that it made should be presented to the legislature and the public because the activities of law enforcement determine the client population of the judicial system, and the complaints from the minority community concerning the delinquency process focused largely on the behavior of law enforcement personnel, allegations that are of serious concern to all.

are white. More than half of the greater Minnesota judges and probation officers and prosecutors statewide say there is no difference.[95] Because data is not collected on stop and release decisions, no empirical evidence is available to assess the accuracy of these opinions.

What we do know is that nearly half of all juveniles arrested for serious crimes reside within the two urban counties,[96] and almost all arrests are made by white officers.[97] The Juvenile Exit Survey conducted by the Task Force shows that of the survey respondents, 95% of the arrests in the metropolitan area and 99% of the greater Minnesota arrests were made by white officers. Forty-seven percent of the minority juveniles and 32% of the white juveniles reported being treated roughly during their arrest. One-third of the minority juveniles in both metro and outstate areas felt race was a factor in their arrest. Additionally, 27% of metropolitan area minority juveniles experienced racial slurs.[98]

As expected, the seriousness of the present offense greatly influences the arrest decision. Arrest data indicates that minority juveniles are arrested for more serious delinquent behavior. Arrests in 1990 for crimes against the person (which includes aggravated assault, robbery, homicide, and criminal sexual conduct) involved minority youth over 50% of the time. Of those arrested for such crimes, 37% were African-American and 10% were Native American. Juveniles arrested for crimes against property, both felony and minor, were much more likely to be white (77% and 84% respectively).[99]

Following arrest, a decision again must be made whether to detain or release the juvenile prior to an adjudication and disposition. It was assumed that juveniles who were arrested for similar offenses and who had similar histories would receive similar outcomes on a detention decision, particularly in the formal structure of the metropolitan area. Professor Barry Feld presented evidence that a detention decision was a significant factor in determining the subsequent disposition and that it is the second most significant factor in determination of home removal and secure detention.[100] A significant relation between race and detention would establish irrefutable evidence of bias within the system.

After controlling for present offense and prior history, the Task Force study of juvenile case processing data found that for first-time delinquents in Hennepin County, there is, in fact, a significant relation between race and detention within three offense categories: felony against a person, felony against property, and other delinquent behavior. *Minority*

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[95]Wayne Kobbervig and Carol Westrum, Minnesota Supreme Court, Summary and Analysis of Juvenile Delinquency, CHIPS, and Family Law Data from Questionnaires and Reports for the Task Force on Racial Bias in the Courts, p. 7 (Dec. 21, 1992) (see Appendix D) (hereinafter "Summary and Analysis").

[96]Minorities in the Juvenile Justice System, supra note 5, p. 7.

[97]Minnesota Supreme Court, Juvenile Exit Survey for the Task Force on Racial Bias in the Courts (June 1992) (on file with the Minnesota Supreme Court) (hereinafter "Juvenile Exit Survey").

[98]Minnesota Supreme Court, Juvenile Exit Survey Results for the Task Force on Racial Bias in the Courts, pp. 2, 3 (Jan. 21, 1993) (on file with the Minnesota Supreme Court) (hereinafter "Juvenile Exit Survey Results").

[99]Minorities in the Juvenile Justice System, supra, note 5, pp. 7-9.

[100]Barry Feld, The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and The Difference They Make 79 J. of Crim. L. and Criminology 1185, 1253 (1989).

youths are detained at nearly two and one-half times the rate of whites in each of these categories. Even for repeat delinquents within the same three offense categories a higher rate of detention existed.[101] This fact is recognized by many within the system. Over half of the public defense attorneys, and one-third of the judges and probation officers in the metro county say that juveniles are more likely to be released pending disposition hearings when they are white.[102]

For the most part, greater Minnesota does not have detention facilities readily available. It also relies upon a more informal structure for behavior control. However, there still exists in greater Minnesota a statistically significant relationship between race and detention for first-time offenders in two offense categories: minor property and other delinquent behavior, with minority offenders being detained again at *nearly twice the rate as white offenders.*[103] The juvenile exit survey corroborated this data, with 36% of the minority juveniles reporting that they had been held in detention compared to 21% of the whites.[104]

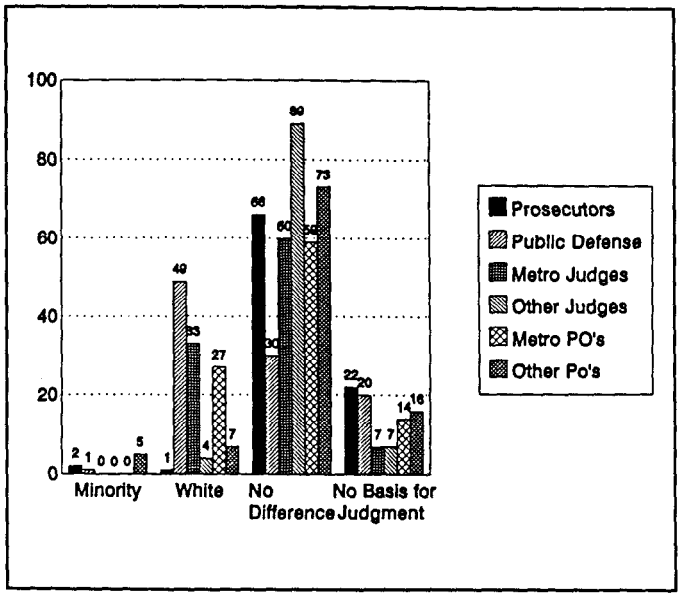

Figure 9. Juveniles are more likely to be released pending dispositional hearings when they are:

For repeat offenders, a significant relationship between race and detention exists in the categories of felony property and minor property.[105] Although the analysis indicates high percentage differences in other areas as well, the number of cases is too small for the percentage differences to have statistical significance. However, there is little recognition of the problem within the system. The majority of prosecutors, judges and probation officers outside the metropolitan area see no difference in release between white and minority juveniles pending disposition.[106]

There are, however, no objective written detention criteria to guide anyone in the detention process. Wide latitude is given to all making the detention decision. In addition,

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[101]Juvenile Case Processing Analysis, supra note 83, p. 7.

[102]Attorney Survey Results, supra note 22 p. 4; Judge Survey Results, supra note 18, p. 4; Minnesota Supreme Court, Probation Officer Survey Results for the Task Force on Racial Bias in the Courts, p. 4 (Jan. 1993) (on file with the Minnesota Supreme Court).

[103]Juvenile Case Processing Analysis, supra note 83, p. 8.

[104]Juvenile Exit Survey Results, supra note 98, p. 6.

[105]Juvenile Case Processing Analysis, supra note 83, p. 8.

[106]Summary and Analysis, supra note 95, p. 7.

parental notification of arrest and detention is sporadic. Parents were more likely to be notified of their child's arrest in greater Minnesota (95%) than in the metropolitan area (84%). In the metropolitan area, parents of white juveniles were notified more often (89%) than were the parents of minority juveniles (80%). Juveniles as a whole were also afforded an opportunity to speak with their parents after their arrest more often in greater Minnesota (67%) than in the metropolitan area (55%). In greater Minnesota, 80% of whites compared to only 41% of people of color reported being able to speak with their parents following their arrest.[107]

In examining dispositional data, the Task Force defined any out-of-home removal as a "severe" consequence, regardless of whether the removal resulted in placement in a secure facility. Although there is a widespread belief among public defense attorneys and judges in the metropolitan area that juveniles are more likely to be removed from the home if they are minority,[108] in Hennepin County the findings indicated that removal rates were fairly similar between whites and people of color when controlling for offense type and delinquency history. Overall, race was not a significant factor in predicting the likelihood of removal from home. However, there was one offense category, felony against a person, that displayed a statistically significant relationship between race and likelihood of removal for first-time delinquents, as shown in Figure 10.

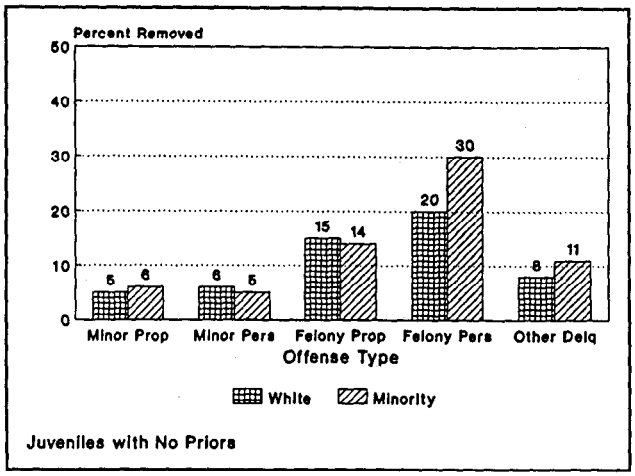

Figure 10. Disposition: Removed from Home, Hennepin County

Among repeat offenders the relationship between race and removal rates was significant only in the "other delinquent behavior" category, which includes a large number of substance abuse cases involving placement in treatment centers.[109]

Further analysis of the data indicated that present offense, prior history, attorney representation at disposition, detention, and gender were significant factors in predicting the probability of removal from the home. Race was not.[110]

In greater Minnesota, removal and race were significantly associated for first-time offenders in three of the categories: felony property, minor property, and other delinquent

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[107]Juvenile Exit Survey Results, supra note 98, p. 7.

[108]Summary and Analysis, supra note 95, p. 11.

[109]Juvenile Case Processing Analysis, supra note 83, p. 9.

[110]Id. p. 10.

behavior. Minorities were removed at higher rates than whites in each of the categories.[111] Race plays a part in the removal decision for first-time offenders. It is a significant factor in predicting removal as shown in Figure 11 below.

No data is available to the Task Force to suggest why minority first-time offenders are removed from the home in greater Minnesota. It is clear that culturally-specific alternatives to removal must be developed. Development of such alternatives depends upon improved communication between juvenile justice system personnel and the communities of color. Freeborn County has made an effort to involve people of color in the juvenile justice system and communities of color have actively sought such involvement.[112]

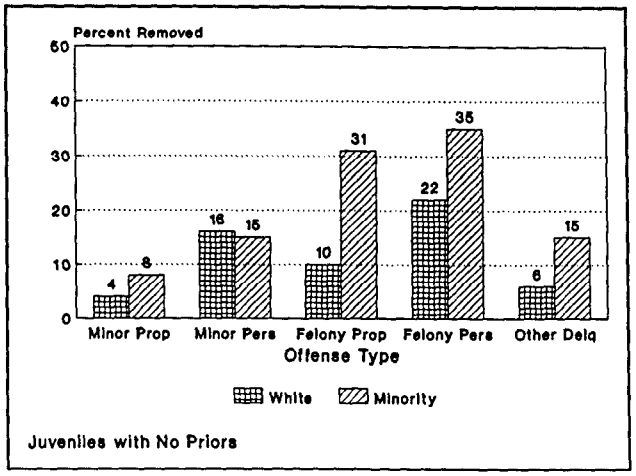

Figure 11. Disposition: Removed from Home, Outstate Sample

It should be noted, however, that the Task Force received several comments that even where alternatives to removal are available, few of these alternatives offer culturally specific programs to help minority juveniles. Indeed, this criticism was also levelled at the removal programs. As one probation officer put it, "I can send a minority juvenile to Thistledew (a forestry and conservation rehabilitation program) and he'll do just fine there. But when he comes back, he's got no more skills to deal with what's going on in the streets than he did when he left. He's just going to be dragged into trouble again".[113] The Task Force strongly recommends culturally specific programs be developed for minority youth for both in-home and out-of-home placements, which will emphasize the acquisition of the skills that will best contribute to the rehabilitation of juveniles and prevent their return to the juvenile justice system.

The Task Force found that minority juveniles are more likely to be represented by an attorney both at the adjudication and disposition than white juveniles in both Hennepin County and greater Minnesota.[114] Only in the greater Minnesota sample within the categories involving offenses against person (felony and minor) were there no significant relationships between race and representation. Whites were more likely than people of color to have private counsel.[115] Surprisingly, over three-quarters of all attorneys, judges

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[111] Id.

[112] Public Hearing, Albert Lea (Nov. 1991).

[113] Juvenile Probation Officers Focus Group Meeting (Jan, 17, 1992).

[114] Juvenile Case Processing Analysis, supra note 83, pp. 4-5.

[115] Id. p. 5

and probation officers say there is no difference by race in the likelihood of representation by counsel at the adjudication or disposition.[116]

The question became then, given the higher rate of representation, why was the outcome for minority juveniles generally more severe? Since the right of a juvenile to representation was established by the United States Supreme Court in In Re Gault[117] one might expect that all juveniles would be represented. In reality, however, it appears that less than half of all juveniles are represented by counsel. Given then, that minority juveniles are receiving a higher rate of representation, it would seem minority juveniles are well-served by the juvenile justice system in this area at least.

In a recent law review article, Professor Feld established strong and consistent evidence that representation by counsel *redounds to the disadvantage of the juvenile.*[118] Professor Feld suggested that appointment of counsel is based upon a "pre-adjudication" judgment of the severity of the outcome as a possible explanation. He also suggests that the appearance of counsel results in a more formal proceeding and that judges may feel less constrained when sentencing a youth who is represented and that the presence of counsel insulates the adjudication from appellate review. This represents those instances where the courts have, in an effort to protect the rights of minority children, pre-determined the outcome and in an effort to appear fair, "bent over backwards" to protect minority children.

The problem of juvenile "gangs" was much discussed within the Task Force. Although the Task Force had no desire to minimize or ignore a problem which it recognized as one which had serious implications for the study of racial bias within the criminal justice system, it did not have the resources or data necessary to do justice to a study of the problem. Although the "gang phenomenom" had been much studied during the 1920's through the 1950's, from the late 1960's to the mid-1980's little gang research was conducted. The recent re-emergence of interest in gangs has raised public concern and led to calls for the criminal justice system to respond. The need to conduct research is clear, given that now youth gangs are emerging in medium-sized communities, where they were once thought to be an urban problem; that gangs are becoming more diverse in composition, with Hispanic and Asian/Pacific Islander gangs now more active in urban Minnesota; that sophistication in weaponry has increased and greatly elevated levels of violence have occurred; and that there is controversy surrounding the role of gangs in drug trafficking.[119] As the Winfree article points out, much of the problem involved in dealing with the "gang problem" starts with defining "a gang," "gang members," and "gang behavior".

Minn. Stat. § 260.125, subd. 3 (8) (1992) provides for "reference" (i.e., certification of a juvenile for trial as an adult) for juveniles who are alleged to have committed an

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[116]Summary and Analysis, supra note 95, p. 10.

[117]387 U.S. 1 (1967).

[118]Feld, supra note 100, p. 1330.

[119]C.Ronald Huff, Gangs in America (1990); L. Thomas Winfree, et. al., The Definition and Measurement of 'Gang Status': Policy Implications for Juvenile Justice, 43 Juvenile and Family Court Journal 29 (1992).

aggravated felony against the person "...in furtherance of criminal activity by an organized gang..." The statute defines an organized gang as "an association of five or more persons, with an established hierarchy, formed to encourage members of the association to perpetrate crimes or to provide support to members of the association who do commit crimes".[120] Under the adult criminal statutes, a criminal gang "means any ongoing organization, association, or group of three or more persons, whether formal or informal that has as one of its primary activities the commission of one or more of the offenses listed in section 609.11, subdivision 9 (roughly, murder, assault in first, second, or third degree, burglary, kidnapping, false imprisonment, manslaughter in the first or second degree, aggravated robbery, simple robbery, escape from custody, arson, criminal sexual conduct or any attempt to commit any of these crimes); has a common name or common identifying sign or symbol; and includes members who individually or collectively engage in or have engaged in a pattern of criminal activity.[121]

These inconsistent legislative definitions serve to underscore the difficulty the components of the criminal justice system have when dealing with "gang behavior". Law enforcement faces the same definitional dilemma. The possibility of enhancement of penalty for crimes deemed to be "gang related" encourages law enforcement and prosecutors to identify violent youth as gang members. The so called "gang books" kept by many law enforcement agencies themselves represent a racially-based selection criteria. In Hennepin and Ramsey Counties, for example, nearly all identified gang members are members of communities of color. *Law enforcement efforts to control gang activity in communities of color are often so broad and indiscriminate that the police further alienate themselves from the communities they are attempting to serve.*

Gang formation can be attributed to myriad social and economic factors. These include the breakdown of the family, the need to belong, low self-esteem, poverty, unemployment, alcohol and drugs, and the failure of educational, criminal justice system and other social institutions. Many gangs start as informal social groups with common interests. Over an extended period of time, they can evolve into active criminal enterprises. The social factors attributed by current studies to gang formation — power, status, protection, substitute for family, friendship — provide a powerful attraction to juveniles at an impressionable age, generally around 12 or 13 years. The need to address these factors must be recognized if we are going to actively undertake positive steps to eliminate the gang problem, as opposed to merely punishing youths allegedly engaged in gang activity.

The Task Force's concern is that current gang definitions are not objectively applied: current gang labelling does not reliably identify gang members or gang behavior; the possibility of penalty enhancement results in gang identification being made largely based on race; distinctions between social and criminal behavior are blurred by "gang" statutes, raising freedom of association issues; focusing on "gang behavior" is antithetical to the "best interests of the child" standard which is the primary standard for juvenile justice; and, further, *none* of the current gang legislation addresses the root causes of gang association

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[120]Minn. Stat. § 260.125, subd. 3(10).

[121]Minn. Stat. § 609.229, subd. 1 (1992).

and behavior. The necessity for identifying and dealing with "gang behavior" requires an in-depth analysis which will not only distinguish the root causes, but provide solutions that can be implemented at a stage *before the juvenile becomes involved with the criminal justice system.* To punish a juvenile more severely because of his or her associations, particularly when identification of those associations may be done in a biased manner, is not acceptable in a juvenile system which emphasizes individualized treatment of the offender.

It is also necessary, as discussed in the CHIPS portion of this report, to increase the number of staff people of color working within the juvenile justice system. Especially with regards to delinquency, minority probation officers are in a better position to understand juveniles in the social background of their community and to make more informed recommendations on appropriate disposition. These efforts should be directed toward providing personnel in direct proportion to the *client* community, and not be based solely upon demographic representation of the minority community. It should be noted that in a focus group involving juvenile probation officers, many minority officers expressed a high level of frustration with their jobs, feeling that there was a "glass ceiling" which prevented them from being given the same opportunities for promotion as their white colleagues, and that white supervisors had a difficult time understanding the cares and concerns of minority employees.[122] If a commitment is to be made to increase the presence of people of color throughout the juvenile justice system, it is essential that this include opportunities for advancement as well as recruitment.

The view of the Task Force was perhaps best summarized by the reply of a judge in the open-ended responses to the questionnaire:

> The courts must go out to the communities of color; judges must learn from the people we serve how we presently misjudge, disrespect, or anger them, so we can do better; we must seek ideas about how we can do better by children of color from their families, who love them; we must learn to see our own whiteness, our ethnocentricity; we must invite and encourage the assistance of people of color in the work of achieving justice. (White Metropolitan Area Judge, Judges Survey)

Findings

1. The failure of the justice system to keep sufficient and accurate race-specific data has the effect of shifting the burden of proving that the juvenile justice system operates in a biased manner to the minority defendants it processes.

[122]Juvenile Probation Officers Focus Group Meeting, (Jan, 1992).

2. Minority juveniles are detained at a significantly higher rate than whites, and detention has a direct relation to the seriousness of the disposition.

3. Minority first-time offenders are removed from the home in greater Minnesota at disproportionate rates.

4. Even where alternatives to removal are available, few of these alternatives offer culturally specific programs to help minority juveniles.

5. There are few culturally specific programs even when the juvenile is removed.

6. People of color are underrepresented on the staffs of the agencies that are part of the juvenile justice system.

Recommendations

1. The Supreme Court should mandate that courts collect accurate race-specific data on all people subject to juvenile court jurisdiction.

2. Rules should be adopted by appropriate agencies, including the Supreme Court and the Department of Human Services, that will allow the complete elicitation of racial and ethnic or cultural affiliations from the child who is the subject of the data or people related to that child and that such elicitation be done at the earliest opportunity in a noncoercive manner in order that the legal philosophy of protecting racial, ethnic, or cultural affiliations of the child is enhanced.

3. The Department of Corrections should develop objective detention criteria for use in all detention decisions. The State Public Defenders Office should develop procedures for challenging the detention decision; and the Legislature should develop and fund alternatives to detention for minority juveniles.

4. The Department of Corrections should develop guidelines for law-enforcement or detention personnel so that an on-going effort is made to notify parents that their child has been arrested and is being detained, and that such notice include a Notice of Rights and referrals to appropriate agencies.

5. The Legislature and counties with significant minority populations should develop and fund culturally specific alternatives to removal for minority juveniles in greater Minnesota.

6. The Legislature, in cooperation with affected state agencies and local government, should develop and fund culturally specific programs for minority youth for both in-home and out-of-home placements which will emphasize the acquisition of skills most needed by minority juveniles in order to give them the best possible chance at rehabilitation and prevent their return to the juvenile justice system.

7. The Courts should use great care so as not to be influenced by the pre-adjudication determination in making a final disposition. This merits further study by the Juvenile Justice Task Force of the Supreme Court.

8. All appropriate state and local agencies should make significant efforts in the recruitment, training, retention, and promotion of minority personnel within the juvenile justice system. In particular, in the case of delinquency, minority probation officers are in a better position to understand the juvenile in the social context of his or her community and to make more informed recommendations on an appropriate disposition.

9. The Legislature should authorize and fund a task force to comprehensively study the issue of "gangs", including the concerns discussed above with input from all affected constituencies, including representative groups from communities of color, professionals in the juvenile and criminal justice system, law enforcement officials, and qualified social science experts.

ACCESS TO REPRESENTATION AND INTERACTION, AND GENERAL CIVIL PROCESS

Introduction

Equal justice under law is one of our most cherished national ideals. Our legal system was created to provide a forum with rules for resolving disputes reasonably and fairly. The success of our system depends on its accessibility to all citizens.

The dual effects of poverty and racial bias cause people of color to be disproportionately numbered among those without access to effective legal representation. This lack of effective representation within the legal system can produce disastrous results. Such results are hard to imagine for those who take quality representation for granted. For economically vulnerable people, the enforcement of their rights through the legal system can be a crucial instrument of survival.

In addition to the inability of many people of color to afford the services of private attorneys to defend them in criminal matters, people of color in Minnesota also experience significant difficulties in obtaining access to representation in many civil legal areas. The civil legal needs of people of color often involve problems which directly affect their day-to-day lives: issues involving their homes, families, health and personal safety, and support for their children. Beyond the day to day barriers discrimination and bigotry create, making it difficult to secure employment, decent housing and basic services, there is a more subtle effect: the constantly reinforced feeling that the institutions on which our civic life depends, including the justice system, are inherently unfriendly and not to be trusted.

The issue of trust in the system is further hindered by the fact that there are still very few attorneys, judges, and other officers of the court who come from communities of color. Possible barriers to participation in the field of law for people of color are addressed in this chapter in sections on the Minnesota Bar Examination, hiring, promotion and retention of minority lawyers, and how current judicial evaluation practices affect judges who are people of color.

ACCESS TO ADEQUATE REPRESENTATION & RELATED ISSUES

The Civil Legal Needs of People of Color

In order to fully understand the continuing and emerging legal needs of people of color, it is important to review recent demographic changes and the impact these changes have on demands upon the legal system.

Two recent studies dramatically demonstrate the large unmet need for legal assistance. The Minnesota Legal Services Coalition conservatively estimated that there are four times the number of poor people needing legal help as are actually served.[1] A second study reported that legal aid programs were able to help only 47% of people requesting assistance with family law cases.[2]

As might be expected, there is a correspondingly large and growing need for civil legal assistance amongst Minnesota's minority population. Requests for service have grown by over 62% since 1980.[3] A survey of Minnesota legal aid programs reveals that, statewide, 23% of legal aid clients are people of color.[4]

In 1990, some 435,331 Minnesotans were below the poverty line.[5] This represents a 16% increase since 1980.[6] Many other working families with incomes slightly above this level are also unable to afford a private attorney. While the number and percentage of Minnesotans living in poverty is growing, so is the income gap. The chart below shows the dramatic rise in the rates of poverty for each major racial/ethnic group in Minnesota.

By comparison, the overall poverty rate for white Minnesotans remained virtually static during this period. It is important to stress that although as the chart indicates, race and poverty are more intertwined than ever, *each has its own completely different set of effects and consequences in people's lives.* People of color *are* disproportionately poor, and being poor means less access to basic necessities, including quality legal services. Although poor people of any race face many common problems, racial discrimination adds a profoundly difficult dimension to them.

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[1]Minnesota Legal Services Coalition, Legal Needs of the Poor in Minnesota: An Assessment of the Unmet Need (1985).

[2]Minnesota State Bar Association, Family Law: A Survey of the Unmet Need for Low-Income Legal Assistance (Feb. 19, 1989).

[3]Minnesota Legal Services Coalition Programs, Proposal for Funding from the Lawyer Trust Account Grant Program for the 1993-1994 Funding Cycle, p. 2 (April 1, 1993) (hereinafter "Lawyer Trust Account Grant Program").

[4]Id. at Appendix F.

[5]Minnesota Planning, News Release, Poverty Climbs for Central Cities and Northern Counties; Children See the Largest Increase, p. 1 (May 29, 1992) (on file with the Minnesota Supreme Court).

[6]Id.

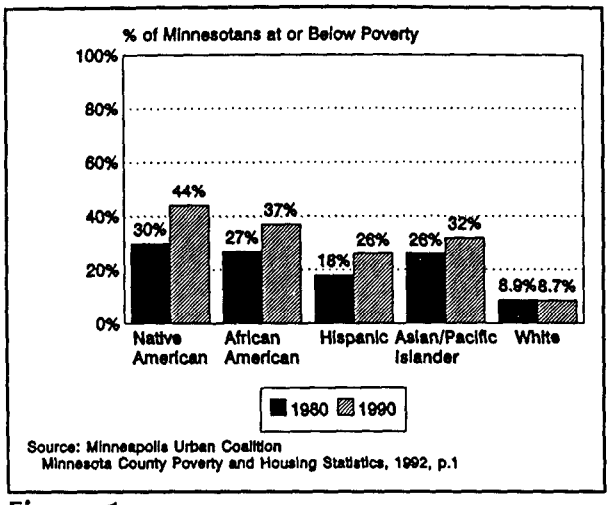

Figure 1

The issue of discrimination is a constant theme that runs through any list of legal problems confronting poor people. For example, a full 48% of Southeast Asians surveyed indicated that "unfair treatment by an employer or co-workers" was a major problem.[7]

For example, de facto residential segregation by race still exists, and in some ways, has grown worse in recent years. Studies offer "strong evidence of continuing discrimination by sales and rental agents, and lack of conventional mortgage financing in minority and transitional areas. Lack of opportunity to live in a desirable neighborhood hinders prospects for a quality education and the ability to find a good job. The problem has been aggravated by the movement of new jobs to suburban areas not easily accessible to minority workers who live in inner cities."[8]

With the growth in the number of low-income households and the shrinkage of the affordable housing market have come a number of associated problems. In many low-income communities, absentee landlords neglect properties, leading to increased deterioration, unsafe conditions and ultimately, legal problems.[9]

Twenty years ago, the Kerner Commission warned that urban America would fragment into separate and unequal societies unless racial inequality was ended. Racial isolation in American cities is now more severe than ever, resulting in the growth of an economic "underclass" of persistently poor people. People of color face daunting barriers to full and equal participation in education and employment. At the root of these barriers is the pervasive racism embodied in housing discrimination.[10]

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[7]Hennepin County Bar Association, Southeast Asian Legal Needs Assessment, p. 10, 11 (June 26, 1989) (hereinafter "Southeast Asian Legal Needs Assessment").

[8]The National Organization of Legal Services Programs, Future Challenges: A Planning Document for Legal Services, p. 15 (hereinafter "Future Challenges: A Planning Document for Legal Services").

[9]Southeast Asian Legal Needs Assessment, supra note 7.

[10]Future Challenges, supra note 8, p. 20.

The recession of the early 90's, and high unemployment among people of color has meant not only more legal problems related to jobs, government aid and benefits, but also heightened tensions within families and increased demands on the community at large. Substantial changes and reductions in government benefits programs have occurred at both the state and federal level in areas such as health care, and income maintenance programs (AFDC, SSI and foodstamps).

With respect to the significant increase in poverty in Minnesota, statistics indicate that half of the increase in poverty among families since 1981 is due to the decline in funding of government programs such as AFDC. Inflation has seriously eroded the benefit level and a pattern of benefit reductions in many programs has characterized this decade.[11] The Family Support Act of 1988,[12] a welfare reform measure enacted by Congress, and the corresponding Minnesota Family Investment Plan,[13] will also present a host of future legal problems. People of color are also among the increasing number of individuals who have no health insurance. Some 37,000,000 non-elderly Americans lacked health insurance coverage in 1990, an increase of more than 25% since 1980.[14]

Changes in immigration laws have also created new challenges for attorneys who serve minority clients. The Immigration Reform and Control Act, which went into effect in 1987, established new standards for legalization of aliens and drastic changes in the law relating to their employment.[15] Applicants experienced considerable difficulty with the requirement to present extensive documentation of U.S. residency in order to obtain legal status. Many Hispanics were threatened by the possibility that employers would discriminate against them in hiring, an overreaction to the new penalties for hiring illegal aliens.[16]

More recently, in response to natural disasters and civil wars in other parts of the world, Congress has passed new immigration laws and granted a whole new class of people, including Kuwaitis, Lebanese, El Savadorans, Liberians, Somalis, and others, entry into the United States under the Temporary Protective Status (TPS) program.[17] Many of these people have relocated to Minnesota.[18]

The burgeoning Asian refugee population has created a whole host of new civil legal needs to be addressed. For example, many Cambodian refugees have family members in refugee camps who are forced to live under severe conditions. The Humanitarian Parole Process they often must invoke is a difficult one and requires specialized legal assistance

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[11] Future Challenges, supra note 8, pp. 17-18.

[12] Pub.L.No. 100-485, 102 Stat. 2343 (1988).

[13] Minn. Stat. 256.031 et. seq.

[14] Future Challenges, supra note 8, p. 20.

[15] Pub.L.No. 99-603, 100 Stat. 3359.

[16] Lawyers Trust Account Grant Program, supra note 3, p. 15.

[17] 8 U.S.C. 1254a (Supp. 1993).

[18] Lawyers Trust Account Grant Program, supra note 3, p. 16.

and considerable time. To bring a person to the United States and reunite them with their family under this Process requires development of documents to prove the underlying family relationship, documentation of the emergency necessitating the parole request, and proof that adequate financial support is available. Many of the beneficiaries of the Humanitarian Parole Process are in refugee camps in other parts of the world, making it difficult to gather the appropriate documentation. Also, each beneficiary must be interviewed by an INS official who may be in a different country than where the beneficiary is currently living.[19]

In 1992, Minnesota's coalition of legal service programs assisted 42,228 people, 9,483 of whom were people of color.[20] While keeping general statistics and information by race, legal aid programs generally do not keep racial data across the different case areas. Nearly 20,000 Minnesotans a year are turned down for service due to limited resources.[21] It is estimated that at least 5,000 of these are people of color.[22]

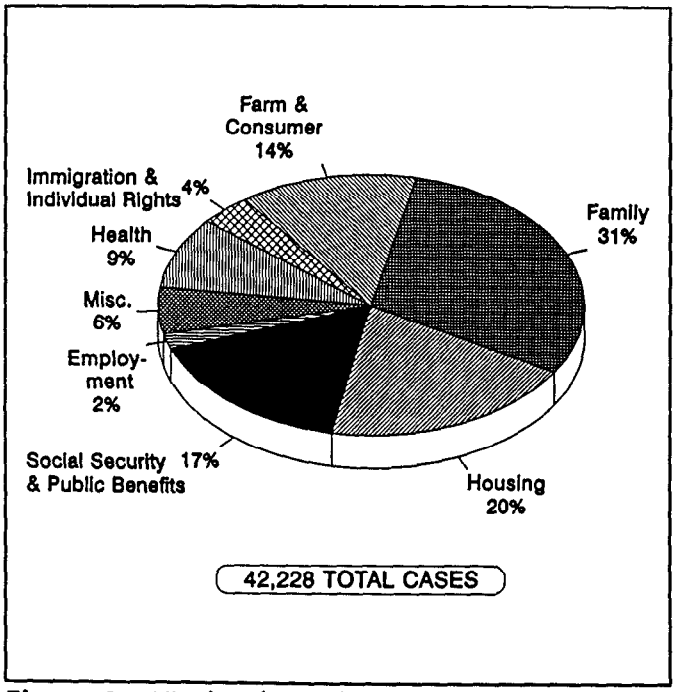

Figure 2. Kinds of Legal Problems Presented by People of Color and Low-Income Individuals — 1992

Figure 2 describes at a glance the major areas of civil legal aid practice in 1992 and, generally, the major areas in which people of color are in need of civil legal assistance.

[19] Id.

[20] Id. Appendix F, p. 3.

[21] Id. Appendix F, p. 4.

[22] Id. Appendix F, p. 6.

Both the Attorney Survey results and the public hearings suggest that people of color also face limited access to adequate representation with respect to personal injury and civil damages cases, workers compensation matters and many other civil legal problems.[23]

Barriers to Obtaining Adequate Representation

Pro Bono Publico. According to the Minnesota Supreme Court, there are approximately 14,016 attorneys licensed to practice in Minnesota. Legal aid providers report that approximately 2,000 of these attorneys are signed up to participate in volunteer attorney programs administered by local legal aid offices.[24] During 1992, these volunteers closed 2,007 cases, most of which involved family law matters. Judicare attorneys closed another 3,225 cases in 1992 on a reduced fee basis (usually $35 - $40 per hour).

The value of such pro bono services cannot be underestimated. However, given the current economic pressures on law firms and the problems and costs of recruiting and administering volunteer programs, pro bono help will not come anywhere near filling the need of thousands of people of color who go without adequate representation.

In addition to economic pressures, volunteer attorneys often lack the substantive expertise needed to represent poor people with their specialized legal problems, or the language skills to represent Spanish speaking or Asian/Pacific Islander clients. A second barrier to adequate representation for people of color by volunteers is that discrimination, family, public benefits, immigration and housing matters tend to be very time consuming, complex, and as mentioned, often require considerable expertise if there is to be effective representation.

The recruitment of volunteer attorneys takes time, skill and the ability to provide training, screening and referral, as well as adequate follow-up to insure quality legal services. In addition to training in specialized areas such as discrimination or housing law, volunteers also often need the support of interpreters and staff lawyers.

Inadequate Legal Aid Resources. During the 1980's, Congress cut Legal Service Corporation (LSC) funds by 25%. Since then, LSC funding levels have remained depressed. Federal funds have again been frozen for 1993, and Minnesota legal aid programs are now receiving only about 50% of the funding in real dollars that were received in 1981.[25]

Legal Aid programs, with the assistance of the Minnesota State Bar Association, have been successful in finding alternative sources of funding as well in enlisting the private bar to assist through pro bono work.[26] Even with these and other resources, however, people

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[23]Minnesota Supreme Court, Attorney Questionnaire Results for the Task Force on Racial Bias in the Courts, p. 26 (Nov. 1992) (on file with the Minnesota Supreme Court).

[24]Lawyer Trust Account Grant Program, supra note 3, p. 21.

[25]Id. pp. 3-4.

[26]Id.

of color continue to experience substantial barriers to obtaining representation in many civil matters.

Legal Aid has significant problems recruiting and retaining lawyers, especially from communities of color, because starting salaries for legal aid attorneys are so low (ranging between $22,000 and $24,000). Law school debts of $30,000 to $70,000 are becoming commonplace. With private firms typically offering first year associates over $50,000, and legal aid salaries at only at 50-65% of public defender or county attorney salaries, legal services programs have a difficult time recruiting attorneys for their urban offices. Rural public defender salaries are much closer to legal aid salaries.

Also, while many minority and majority attorneys make a significant financial sacrifice to enter legal aid service, it appears that a high percentage must leave after a few years in order to meet the needs of their families. All of this impacts on adequacy of representation available to people of color.

The conclusion that people of color experience substantial difficulty in obtaining representation in civil matters is corroborated by many survey responses:

> I have been told by minorities that they think white lawyers will not do a good job for them. They also believe that minority lawyers won't be treated fairly. They feel left out of the system. (White Greater Minnesota Attorney, Attorney Survey)

> Access to the courts is, to some extent, limited by one's resources. Members of minority groups often cannot afford counsel in many civil disputes. This disadvantage is often exploited by such groups as landlords, creditors, and the like. (White Metropolitan Area Attorney, Attorney Survey)

> Lack of money inhibits access to courts and to the extent minorities may be poorer, their access is limited. I frequently talk with women of all races who cannot afford to retain me for divorces or orders for protection. I did contract work for legal aid for 6 months and often turned down people, many minorities, when we were too overworked to represent, who could not afford a private attorney. I have had clients, all women, some minority, who, in general, feel intimidated by the overwhelmingly maleness and whiteness of the bench. Its a general feeling of wariness, mistrust and intimidation. (White Metropolitan Area Attorney, Attorney Survey)

Another area of the law that involves race-specific issues is Native American law.

Autonomy and treaty rights are a complex topic that involves issues not only of comity[27] and full faith and credit, but also questions of tribal constitutional interpretation. The experience of attorneys who represent Native American interests in court has been that there is a profound lack of understanding of tribal courts and treaty rights.[28]

A county attorney's reaction to the Eighth Circuit decision in Walker v. Rushing provides a good example of such ignorance and general hostility.[29] In Walker the Federal Circuit Court held that Indian tribes possessed concurrent criminal jurisdiction over their members. The county attorney in question stated he did not recognize Walker as valid law in Minnesota and later threatened citations upon tribal courts if they persisted in asserting tribal court jurisdiction.[30]

As issues of jurisdiction, sovereignty and autonomy become increasingly more significant, it is incumbent upon judges and attorneys to become well versed in the special legal relationship between the various tribes and the state. Legal education and public awareness is essential in resolving the hostility and ignorance toward tribal autonomy and treaty rights.

Currently there is no clinical course work in any of the three law schools that covers Native American treaty rights or Native American family law. Hamline School of Law teaches one Native American law course and is in the process of opening an American Indian Policy in Law Center. The University of Minnesota has one American Indian law course one semester per year. Finally, William Mitchell College of Law offers an Indian law seminar one semester per year.[31]

The continuing legal education branch of the Minnesota State Bar Association, Minnesota CLE, has not had a course on Native American treaties or law and is not currently planning to do so. The only CLE course work currently available is a course on legal reservation-based gambling.[32] None of these courses are required. Thus, a student in Minnesota, a state with a significant Native American population, could very easily never encounter even the rudiments of Native American law.

At the December 1992 Judges' Conference, an optional two hour workshop on the Indian Child Welfare Act was offered.

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[27]Comity: Simply a phase designating the practice by which the courts of one state follows the decision of another on a like question, though not bound by law of precedents to do so. Black's Law Dictionary 242 (5th Ed. 1979).

[28]Letters to the Task Force from Native American and white attorneys (Aug. 21 & 30, 1992).

[29]898 F. 2d 672 (1990).

[30]Letter to Task Force from Native American attorney.

[31]Letters to the Task Force from Hamline School of Law, William Mitchell College of Law, and the University of Minnesota Law School.

[32]Letter to the Task Force from Minnesota CLE (Aug. 4, 1992).

Opportunities for Minority Attorneys and Judges

A recurring theme of the Task Force Report is that the low number of people of color at work across all parts of the bar represents a serious issue both of trust in the system and access to it for communities of color. For that reason, the Task Force examined where lawyers from communities of color are working, whether or not they are being retained in those positions, whether they are treated positively and respectfully by other members of the bar, and whether their effectiveness is affected by the treatment they receive.

The Task Force found that lawyers of color are underrepresented in Minnesota. Currently, 3% of Minnesota's lawyers are minority, compared to a 6% minority population. New attorneys (since 1/1/89) have been 5% minority. One-third of the new minority lawyers are women.[33]

A 1990 survey of large law firms by the Twin Cities Committee for Minority Hiring in Large Law Firms confirmed a total of 53 lawyers of color out of a total of 2,105 lawyers employed.[34] People of color still represent roughly 2 percent of the lawyers employed in these law firms. Even though the pool of lawyers of color is expanding, the largest Twin Cities law firms still have no lawyers of color in senior management. The number of partners of color in all firms combined can be counted on one hand. These firms have only a small number of associates of color and an even smaller number of associates with more than a few years of experience.

Lawyers of color who appeared before the Hennepin County Bar Association Glass Ceiling Task Force testified uniformly that the Twin Cities metropolitan area is a hostile environment in which to practice, although the hostility may often not appear overt ("this is Minnesota nice"); that their experiences here are worse than in other legal communities; and that lawyers of color face disadvantages in hiring, as well as in advancement and retention:[35]

> When I was in law school I had an inherent belief that if minority attorneys were talented, politically and culturally aware, worked hard and produced good work, the system would allow some minorities to sneak through. However, now that I work for a large law firm institution, the institution is more biased and toxic than I thought, making the glass ceiling virtually untouchable for minorities. (Male Lawyer of Color, Law Firm)[36]

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[33]Wayne Kobbervig and Carol Westrum, Minnesota Supreme Court, Summary and Analysis of Civil, Access and Courtroom Interaction Data from Questionnaire for the Task Force on Racial Bias in the Courts, p. 3. (Nov. 20, 1992) (on file with the Minnesota Supreme Court).

[34]Twin Cities Committee on Minority Lawyers in Large Law Firms, Vol. 1, No. 1, TCC Exchange, p.3 (Spring 1990).

[35]Hennepin County Bar Association Glass Ceiling Task Force, Walking Through Invisible Doors and Shattering Glass Ceilings, p. 6, (Apr. 20, 1993)(hereinafter "Glass Ceiling Report").

[36]Id.

> When I moved to this legal community I experienced discrimination five times worse than what I had seen previously. Opposing counsel are, at times, rude, verbally abusive and patronizing. (Woman Lawyer of Color, Law Firm)[37]

> It is perfectly obvious that there is a problem with promotion and retention of lawyers of color in the Twin Cities. By observation, there are large firms that currently have no lawyers of color, and the number of senior associates and partners of color can be counted almost on one hand. (Woman Lawyer of Color, Law Firm)[38]

> The term glass ceiling should not be used. The term implies invisible barriers, but the barriers are very visible. (Male Lawyer of Color, formerly in Law Firm)[39]

> The experience of the glass ceiling is maddening. It is like trying to prove something beyond a reasonable doubt with circumstantial evidence. Perpetrators act with a smile on their face and often in the name of progress. (Male Lawyer of Color, formerly in Law Firm)[40]

Testimony and survey responses to the Task Force on the subject of hiring, promotion and retention decisions involving minority lawyers echoe these observations.

> Token attempts — adequate recruitment requires adequate retention efforts. (Minority Metropolitan Area Attorney, Attorneys Survey, Attorney Survey)

> Although minority attorneys were frequently interviewed, few were given job offers. The typical explanation for this was that it was difficult to find minority law students whose qualifications (i.e. grades) were adequate. In my opinion, the firm should have looked harder, and should have been more willing to look beyond law school grades in examining each individuals qualifications. (White Metropolitan Area Attorney, Attorneys Survey, Attorney Survey)

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[37] Id. p. 7.
[38] Id.
[39] Id.
[40] Id.

> Initial recruiting efforts are exemplary — post hiring mentoring, conditioning, client opportunities stink. (White Metropolitan Area Attorney, Attorneys Survey)

Attorneys also were asked to share any instances of racial bias or race related problems they had encountered or observed with respect to people pursuing legal careers in Minnesota. Again, a brief summary of some of the comments provides a dramatic perspective both with respect to the general problem of racial bias in our judicial system and the limited opportunities for attorneys of color.

Even a casual review of the comments reveals a striking undercurrent of resentment expressed by a number of respondents both as personal experiences and as generalized statements that minorities get "all the advantages..." It is also enlightening to take note of the polarization of the viewpoints expressed on the questionnaires, and to see that the conflicting responses come from the same types of lawyers in the same geographic areas.

> I often work with law students who are seeking employment and with attorneys who are making career transitions. Great strides have been made, but there is still a great deal of unspoken bias. Race bias in hiring is usually subtle, but not always. It has involved questions such as "our firm has been around for x years and we've never had a African American lawyer. Why do you think we should hire one now?" And statements that presume poor academic credentials (without checking first). Often interviewers will assume that applicants of color will not be interested in the types of social activities in which majority members of the firm like to engage. Interview questions in general may gloss over things for applicants of color which will be discussed at length with white applicants. (White Metropolitan Area Attorney, Attorney Survey)

> I have heard from law school friends (who are minorities) that there is a lot of affirmative effort, but no action. In other words, they have plenty of interviews from the public sector and private firms, but they are not ultimately offered the position. I have also experienced comments directed at myself because I am a petite white woman that I would not be able to "handle" certain criminal defendants (I was told this when interviewing for a job in the public sector). (White Greater Minnesota Attorney, Attorney Survey)

> During the interviewing process with law firms, interviews were very candid, that minorities were not viewed favorably by clients, and were not capable of bringing any business to firms, therefore they were not an asset. (Minority Metropolitan Area Attorney, Attorney Survey)

African American attorney undermined by others in office who stated they felt he was hired only because of his race. Very difficult working environment. He wasn't given support or respect by many co-workers. He wasn't "allowed" by co-workers to make mistakes and his strengths were ignored. (White Metropolitan Area Legal Services Worker, Attorney Survey)

As a member of a minority group, I perceive a surprise and sometimes controlled shock when I introduce myself as a lawyer. Clients more often try to confirm my opinion with my white counterparts or supervisor. In talking to my lawyer peers, I hear statement like "the minority lawyer from the abc firm is working on our case just because he's a minority. He's not really qualified." Or "you know that lawyer whose convicted of embezzlement? He's African American you know." (He wasn't African American) (Minority Metropolitan Area Attorney, Attorney Survey)

It seems to be very clear that minority attorneys have nowhere near the opportunities to develop a practice in my firm that white (male) attorneys have. No mentoring exists, no special efforts are made to introduce them to clients, and I think other attorneys avoid them, socially and professionally. An African American woman lawyer friend of mine was repeatedly assumed by her lawyer peers to be a secretary. She had to tell others in her office on many occasions that she was a lawyer. This wears at one's sense of professional self-esteem. (White Metropolitan Area Attorney, Attorney Survey)

I think there is significantly less mentoring of minorities. I am a manager and have felt that other managers judge the performance of minority attorneys more harshly than whites. There is little awareness of the dominance of a "white, upper-class" value and cultural system in the law office. The minorities must do all the adapting. One African American female applicant was highly rated by all but one interviewer. The one (older, white male) interviewer said she was "too aggressive". She was thrown out of the interview process at that early stage because of one negative comment. In that same group of applicants, there were two white males who had connections to senior members of the office. Even though they had lower grades and negative reviews from numerous interviewers, they were hired. When a Native American attorney was assigned to a complex financial case, numerous lawyers questioned whether he "had the background" for it. He

> was as qualified as the non-minority attorney assigned. None questioned the other (white male) attorneys "background" or ability to handle it. (White Metropolitan Area Attorney, Attorney Survey)
>
> I find that many of the firm's clients are prejudiced against racial minorities. They often make racial slurs or derogatory statements about particular minority groups, about minority groups in general, and about individuals because they belong to a minority group. I have to believe that this bigotry effects the practice of law at every level and therefore presents a problem or obstacle for a minority attorney, judge or client at every stage of the legal process. (White Metropolitan Area Attorney, Attorney Survey)

Findings

1. People of color experience a disproportionately large number of civil legal problems due to racial discrimination and poverty.

2. Civil legal areas where people of color particularly need representation include family law, housing, public income and health benefit matters, education, employment and other discrimination, consumer matters and immigration.

3. While making up only 6% of Minnesota's population, people of color constitute 23% of the people represented by legal aid programs.

4. People of color are less likely to have access to representation in civil cases.

5. The lack of resources for legal aid programs is a major barrier to access to representation for people of color.

6. It appears that few employers take adequate steps to recruit, hire, retain, and promote minority attorneys.

7. There are proportionately fewer minority attorneys both licensed to practice than the proportion of people of color in the general population.

8. There are fewer opportunities for minority attorneys to develop effective mentoring relationships.

9. Parties asserting Native American treaty rights encounter general hostility from non-Indian judges, attorneys, and other justice system employees.

10. Tribal courts often are not recognized in court proceedings.

11. The three Minnesota law schools are providing only non-required courses on Native American treaty rights and laws.

12. The Minnesota continuing legal education system is not providing avenues for education of attorneys on issues of Native American treaty rights and laws.

Recommendations

1. The Legislature should appropriate a higher level of funding to legal aid programs to enable them to increase legal representation for people of color, particularly with respect to family law, housing, public benefits, immigration, discrimination and education matters.

2. The Supreme Court, the Minnesota State Bar Association (MSBA), Minnesota Minority Lawyers Association (MMLA), other minority law associations, and legal aid providers should strengthen their commitment to motivating private attorneys to provide pro bono or reduced-fee services, or otherwise financially support representation to people of color.

3. The Supreme Court should encourage and support MSBA and Legal Aid Society efforts to raise foundation dollars to leverage pro bono time to create a specialized employment and/or housing discrimination panel (including necessary training, and support and administration activities) to assist people of color.

4. The MMLA should assist the MSBA in developing and providing cultural diversity training for its staff.

5. The minority bar associations should assist MMLA in the development of model recruitment policy and program for legal employers to use in hiring and recruiting minority attorneys.

6. The MMLA and other minority law associations in conjunction with the MSBA should provide recruitment and hiring practices seminars and materials to assist law firms in adopting racially neutral hiring practices. These seminars should be CLE approved.

7. Law firms and other employers should internally review their mentor relationships and systems to make sure that adequate mentoring programs are available to minority attorneys.

8. The MMLA and other minority law associations in conjunction with the MSBA should develop a training package to enhance the capacity of law firms and other employers to develop mentoring relationships and to otherwise create a climate conducive to retention of minority attorneys.

9. The Supreme Court, the MMLA and other minority bar associations in conjunction with the MSBA should identify a pool of people with expertise to provide cultural diversity training for legal employers.

10. The minority bar associations should assist the MSBA in requesting law firms and other legal employers to commit to hiring a certain number or percentage of minority attorneys and other staff over a specified period, in order to bring the percentage of minority attorneys practicing in Minnesota to a level of at least parity with the percentage of minority population in the state.

11. The Supreme Court should work with the Minnesota Department of Education to develop materials and to encourage or require courses in the elementary and secondary school setting to develop greater understanding of the legal system.

12. Judges, justice system personnel and attorneys should receive specific training on the Indian Child Welfare Act and Native American treaty rights issues.

13. All students attending one of the three Minnesota law schools should be required to complete course work in the basic of Native American treaty rights and laws, especially as it relates to sovereignty, jurisdiction and family law.

14. All students attending one of the three Minnesota law schools should be required to complete cultural-diversity course work, preferably in their professional responsibility class. Faculty members and staff should also be required to receive diversity training.

15. Minnesota continuing legal education providers should begin providing substantive continuing legal education on issues of Native American treaty rights and laws.

MINNESOTA BAR EXAMINATION

Any discussion of the impact of racial bias on the judicial system would be incomplete without an examination of how racial bias may affect the process by which lawyers are admitted to the bar.[41] One of the principal and most fundamental findings of the various task forces that have examined racial bias in recent years, is that underrepresentation of minorities across all sections of the bar adds to the widespread perception that the judicial system does not offer equal justice to all.[42]

We must recognize the extreme importance that bar examination passage has on minority access to the legal profession and commit ourselves to a thorough study of the bar examination process in order to ensure that it is free of bias.

There is a common perception that the minority pass rate on the Minnesota Bar examination is well below that of white applicants to the bar.

> It is my experience as an employer the past 15 years that the bar admissions process has the effect of discriminating against law graduates of color. We have employed at least 6 minority law graduates who have gone on to distinguished legal careers as judges, professors, CEOs, etc., each of whom had failed the Minnesota bar exam several times. It was, and is, inconceivable to me that these individuals failed the bar when I observed many less qualified caucasian attorneys practicing. There is a wide perception in the legal services community that the Minnesota bar examination process not only discriminates against applicants of color, but bears little relationship to most of the qualifications necessary to effectively practice law. (White Metropolitan Area Legal Services Attorney, Attorney Survey)

> My own belief is that the bar admittance procedure is the major problem contributing to the lack of minority attorneys. I believe that the focus of this investigation should be on the bar exam, grading, and admittance process. (White Attorney, Attorney Survey)

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[41]American Bar Association, Achieving Justice in a Diverse American: Report of the American Bar Association Task Force on Minorities and the Justice System (July 1992).

[42]Committee on Legal Education and Admissions to the Bar of the State of New York, Report on Admission to The Bar in New York in The Twenty First Century: A Blueprint for Reform, (1989) (hereinafter "A Blueprint for Reform"); Special Subcommittee to Study Passing Rates, Report to the Committee of Bar Examiners of the State Bar of California on Minority Passing Rates on the Bar Examination (Sept. 17, 1988) (hereinafter "California Minority Passing Rates"); Florida Supreme Court Racial and Ethnic Bias Study Commission, Where the Injured Fly for Justice (Dec. 11, 1991) (hereinafter "Where the Injured Fly for Justice").

> Many minority lawyers have consistently failed the bar. I think the bar exam process should also be studied for racial bias. (White Attorney, Attorney Survey)

In addition, the Task Force heard testimony at its public hearings regarding perceptions of bias in the bar examination process. A number of witnesses shared the view that the bar examination process was "shrouded in secrecy" and they questioned its confidentiality. The witnesses expressed strong concerns that minority test takers were being identified through their I.D. pictures and matched to test booklets in a systematic attempt to limit minority bar admission. They also expressed concerns over obtaining satisfactory explanations of the grading process, including the opportunity to review sample satisfactory answers to test questions.[43]

Similar complaints and perceptions about the impact the bar examination has on minority involvement in the legal system have prompted other states to commission complete studies on this issue alone. New York, Florida, and California have all recently published reports on this issue.[44] These reports found significant gaps in pass rates between people of color and white candidates. If the findings in these states are indicative of the status of minority bar examination passage, and we have no reason to think they are not, then we must vigorously pursue our study of this issue. It should be noted that lower passage rates for people of color may not simply be a result of problems with the bar examination process or the exam itself. There may well be other factors that have a deleterious impact on bar examination results for many people of color such as: language difficulties; unequal quality of education received prior to law school; financial status (i.e. needing to work during law school and during preparation of the bar); availability and/or efficacy of minority-focused tutoring programs; possible bias in some elements of law school curricula; and the impact of poverty.[45]

Like most state boards, the Minnesota Supreme Court Board of Law Examiners does not presently keep statistics on passing rates by race of applicant. The Board's rationale for not previously collecting race-specific data has been a desire to avoid any question of racial or ethnic bias in the Minnesota bar examination process. A comprehensive study of the Minnesota State Bar Examination focusing especially on comparative pass rates between racial groups cannot be completed until we have gathered reliable data.

The Board reports that it has not, in any formal manner, reviewed the essay portion of the Minnesota bar examination for racial or cultural bias.[46] The Board does, however, review all essay questions for explicit derogatory racial, cultural or gender references, and

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[43]Public Hearing, St. Paul, (Oct. 19, 1991).

[44]A Blueprint for Reform, supra note 42; California Minority Passing Rates, supra note 42; Where the Injured Fly for Justice, supra note 42.

[45]See Stephen P. Klein and Roger Bolus, Committee of Bar Examiners of the State Bar of California, Minority Group Performance on the California Bar Examination, (Dec. 3, 1987).

[46]Letter from Richard Kyle, President of Board of Law Examiners to Judge LaJune Thomas Lange (Feb. 14, 1992) (on file with the Minnesota Supreme Court).

deletes any such references when they appear. The Board also reviews all of the hypothetical questions in the essay portion of the examination to ensure that not all the criminal defendants are African American or other racial or ethnic minorities, that not all the secretaries are women.[47]

The Board also relates that it has made an effort to include people of color as essay writers. Dean Dan Bernstein from the University of Wisconsin, Professor Anita Hill from the University of Oklahoma, Professor Charles Edison Smith from North Carolina Central University School of Law, all African American, and Professor Wendy Shiba, an Asian from Temple University, are among those who have written and submitted essays. Part of the Board's effort to recruit professors from communities of color is the maintenance of regular contact with the Minority Law Professors Association.[48]

Over the course of the past year the Supreme Court increased minority representation on the Board of Law Examiners, increasing the number of minority board members to three out of nine. In addition, the Board has discontinued the practice of retaining identification photos of examinees at the conclusion of the test. The Board has also taken steps to make information about the bar examination process more accessible by scheduling meetings at the area law schools and making sample test answers available.

It is our sincere hope that a twin strategy of race-specific data collection and further study of the entire bar examination process will soon help us understand and successfully address any barriers that may be impeding the entry of talented applicants from communities of color into the legal profession.

Findings

1. There is insufficient information to determine how applicants to the bar from communities of color fare in comparison to white applicants with respect to pass/fail rates on the bar examination.

2. Common perceptions exist in the legal community that minority applicants are discriminated against in the test administration or grading process. These must be addressed through further study.

Recommendations

1. The Minnesota Board of Law Examiners should collect racial data on all bar exam participants using the least intrusive method possible in order to track pass/fail and repeater rates for all examinees. Comparisons by racial group, Minnesota law school graduates and other factors could be separated for analysis.

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[47]Telephone interview with Margaret Fuller Corneille, Director of Board of Law Examiners (Dec. 9, 1992).

[48]Id.

2. The Supreme Court should study the Minnesota bar examination process to determine if any of the following specific areas of concern affect pass/fail rates: English as a second language; unequal quality of education received prior to law school; financial status (i.e. needing to work during law school and during preparation for the bar); availability and/or efficacy of minority-focused tutoring programs; possible bias in some elements of law school curricula; possible bias in private bar preparation program curricula; the impact of poverty; the particular law school attended, LSAT scores, law school rank, etc.

3. The Board should keep data on race for admittees without examination to the bar, pursuant to the Rules of the Supreme Court and of the State Board of Law Examiners for Admission to the Bar, Rule IV.

4. The Board should make greater efforts to explain the administration and grading of the exam to law students, prospective law students, members of the bar, and the general public.

5. The Board should make every effort to hire more minority graders and should continue to seek bar exam questions from minority law professors.

6. The Board should review the training of graders and include cultural diversity issues in its training. Graders' performance should continue to be reviewed for grading disparities.

7. The Board should periodically submit essay questions to testing experts for review of any racially/culturally-based language, references or biases inherent in the test questions.

JUDICIAL EVALUATION

The judges of the State of Minnesota are subject to various procedures for evaluating their performance on the bench. Among these are public elections, court-watch groups and formal judicial evaluations. The stated purpose for judicial evaluations is to improve judicial performance and to inform the public. These are important and worthwhile goals, but the Task Force is concerned that some methodologies, especially those based on survey data are inherently flawed. The worst of these fail to yield useful information on any judge, but their results are especially suspect when judges of color are evaluated because the survey design allows racial and gender bias to taint the results.

In the last five years, a number of committees discussed ways to evaluate judicial performances.[49] The Hennepin County Bar Association Task Force on Judicial Evaluation and the Minnesota State Bar Association's Judicial Administration Committee were the only committees to actually perform judicial evaluations. In addition, one law-related publication, Minnesota's Journal of Law and Politics, crafted its own judicial survey of the Hennepin County bench.[50]

In November 1990, the Minnesota Supreme Court issued an order approving a pilot program for confidential evaluation of judges. This pilot program was developed by the Committee of the Minnesota State Bar Association (MSBA) Judicial Administration and was approved by the MSBA.[51]

This program evaluated fourteen randomly selected judges. It used two separate evaluation methodologies. The first methodology utilized was a written, confidential questionnaire completed by jurors and attorneys. *The attorney questionnaires were sent only to attorneys who had appeared before the subject judges in the last twelve months.* All questionnaires were submitted anonymously. The second method of evaluation was to have a "resource judge" observe a judge "in action" during a normal work day.[52]

The pilot program found that the confidential attorney questionnaire was a valuable resource to judges in evaluating judicial performances. Also, the person-to-person review of questionnaire results by a resource judge with the subject judge was an important component of the evaluation process.[53]

The pilot program made the following recommendations to the Supreme Court:[54]

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[49]Hennepin County Bar Association; Minnesota State Bar Association Judicial Administration Committee; Minnesota State Bar Association Civil Litigation Section; Minnesota District Court Judges Association Judicial Evaluation Committee; and American Bar Association Proposal.

[50]See, Rhonda Hillberry, Rudy's Benchmarks, Minn. J. of Law and Politics (Dec. 1990), pp. 11-15..

[51]Minnesota Supreme Court, Pilot Program to Improve Individual Judicial Performance (Feb. 1, 1993) (on file with the Minnesota Supreme Court).

[52]Id. pp. 3-5.

[53]Id. p. 5.

[54]Id. pp. 6-7.

1) A judge should be evaluated periodically;
2) The Supreme Court should establish a permanent program of judicial evaluation;
3) The evaluation program should be confidential; and
4) Educational programs and training seminars should be undertaken to help improve judicial performances.

In November 1991, the Hennepin County Bar Association Task Force on Judicial Evaluation sent out its questionnaire to all Hennepin County Bar members and all county attorneys, city attorneys, public defenders that practice in Hennepin County. The questionnaires were to be completed by the honor system.[55] Attorneys who had individual direct case contact with the subject judge in the *last four* years were to fill them out. The questionnaire also had the following retention question: "If this judge were up for election at the next general election should this judge be retained?" Only the retention question for each individual judge who is standing for election was to be published and made public. All other parts of the questionnaire were confidential. The results were published in March 1992.[56]

The forementioned Minnesota Journal of Law and Politics survey was published in the September 1990 edition. It asked its readership to respond by sending results back to the magazine. The survey was conducted only on the judges appointed by Governor Perpich.

Both the Hennepin County Bar Association and the Law and Politics poll have come under public attack for faulty methodology in regard to basic survey technique and the potential for biases against female judges and judges of color.

In February 1993, the Executive Committee of the Hennepin County Bench found both that the Hennepin County Bar Association Judicial Evaluation survey was flawed and that its stated goal of helping improve judicial performance was not being met. In a letter to the task force, the Chief Judge of Hennepin County stated the following:

> The Hennepin County bench has had strong reservations about the validity and usefulness of the Hennepin County Bar Association judicial evaluation. Based upon a reasoned analysis of the survey which was issued last year, the vast majority of our bench has concluded that there are serious flaws in its methodology. An analysis of the results of the questions, particularly in certain areas such as the administration of a person's civil block, clearly reveals both a gender and racial bias in the answers.

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[55] Letter and attached survey from Sheryl Ramstad Hvass, President, Hennepin County Bar Association to members of the Hennepin County Bar Association (Nov. 5, 1991) (on file with the Minnesota Supreme Court).

[56] Id.

> We have as a bench spent a considerable amount of time trying to analyze whether there were some ways to correct or improve the evaluation done by the Hennepin County Bar Association. After considerable thought, it is the consensus of our bench that the methodology is so flawed and the purpose so questionable that there is not reason for us to make that futile effort. Our bench recognizes the need to improve and the need to be responsive to the needs of the legal community. Toward that end, we have initiated a series of measures we believe will improve the district court, such as introducing total quality management. The Bar evaluation will not be part of that effort.[57]

In a letter published in the December 1990, "Law and Politics" magazine, Joseph W. Anthony, Chair of Hennepin County Bench and Bar Committee, wrote:

> ...The question of judicial evaluation has been hotly debated at both the Minnesota and Hennepin County Bar Associations. As a result of those debates, judicial evaluation programs were adopted that contain safeguards so that information by the evaluation process is not arbitrarily and unfairly used to discredit judges.
>
> It is against his backdrop of information that the Bench & Bar Committee considers your questionnaire to be most troubling. We recognize that you are in the business of selling magazines and that the proposed questionnaire may have some entertainment value. No one seeks to deprive you of your desire to entertain. However, if you choose to entertain then, perhaps, in accumulating information you should be more careful with your facts. For example, despite your statement to the contrary, your survey of judges includes those appointed by governors other than Governor Perpich. Second, you have at least one judge in your survey who is no longer serving on the bench.

In addition to methodological flaws in regard to the basic survey technique, an important issue exists regarding the potential for biases against female judges and judges who are people of color. *Since such surveys primarily measure perceptions, they will tend to incorporate any gender and racial biases that are held by respondent.* In light of this potential, it is relevant to comment on the findings of the Task Force regarding testimony on the existence of bias against minority judges, and its consequences for judicial evaluations.

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[57]Letter from Kevin S. Burke, Chief Judge, Hennepin County District Court, Fourth Judicial District to Racial Bias Task Force (April 29, 1993) (on file with the Minnesota Supreme Court).

The public hearing testimony, focus groups and the survey material all supported one central finding: racial bias is real and permeates every level of the legal profession and the court system. The Task Force found that minority judges face an often hostile and not very empathetic environment both on and off the bench. Examples of hostility, indifference and resentment were common.

> In open court I was called a "nigger" by a white defendant. I found him guilty of contempt of court and sent him to the workhouse.[58]

> Yes. [I've seen] both overt and covert discrimination. I've had defendants call me a "black bitch," "nigger."[59]

Insensitivity has also been found on the bench. A declaration by a white judge of "Martin Luther Coon Day" reflected the need for the judiciary to closely monitor its own behavior and exert leadership in the elimination of bias and insensitivity in the bench and bar.

To the extent that biases exist among attorneys and their clients regarding racial minorities on the bench, surveys soliciting the opinions of such people will tend to show results that adversely impact minority judges. In such a context, people who design, analyze and report on such surveys bear a special responsibility to be sensitive to this potential source of bias, to understand how it can be minimized through survey design, data analysis and reporting, and to inform readers of this potential problem.

Findings

1. The Hennepin County Bar Association Task Force on Judicial Evaluation and the Minnesota State Bar Association Judicial Administration Committee have performed judicial evaluations.

2. The Hennepin County bench has rejected the Hennepin County Bar Association Task Force model as critically flawed.

3. Published surveys evaluating the supposed performance of judges have not always satisfied commonly-accepted minimum standards of objectivity and quality.

4. Little sensitivity appears to exist to the problem of racial bias in opinion surveys and special efforts do not appear to have been made to minimize such biases or warn readers of the potential bias.

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[58]Memo to Task Force from Hennepin County African American judge (May 6, 1993).

[59]Memo to Task Force from Hennepin County African American judge (May 6, 1993).

Recommendations

1. The potential for unfair impact on minority judges is sufficiently strong that some guidelines to those doing such surveys are noted.

    a. Responsibly-conducted surveys and resulting reports should comply with commonly-accepted standards of sound survey design and analysis.

    b. Recognizing that such surveys simply measure perceptions, the authors need to be sensitive to the real potential for such racial biases in their results, take steps to minimize such bias in their surveys, and warn the reader about this possibility in their reports.

BUILDING CULTURAL DIVERSITY IN THE JUSTICE SYSTEM WORKPLACE

A recurrent theme of this Task Force Report is that people of color in Minnesota are confronted by a court system composed almost exclusively of white justice system employees who often have little understanding of minority cultures or communities. As documented throughout this report, this reality creates distrust of the system among people of color and results in patterns of disparate treatment as compared with whites. Since this is a theme that spans virtually all aspects of the system, it is addressed here as a distinct section of the report.

One consensus that emerged during the work of the Task Force is that in order to ensure that the system evolves toward elimination of racial bias, we need to make the system itself more culturally diverse through the hiring, promotion, and retention of people of color. Second, we need to ensure that judges, attorneys, court personnel, probation officers, law enforcement personnel, and others involved in the system receive *high quality* training designed to help them become more culturally sensitive to the people they serve. During a meeting of the full Task Force, one member said, "Providing training that will make people in the system more culturally aware is well and good, but we need to do better screening to make certain people who can't deal with culturally-diverse client loads and co-workers don't get hired in the first place."

Finally, we need to begin keeping race-specific employment data throughout the entire system. Then we will be able to continually monitor our progress toward the building of a culturally-diverse workforce more truly representative of the community it serves.

Demographics of the State and Client Population

People of color comprise only 6% of Minnesota's population.[1] However, the composition of the population in Minnesota is changing rapidly. For example, during the 1980's the nonwhite population of the state grew by 72%.[2] At the same time, officials within the justice system are finding that substantial proportions (if not the majority) of their case loads involve people of color. Some examples are:

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[1]Bureau of the Census, U.S. Department of Commerce 1990 Census of Population and Housing, Summary Population and Housing Characteristics, Minnesota, p. 85 (Aug. 1991) (hereinafter "Census Bureau's 1990 Population Characteristics").

[2]Minnesota State Demographer, Population Notes, p. 1 (Sept. 1991).

- While people of color represented only 11% of the Hennepin County population in 1991,[3] they accounted for 51% of all juvenile and adult arrests for Part I felony crimes.[4]

- Of all the homicide cases presented to the grand jury by the Hennepin County Attorney in 1990, 65% of the victims and 77% of the suspects have been people of color.[5]

- In 1990, of those cases where race information was known, 22% of juveniles processed statewide as delinquent were people of color.[6] At the same time, people of color accounted for 8% of the state's juvenile population ages 10-17.[7]

- The Minnesota Coalition of Legal Service Programs reports that while 6% of the state's population is nonwhite, 23% of their clients are people of color.[8]

- Of the people convicted of felonies in Minnesota in 1990, 29% were people of color.[9]

Such demographics show that substantial proportions (sometimes the majority) of justice system employees' case loads involve people of color. Clearly, in order to perform their duties in a competent fashion, employees in the criminal justice system need to be able to work with a culturally and racially diverse community. To deal fairly with people of color who are victims or offenders, justice system employees need to develop greater cultural and racial sensitivity and gain an understanding of other communities, lifeways, and cultures. *This is an essential job requirement and needs to be treated as such in hiring and promotion.*

The Task Force collected data to determine how well the racial composition and training of employees in the system compares with these requirements.

Demographics of Justice System Employees

The surveys completed by the Task Force in 1992 show that for the state as a whole, approximately 3% of attorneys, 7% of probation officers, and 5% of judges are people of

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[3]Census Bureau's 1990 Population Characteristics, supra note 1, p. 97.

[4]Office of Planning and Development, Hennepin County, Hennepin County Crime Report 1991 Appendix, p. 79 (Aug. 1992).

[5]Office of the Hennepin County Attorney, Hennepin County Attorney's Task Force on Racial Composition of the Grand Jury, p. 30 (April 1992).

[6]Minnesota Criminal Justice Statistical Analysis Center, Minorities in the Juvenile Justice System, At-a-Glance, p. 9 (Oct. 1991).

[7]Id. p. 5

[8]Interview with staff member, Minnesota Coalition of Legal Service Programs.

[9]Minnesota Sentencing Guidelines Commission, Summary of 1990 Sentencing Practices for Convicted Felons, p. 6, (June 1992).

color. Law enforcement agencies throughout the state are much more white than the communities they serve. For example, Native Americans comprise 16% of Beltrami County's population,[10] but the county sheriff and the city of Bemidji together employ only four Native Americans (as jailers), which represents 5% of both forces.[11] Kandiyohi County and Willmar (the county's largest city) both have an all-white police force.[12] In October 1992, the St. Paul Pioneer Press reported that Minneapolis had one of the worst records of hiring African American police officers among the country's 50 largest cities.[13] Although 13% of Minneapolis' population is African American, the percentage of the police force that is African American is less than 6%.[14] *In short, the racial composition of employees in the system generally underrepresents the racial diversity of the community at large and vastly underrepresents the racial diversity of people served by the system.*

Minnesota statutes provide that a municipality is *encouraged* to prepare and implement an affirmative action plan for the employment of people of color, women, and the disabled and submit the plan to the commissioner of human rights, but such plans are not mandatory.[15] Another statute, Minn. Stat. §419.06 (1992), addresses affirmative action in police departments. However, this statute only applies in cities not of the first class, that have created a police civil service commission.[16]

Another factor that negatively impacts the effectiveness of white justice system employees in working with people of color is the insufficient amount of cultural sensitivity training that they have received. Statewide samples of probation officers, attorneys and judges in the 1992 surveys conducted by the Task Force were asked about such training. Seventy-three percent (73%) of the probation officers reported having some formal cultural sensitivity training.[17] Of those who did, only 32% said that it was mandatory.[18] Fifty percent (50%) of the judges reported receiving any such training, with 23% of those reporting that it was mandatory.[19] Only 14% of the statewide sample of attorneys reported having received such training while working for their current employer, with 42% reporting

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[10]Census Bureau's 1990 Population Characteristics, supra note 1, p. 86.

[11]Letter from Bemidji Police Department to Task Force on Racial Bias in the Courts (Sept. 11, 1992) (on file with the Minnesota Supreme Court).

[12]Letter from Todd Miller, Willmar Police Chief to Task Force on Racial Bias in the Courts (March 30, 1992) (on file with the Minnesota Supreme Court). Chief Miller indicated that as of March 30, 1992, Willmar employed one Hispanic police officer. This officer subsequently left the Willmar police force. Law Enforcement Focus Group (Jan. 13, 1993).

[13]Richard Chin, Minneapolis Law in Hiring Black Police, St. Paul Pioneer Press, Oct. 8, 1992, p. 1A.

[14]Id. p. 6A.

[15]Minn. Stat. § 363.073, subd. 1 (1992).

[16]Minn. Stat. § 419.017, (1992).

[17]Minnesota Supreme Court, Probation Officer Survey Results for the Task Force on Racial Bias in the Courts, p. 24 (Nov. 9, 1992) (on file with the Minnesota Supreme Court).

[18]Id.

[19]Minnesota Supreme Court, Judge Questionnaire Results for the Task Force on Racial Bias in the Courts, p. 38 (Nov. 1992) (on file with the Minnesota Supreme Court).

that the training was mandatory.[20] *Such findings suggest that little emphasis has been placed on providing predominantly white justice system employees with the training needed to help them understand and respond appropriately to the cultures and communities of the people of color with whom they are involved.*

The Task Force received many reports of the distrust and dread that many people of color feel when faced by an almost exclusively white system. For example, the following testimony from a St. Paul public hearing:

> We sat down to select a jury. I sat there with my client, my white co-counsel, the white judge, the white prosecutor. In walked the 36 potential white jurors. My client turned to me in his first degree murder case and he said, "Can I plead guilty?" (White Public Defender, Metropolitan Area, St. Paul Public Hearing)

The predominantly white composition of the work force in law enforcement agencies and the justice system, coupled with the meager training generally available regarding racial diversity, creates difficulties not only for people subject to the system, but for people of color who are employees in the system as well. For example, the public hearing testimony and survey comments from minority attorneys were full of accounts of the special difficulties they face in getting hired, hurdles they need to overcome in disproving stereotypes, hardships they face in making connections and receiving mentoring within the predominantly white "old-boy" network, and general difficulties in obtaining respectful and unbiased treatment throughout the system. The Task Force believes we can and must do better.

Findings

1. With a rapidly growing minority population and a disproportionate number of people of color subject to the court system, substantial proportions and sometimes a majority of case loads concern people of color.

2. Law enforcement and justice system employees generally underrepresent the racial diversity of the community at large and underrepresent the racial diversity of the defendants and victims processed through the system.

3. Little emphasis is placed on providing predominantly white justice system employees with the training needed to help them understand and respond appropriately to the cultures and communities of the people of color with whom they are involved.

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[20]Minnesota Supreme Court, Attorney Questionnaire Results for the Task Force on Racial Bias in the Courts, p. 32 (Nov. 1992) (on file with the Minnesota Supreme Court).

4. Poor representation of people of color and inadequate training combine with other systemic problems to create common instances of biased and insensitive treatment and patterns of adverse impact on minorities involved in the justice system.

5. The almost exclusively white composition of the system results in distrust and a sense of dread among many people of color subject to it.

6. People of color trying to enter the system as employees similarly face difficulties in getting hired, mentored, promoted and treated in an unbiased fashion.

Recommendations

1. The ability to work with and understand others in a culturally and racially diverse community should be considered an essential job skill and a requirement of all justice system employees.

   a. Hiring. All job applications, tests and oral examinations should be modified to allow applicants an opportunity to demonstrate they possess this ability in addition to other job-related traits.

   b. Promotions. Similarly, candidates for promotion should be required and given the opportunity to demonstrate a heightened ability to create and/or manage a culturally diverse workforce.

   c. Bilingual Skills. The ability to communicate in a foreign language should be considered a preferred or required qualification; which would depend upon community needs and agency resources.

   d. Networking. Expanding our existing ties with the communities we serve is essential. Community participation/leadership should be a preferred qualification for hiring/promotion at all levels. Involvement in minority communities is a plus.

2. Affirmative Action Programs. Various agencies/departments within the system should be required to have affirmative action programs as recommended in other sections of this report.

3. Cultural Sensitivity Training. Agencies and departments should be required to provide cultural diversity training as recommended in other sections of this report.

APPENDIX A

Public Hearings and Focus Groups

PUBLIC HEARINGS

Public Hearings were held in the following cities in Minnesota:

Albert Lea, November 6, 1991
Bemidji, October 2, 1991
Duluth, October 16, 1991
Marshall, October 30, 1991
Minneapolis, November 13, 1991, January 23, 1992
Moorhead, October 23, 1991
St. Paul, October 9, 1991, November 19, 1991, January 29, 1992

FOCUS GROUPS

Focus Groups were held with the following organizations:

Black Ministerial Alliance, St. Paul, August 29, 1991
Black, Indian, Hispanic and Asian Women in Action, January, 29, 1993
Civil Legal Services Programs & Volunteer Attorney Programs,
St. Paul, August 20, 1991
County Attorneys, August 19, 1991, St. Paul
Family & Domestic Violence Programs Workers, St. Paul, August 20, 1991
Minority Judges and Referees, Minneapolis, August 27, 1991
Minority Legal Associations, St. Paul, August 12, 1991
National Jury Project, St. Paul, August 21, 1991
Probation Officers, St. Paul, August 27, 1991
Public Defense Providers, St. Paul, August 14, 1991
State Minority Councils, St. Paul, August 26, 1991
Trial Court Chief Judges, St. Paul, August 16, 1991
Tribal Social Services Workers, St. Cloud, August 26, 1991
Victim Rights Providers, St. Paul, August 15, 1991
Women Inmates at the Shakopee Correctional Facility, Shakopee, February 10, 1993.

APPENDIX B

Methodology

Research Methodology

Minnesota Supreme Court Racial Bias Task Force

Research Projects

February 2, 1993

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Attorney Survey

Most state task forces studying gender and racial bias in the courts have surveyed attorneys about their perceptions and experiences. Many of these surveys have settled for low response rates, raising questions about the generalizability and validity of the results. A previous survey of attorneys in Minnesota regarding gender issues[1] adopted the techniques of the total design method[2] to produce a response rate greater than 80%. The gender survey was stratified[3] to over-sample women in the metro and non-metro areas of Minnesota, and comparisons were drawn between the perceptions of men and women in both metro and non-metro areas.

The present study of racial bias issues in the courts also utilized the total design methodology, but employs a more complex sampling design, due to the relatively low number of minority attorneys in the state. A total of 4,016 attorneys from a population of nearly 14,000 active attorneys[4] were sampled. Because of the critical focus of the Task Force on criminal process issues and issues affecting the poor, all prosecutors, public defense, legal services and known minority attorneys were sampled. Lists of prosecutor, public defense, and legal services attorneys were compiled from office rosters. A list of minority attorneys was compiled from minority bar association membership lists. A random sample of other attorneys was chosen to obtain significant numbers for analysis in each of the substantive areas.

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[1] See 15 (4) William Mitchell Law Review 1989.

[2] Don A. Dillman. 1978. Mail and Telephone Surveys. New York: John Wiley.

[3] Stratifying a sample simply means to combine population elements according to an attribute, such as gender, racial category, or area of residence, and then to draw samples within each stratum.

[4] The active attorney population was obtained from a list of attorneys registered with the Supreme Court.

Table I. Attorney Survey Sampling Design

Sampling Proportions and Number of Cases					
Strata	Prosecutors, Public Defense, Legal Services		All Other Attorneys		TOTAL
	Pct	N	Pct	N	N
Hennepin/Ramsey					
White	100%	457	20%	1838	2,295
Minority	100%	23	100%	124	147
Counties > 3%					
White	100%	279	50%	654	933
Minority	100%	1	100%	5	6
Other Counties					
White	100%	403	10%	225	628
Minority	100%	2	100%	5	7
Totals		1,165		2,851	4,016
White		1,139		2,717	3,856
Minority		26		134	160

Note: Counties with greater than 3% minority population includes Mahnomen, Beltrami, Cass, Cook, Clearwater, Becker, Watonwan, Pine, Carlton, Polk, Olmsted, Dakota, Clay, Koochiching, Kandiyohi, Mille Lacs, Washington, Itasca, Freeborn, Nobles, St. Louis, Anoka, Traverse.

Since nearly two-thirds of the minority population of Minnesota reside in Hennepin and Ramsey counties, the population was also stratified by location (see Table I). Zip codes[5] were used to classify attorneys into one of three categories: Hennepin-Ramsey, counties with a minority population greater than three percent, and all other counties. The purpose of this classification was to target the questionnaire to attorneys most likely to have experience with minority populations. Whenever strata

[5] Attorneys in bordering states were placed in the other category, while attorneys with addresses in non-contiguous locations were placed in the Hennepin-Ramsey category; this procedure was also used for the gender survey. Using zip codes from the attorney registration file invariably leads to some misclassification due to changes of address which are not reflected in the file until an attorney renews registration and errors due to use of home addresses instead of business addresses. However, cross-tabulation of the strata categories with survey responses show a high degree of congruity.

with varying sampling proportions are combined for analysis, it is necessary to weight responses to reflect the appropriate proportions in the population. Since most of the percentages presented from the attorney survey are based on the weighted numbers rather than the actual number of responses, the number of cases is not routinely shown in the tables and graphs.

Table II. Response Rates by Sample Strata for Attorney Survey

Strata	Response Rates by Strata					
	Prosecutors, Public Defense, Legal Services		All Other Attorneys		TOTAL	
	Pct	N	Pct	N	Pct	N
Hennepin/Ramsey						
White	83%	380	84%	1545	84%	1,925
Minority	57%	13	65%	81	64%	94
Counties > 3%						
White	90%	252	84%	547	86%	799
Minority	100%	1	80%	4	83%	5
Other Counties						
White	88%	353	82%	185	86%	538
Minority	100%	2	80%	4	86%	6
Total:	86%	1,001	83%	2,366	84%	3,367
White	86%	985	84%	2,277	85%	3,262
Minority	62%	16	66%	89	66%	105

The rate of attorney response was 84% overall (see Table II). Response rates within each of the strata were higher than 80%, except the minority strata response rate in Hennepin-Ramsey which was 64%. This response rate is very high for mail questionnaires and the consistently high response rates across strata is very encouraging. However, it is important to remember that any level of non-response may bias the results in addition to errors due to sampling variation. Unlike sampling error, however, non-response error cannot be statistically estimated. The research staff followed up by letter and telephone with non-respondents and concluded that a significant proportion did not appear in court and therefore ignored the questionnaire.

The sampling error in this survey is approximately ±2% at the 95% level of confidence. That is, we can be 95% certain that a given proportion is valid within plus or minus two percentage points. This is a pooled estimate of the sampling error for the

entire sample, using a finite population correction factor to account for the large and variable sampling fractions in the strata. Since attorneys only answered those sections applicable to their experience, the sampling error for most reported results is effectively larger than ±2%. In the family law section, for example, the sampling error is approximately ±4%. Since all prosecutors and public defense counsel were sampled, there is no sampling error for these groups, but only non-response error.

The total design method accounts for the high response rates. The questionnaire was sent along with a cover letter from the Chief Justice which stressed the importance of the issues and asked for cooperation. One week later, a follow-up postcard was mailed. Two weeks after the postcard, a second letter and questionnaire was mailed to non-responding attorneys. Additional mail and telephone follow-ups were done by the research staff to non-respondents.

The survey instrument was designed to assess recent experiences with and perceptions of racial bias issues in the courts. Attorneys were asked to complete only those sections of the questionnaire which related to their practice, i.e., cases they handled within the last two years. Attorneys who had not appeared in court during the previous two years were asked to complete only the section on background information and legal careers.

Table III. Number and Percent of Respondents Answering Each Section.

Section	Number of Respondents	Percent of Respondents
Juvenile Delinquency	510	15
Chips and TPR	472	14
Civil	709	21
Family	784	23
Criminal Process	958	28
Access to Justice	2137	63
Courtroom Interaction	2196	65
Total Respondents (does not add up)	3367	

The total number of attorneys answering each section is shown in Table III.

Judge Survey

The questionnaire was mailed to all 261 trial court judges and referees in the state of Minnesota. A total of 229 questionnaires were returned, a response rate of 88%. This response rate is very high for mail questionnaires.

The total design methodology was utilized to achieve this high rate of response.[6] The questionnaire was sent along with a cover letter from the Chief Justice which stressed the importance of the issues and asked for cooperation. To maintain anonymity, a separate postcard with an identification number was also included. Judges were asked to sign and return the postcard separately to indicate they had completed and returned the questionnaire. One week later, a follow up postcard was mailed. Two weeks after the postcard, a second letter, postcard and questionnaire was mailed to non-responding judges.

Since all judges and referees were sampled, there is no sampling error, only non-response error. Non-response may bias the results, however non-response error cannot be statistically estimated.

The survey was designed to assess recent experiences with and perceptions of racial bias issues in the courts. Judges were asked to complete only those sections of the questionnaire which related to the types of cases they had presided over within the past two years.

Table IV: Number and Percent of Respondents Answering Each Section of Judge Survey.

Section	Number of Respondents	Percent of Respondents
Juvenile Delinquency	130	57
CHIPS and TPR	127	55
Civil	177	77
Family	175	76
Criminal Process	228	100
Access to Justice	227	99
Courtroom Interaction	226	99

[6] Don A. Dillman. 1978. Mail and Telephone Surveys. New York: John Wiley.

Probation Officer Survey

A list of active probation agents was compiled by soliciting information from all probation service providers at the state and county levels. All active probation officers in the state, along with a group of specialized correctional professionals, were mailed a survey. No samples were drawn, therefore, there is no sampling error to consider. The state's population of probation officers is included in the survey. The response rate for the survey was 77% (738 of 958 questionnaires were returned). This is a very good response rate for mail questionnaires. However, it is important to remember that any level of non-response may bias the results of a survey. Unfortunately, non-response error cannot be statistically estimated.

The high response rate is a result of the design methodology of the survey (which was patterned after the attorney survey). The questionnaire was sent along with a cover letter from the Chief Justice which stressed the importance of the issues in the survey. The cover letter also emphasized the importance of participation and asked for everyone's cooperation. One week later, a follow-up postcard was mailed. Two weeks after the postcard, a second letter and questionnaire were mailed to all non-respondents.

The survey instrument was designed to assess recent (within the past two years) experiences and perceptions of probation officers and specialized correctional professionals with racial bias issues in the judicial system. Participants were asked to complete only those sections of the questionnaire which related to their experiences (i.e., only those with experience in working with juveniles were asked to complete the juvenile delinquency section). Those respondents who had no experience with probationers or defendants during the previous two years were asked to complete only the demographic and background information. The total number of respondents answering each section is shown in Table V.

Table V: Number and Percent of Respondents Answering Each Section of Probation Officer Survey.

Section	Number of Respondents	Percent of Respondents
Juvenile Delinquency	280	38
Criminal Process	408	55
Courtroom Interaction	682	92
Total Respondents (does not add up)	738	

Victim Service Providers Survey

A list of victim service providers was compiled by sending a preliminary survey to victim service organizations throughout the state of Minnesota. Organizations were asked to send a roster of their paid and volunteer advocates. On the basis of the returned rosters, questionnaires were mailed to a total of 867 identified victim service providers. A total of 294 surveys were returned, a response rate of 34%.

Surveys were mailed using a total design methodology. Questionnaires were sent along with a letter from the Chief Justice stressing the importance of the issues and urging their cooperation in returning the survey. One week later, a reminder post card was sent. Two weeks after the post card, a second letter was mailed, which included a second copy of the questionnaire. Normally, this design methodology results in a high response rate. In this instance, the response rate was lower than expected.

While surveys were sent to all victim service providers whose organizations had provided a list, response to the original demographic survey was low (40%). Only 38% of the demographic surveys which were returned included a roster of advocates from which we could sample. Therefore, in addition to non-response error, which cannot be statistically estimated, there is sampling error. However, the low demographic survey response also meant a random sample could not be drawn, resulting in inadequate information for estimating the sampling error for the survey.

Because of the low response rate, results from the Victim Service Providers' Survey cannot be assumed to be generalizable to victim service providers across the state. Results can only be said to represent those victim service providers who completed and returned the survey.

Table VI: Number and Percent of Respondents Answering Each Section of the Victim Service Providers' Survey

Section	Number of Respondents	Percent of Respondents
Criminal Process	190	65
Courtroom Interaction	136	46
Criminal Process: Interaction	140	48
Total Respondents (does not add up)	294	

Juvenile Exit Survey

The juvenile exit survey involved handing questionnaires to juveniles who appeared in juvenile court. The purpose of the study was to ask about experiences with and perceptions of racial bias in the juvenile court system.

The survey was conducted between June 16, 1992 and August 25, 1992, in ten counties across the state. These ten counties were selected on the basis of their proportion of racial minorities residing in the county, as reported by the 1990 U.S. Census. Counties were selected for inclusion in the sample if at least 3% of their population was minority. The counties included were: Beltrami, Carlton, Cass, Dakota, Freeborn, Kandiyohi, Hennepin, Itasca, Ramsey, and St. Louis. A total of 801 surveys were completed.

Table VII: Completions by County

COUNTY	Number of Completions	Percent of Total
Beltrami	39	5%
Carlton	40	5%
Cass	34	4%
Dakota	47	6%
Freeborn	13	2%
Hennepin	254	32%
Itasca	34	4%
Kandiyohi	47	6%
Ramsey	215	27%
St. Louis	78	10%
TOTAL	801	100%

The respondents were juveniles appearing in court on a delinquency or status petition. Juveniles ranged in ages from 10 to 19.

Table VIII: Completions By Race

Total	African American	Asian	White	Hispanic	Native American	Other	Not Specified
801 (100%)	123 (15%)	10 (1%)	487 (61%)	37 (5%)	88 (11%)	48 (6%)	8 (1%)

Juveniles who were being held in detention were included. In Hennepin county, special arrangements were made with the detention staff to allow one interviewer to hand out surveys in the detention center as the juvenile returned from his/her court appearance. In Ramsey county, detention staff handed out surveys to juveniles in detention. At the end of the day, these surveys were returned to the court reception area, where they were picked up by the interviewers. In all other counties, juveniles who were being detained were allowed to complete the survey at the courthouse before being returned to detention.

Interviewers were instructed to wait outside the courtroom door. When a juvenile exited the courtroom after the hearing, the interviewer approached the juvenile, introduced herself, and asked the juvenile to participate. If the juvenile agreed, s/he was asked to fill out the questionnaire and return it to the interviewer upon completion.

At the end of the day, interviewers edited the surveys and added the date and county in which the survey was completed. Surveys were returned to the research office at the end of each week for processing and analysis.

Juvenile Case Processing

The purpose of the study was to determine the extent of the differential processing of juvenile delinquency cases in Minnesota courts based on race. Four major questions were addressed:

1. Controlling for current offense and delinquency history, are minority juveniles more likely to receive an "out of home" dispositional placement than their white peers?

2. Controlling for current offense and delinquency history, are minority juveniles more likely to be held in pre-disposition detention than their white peers?

3. Controlling for current offense and delinquency history, are minority juveniles more likely to be certified as adults than their white peers?

4. Is the likelihood of attorney representation related to the race of the juvenile?

Five years (1987-1991) of juvenile delinquency data from the State Judicial Information Systems (SJIS) were consolidated for analysis. Since many counties fail to report the race of juveniles to SJIS, a sample of specific counties with a high proportion of cases reporting race was used. As a result, findings cannot be assumed to be representative of the entire state since the samples were not randomly drawn.

Counties were examined using the 1990 census data to identify those with a high minority population. Counties were selected for analysis if at least 50% of their cases reported a known race from the five-year SJIS data, and 5% or more of their juveniles in the database were racial minorities. The one exception to this selection criteria was St. Louis County. Even though over 50% of the cases in St. Louis county had an unknown race value, the county was included in the analysis because it still contributed a significant number of Native American and Asian juveniles to the sample.

Fifteen outstate counties were chosen for analysis, along with Hennepin County. The outstate counties included in the study are Clay, Becker, Mahnomen, Clearwater, Hubbard, Cass, St. Louis, Carlton, Mille Lacs, Traverse, Kandiyohi, Renville, Chippewa, Freeborn, and Pipestone. By selecting these specific counties, we included the majority of the African American, Native American, and Hispanic juveniles who were processed throughout the state as delinquents in the 1987-91 time frame.

The Hennepin County sample was analyzed separately from the outstate sample. This was done because the Hennepin County sample was larger (10,000+ cases) than all of the outstate counties combined (8,000+ cases), and also because the racial composition of the two samples was quite different. The Hennepin County sample was 61% white, with African Americans being the largest minority group. The outstate sample was 78% white, and its dominant minority group was Native American.

Table IX: RACE DISTRIBUTION

	Hennepin County			Outstate Counties		
	N Cases	Percent	Valid %	N Cases	Percent	Valid %
White	5,154	47.6%	60.8%	3,814	45.6%	78.0%
Black	2,490	23.0%	29.4%	26	0.3%	0.5%
Amer Indian	723	6.7%	8.5%	801	9.6%	16.4%
Hispanic	51	0.5%	0.6%	196	2.3%	4.0%
Asian	57	0.5%	0.6%	46	0.5%	1.0%
Unknown	2,359	21.8%	--	3,486	41.7%	--
TOTAL	10,834	100%	100%	8,369	100%	100%

The racial distribution for both samples is displayed in Table IX. Due to the small number of cases for some minority groups, the race variable was collapsed into two categories, white and minority, for all analyses. Race was reported as "unknown" in 22% of the Hennepin sample and 42% of the outstate sample. This could present a problem in the analyses if a systematic bias was evident in the cases with missing race data. In order to check for systematic bias, a comparison was made between the "known race" and the "unknown race" subsamples within both the Hennepin and outstate samples. The frequency distributions for offense type, delinquency history, removal from home, certification, and pre-disposition detention were examined to see if there were differences between the "known race" and "unknown race" subsamples. These distributions were found to be quite similar. Thus, the cases for both the Hennepin and outstate samples with missing race information do not appear to introduce any systematic bias.

Two control factors were utilized in the study: current offense type and delinquency history of the juvenile. Current offense type was defined as the most severe charge filed in the most recent delinquency petition against the juvenile for which there was a disposition. Offenses were categorized into five classification types: felony against a person, felony against property, minor offense against a person, minor

property offense, and other delinquency. The two minor offense categories included both misdemeanors and gross misdemeanors. The category of "other delinquency" included all other offenses, both felony and non-felony crimes, which did not fall into the other four categories.[7]

Table X: OFFENSE TYPE DISTRIBUTIONS

	HENNEPIN		OUTSTATE	
	N Cases	Percent	N Cases	Percent
Felony Person	903	9.3%	323	4.2%
Felony Property	2,366	24.4%	1,426	18.4%
Minor Person	904	9.3%	594	7.7%
Minor Property	3,654	37.8%	3,187	41.2%
Other Delinquency	1,853	19.2%	2,204	28.5%
TOTAL	9,680	100%	7,734	100%

In order to determine delinquency history, the number of petitions filed against each youth from 1987 through 1991 were counted. For all analyses, this delinquency history variable was collapsed into two categories: 0 for no prior petitions and 1 for any prior petitions.

The legal factors and decisions examined are certification to adult court, predisposition detention, removal from home as a disposition, and attorney representation. All of these variables are dichotomous with a "yes" or "no" response.

Contingency table analysis (using the chi-square statistic) and logistic regression were used, as both methods are well suited for categorical data analysis.

[7] The "other delinquency" category included all drug offenses, escape, traffic/accidents, disturbing the peace, weapons possession, alcohol offenses. etc. The "minor property" category included non-felony property offenses such as theft, forgery, property damage, etc. The "minor person" category included non-felony assaults. The "felony property" category included felony theft, burglary, forgery, arson, auto theft, etc. The "felony person" category included felony assaults, robbery, homicide, and criminal sexual conduct.

Analysis of Jail Sanctions for Felons

The purpose of the study was to examine the relationship between race and length of jail time served by felons in Minnesota jails. The relationship between race and whether or not any time was spent in jail, regardless of duration, was also examined. Jail time served included any and all time spent in jail, both pre-sentence and post-sentence. It was important to include all offenders who served jail time, before sentencing and after sentencing, since a judge's decision to pronounce jail as a condition of probation may depend on whether the offender has already served time in jail while awaiting trial or disposition.[8]

Two questions were addressed by the study:

1. Does an offender's race or minority status have a significant effect on his/her odds of serving time in jail (either pre or post disposition)?

2. Does an offender's race or minority status have a significant effect on the length of jail time served (either pre or post disposition)?

Data were obtained from the Minnesota Sentencing Guidelines Commission (MSGC) regarding non-imprisonment sanctions. The MSGC collected data from around the state in order to get information on offenders who were given stayed sentences and non-imprisonment sanctions. The MSGC sampled cases from the population of convicted felons sentenced to stayed sentences between November 1, 1986, and October 31, 1987.

The data set included demographic and sentencing information on 1,794 felons who were given stayed incarceration sentences in 37 of 87 counties, including presumptive non-imprisonment sentences, and all offenders who received a stayed sentence when the sentencing guidelines recommended a prison term. The sample was stratified by race and gender and weighted by the MSGC research staff in order to reflect the actual felon population proportions for each county. The total number of weighted cases in the study is 4,190.

Two factors were analyzed in this study. The first factor was whether the offender served time in jail, either pre or post sentence, regardless of the duration of jail time. The second factor was the length of jail time served by offenders, including both pre and post-disposition jail time.

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[8] Minnesota Sentencing Guidelines Commission (Feb., 1991) Report to the Legislature on Intermediate Sanctions.

Six demographic variables (race, gender, county, employment, education, age) and four criminal history variables (offense severity, criminal history score, weapon use/possession, conviction method) were analyzed in order to determine what influence they had in affecting an offender's odds of serving jail time as well as the length of time served. The majority of these variables were categorical in scale with the exception of age, criminal history score and offense severity. The scales (coding schemes) for offense severity and criminal history were constructed by calculating the marginal averages for each level of each variable as depicted in the MSGC's sentencing guidelines grid. Each scale (value) for criminal history is the mean presumptive prison sentence for that particular history score level. Likewise, each scale for offense severity is the mean presumptive prison sentence for that severity level. These calculations were based upon the sentencing guidelines grid that was in effect for the 1986-87 time frame, since that is the time period in which these offenders were sentenced.

The frequency distributions for race are displayed in Table XI. For contingency table analysis, the race variable was collapsed into two categories, white and minority. In the regression analyses, race was coded as "dummy variables" indicative of membership in one of the four race categories displayed in Table XI.

Table XI: Race

White		Black		Am. Indian		Other	
N Cases	Percent	N Cases	Percent	N Cases	Percent	N Cases	Percent
3,168	75.6%	721	17.2%	188	4.5%	113	2.7%

This study analyzed two dependent variables: whether an offender served time in jail and length of jail time served. Logistic regression analysis was used to analyze the felons' demographic and criminal history characteristics to determine their significance in predicting the odds of serving a jail term; and ordinary least squares regression was used in the analysis of the length of jail time served. This type of analysis was necessary in order to examine the direct effect of the offender's race on the use of jail sanctions, while holding the demographic and criminal history factors constant.

Hennepin County Misdemeanor Processing Analysis

This study was requested by the Criminal Process Committee of the Racial Bias Task Force. The purpose of the study was to determine if any racial differences exist in the processing and sentencing of misdemeanor offenders in Hennepin County. The specific research questions are:

1. Are there differences by race in the processing of misdemeanor defendants in the areas of setting bail, use of summons vs. arrest, attorney representation, rate of trial vs. pleading guilty, conviction rate, and dismissal rate?

2. Are there differences by race in sentences pronounced for misdemeanor offenders, in the use of specific sanctions such as jail, probation and fines?

Two factors, type of offense and prior convictions, were held constant throughout the analyses.

The data analyzed in this study were obtained from Hennepin County's SIP system (Subject in Process). The data include case processing and sentencing information on nearly 19,000 defendants who were charged with specific misdemeanor offenses in Hennepin County from January 1989 through April 1992. Only assault, prostitution and theft offenses were chosen for analysis, as a way to control for type of offense charged against the defendant. Throughout the analyses, which examined differences by race in case processing and outcome, the racial comparisons were made within each offense category, thus holding constant the effect of the offense charged. For each offender with multiple offenses charged during the time period analyzed, the most recent offense was used to categorize the type of offense for analysis purposes.

The defendant's prior conviction record dating back to 1989 was also controlled in these analyses. Only the misdemeanor data residing on the "online" SIP system were available from Hennepin County. These data were restricted to the time frame of January 1989 to April 1992. Therefore, the defendant's prior conviction history was constructed by determining if convictions (for any offense) were recorded in that time frame. The conviction history was utilized as a dichotomous factor: if no convictions were recorded on the SIP system (other than the current case outcome), s/he was classified as a "first-time" offender in the analysis. If a defendant had any number of previous convictions, s/he was classified as a "repeat" offender. This is a limitation in the study, but one that was unavoidable. Approximately one-fifth of the sample fell under the definition of "repeat offender".

For the analyses conducted in this study, the race variable was collapsed into two categories: white and minority. This was necessary due to the relatively small number of cases in some of the minority categories. There were not enough American Indians, Hispanics and Asians in the sample to allow controls to be set for current offense and

conviction history and still produce meaningful analysis of the various case processing and outcome factors.

The legal and case processing factors examined were charging method, bail status, trial rates, guilty pleas, attorney representation and case outcome (convicted, dismissed or continued). For those defendants who were convicted or continued, the likelihood of receiving a specific sanction (jail, fines, probation) was analyzed. Contingency table analysis was used to determine if there was a relationship between the defendant's race and the factors of interest while controlling for current offense and conviction history of the defendant. For those defendants who had bail set, analysis of variance was used to determine if average bail amounts differed by race while holding offense type and conviction history constant. This same methodology was employed to analyze the length of jail terms given to those offenders who were sentenced to jail.

Analysis of Imprisonment Rates and Sentencing Guidelines Departures

An examination of imprisonment rates and sentencing guideline departure rates in Minnesota was requested by the Criminal Process Committee of the Racial Bias Task Force. The Minnesota Sentencing Guidelines Commission (MSGC) collects data on a regular basis regarding convicted felons and their prison sentences. The most recent data available from MSGC regarding prison sentencing patterns was from the 1990 calendar year. In that year there were 8,844 felons sentenced, of which 19.5% were incarcerated in a state prison.[9]

Upon request, the MSGC research staff conducted a specific set of analyses to examine racial differences in dispositional and durational departures (both aggravated and mitigated), as well as imprisonment rates for a select group of offenses (aggravated robbery, criminal sexual conduct, weapons offenses, and second degree assault). Contingency table analysis was used to examine the racial differences. Two samples were analyzed. First, the 1990 data was analyzed separately. This was followed by an analysis of five years of consolidated data from 1986 through 1990.

[9] "Summary of the 1990 Sentencing Practices for Convicted Felons", Minnesota Sentencing Guidelines Commission (June, 1992).

Hennepin County Bail and Pre-Trial Release Study

This study was conducted by the Hennepin County Bureau of Community Corrections, Planning and Evaluation Unit. Information was gathered from the SIP computer system on individuals who had a first appearance on a felony or gross misdemeanor from November 14, 1989 through February 28, 1990. The sample analyzed included 972 individuals, of which 473 (48.7%) were black and 499 (51.3%) were white. Of the 972, 192 (19.7%) were mailed a summons and 44 (4.5%) posted bail prior to their first appearance.

Three main questions were addressed by the study:

1. Is NBR status (No Bail Required) less likely to be granted to black defendants, holding constant type of offense?

2. For those defendants who have bail set, do bail amounts differ by race, controlling for type of offense?

3. Does the likelihood of detention differ by race when offense type is held constant?

Contingency table analysis and analysis of variance were the statistical techniques employed to answer these questions.

APPENDIX C

Survey Instruments

Attorney Questionnaire

Minnesota Supreme Court
Racial Bias Task Force

The Minnesota Supreme Court Racial Bias Task Force thanks you for taking the time to participate in the study of racial bias in the state trial courts. You will need to complete only selected parts of the questionnaire. If you do not regularly appear in court you will only answer the background questions in Section A. If you do regularly appear in court you will complete only those sections pertaining to your experience. Questions at the beginning of several sections ask how many times you have "represented a party" in specific types of cases. Please interpret "represented a party" broadly to include first chair, second chair, advised, represented the state, and so on.

Your written comments are also welcomed. If you wish to clarify your answers or comment on the clarity of the questions please feel free to use the blank space provided at the end of each section.

When completed, please return the questionnaire as soon as possible, or within one week, in the enclosed envelope or to:

Research & Planning
State Court Administration
25 Constitution Ave., Suite 120
St. Paul, MN 55155
Questions ? call (612) 297-7580

Approximately how often have you appeared in Minnesota state trial courtrooms during the past two years?

1 NEVER ☞
2 LESS THAN ONCE A MONTH
3 ONCE OR TWICE A MONTH
4 WEEKLY
5 DAILY

If NEVER, complete Section A, General Background Information only and return the questionnaire in the enclosed envelope.

IN THIS SURVEY, MINORITY REFERS TO PERSONS WHO ARE IDENTIFIED AS: BLACK; HISPANIC (REGARDLESS OF SKIN COLOR); NATIVE AMERICAN; ASIAN/PACIFIC ISLANDER; OR OTHER RACIAL MINORITY GROUPS.

A. GENERAL BACKGROUND INFORMATION

Please circle the appropriate response or fill in the requested information in the space provided.

1. What is your gender?

1	MALE
2	FEMALE

2. Which one of the following best describes you?

1	WHITE (NON-HISPANIC)	4	ASIAN/PACIFIC ISLANDER
2	BLACK	5	NATIVE AMERICAN
3	HISPANIC	6	OTHER (SPECIFY)_____

3. In what year were you born: _____

4. In what year were you first admitted to practice law in any state: _____

5. How many years have you been actively engaged in the practice of law: _____

6. How many years have you been employed in your current position: _____

7. In what county and judicial district is your primary practice?

   County: _____ Judicial District: _____

8. Which of the following best describes your current employment:

1	ACADEMIC
2	CORPORATE
3	GOVERNMENT/PUBLIC SECTOR
4	PRIVATE PRACTICE - SOLO PRACTITIONER
5	PRIVATE PRACTICE - LAW FIRM
6	LEGAL SERVICES
7	OTHER (PLEASE SPECIFY) _____

9. In which area(s) of specialization do you regularly practice? (Circle the numbers of all that apply.)

1	GENERAL PRACTICE	8	CIVIL LITIGATION
2	CRIMINAL PROSECUTION	9	LABOR/EMPLOYMENT
3	CRIMINAL DEFENSE - PRIVATE	10	APPELLATE
4	CRIMINAL DEFENSE - PUBLIC	11	CORPORATE
5	JUVENILE	12	REAL ESTATE
6	FAMILY LAW	13	OTHER (SPECIFY) _____
7	PROBATE		

10. What proportion of your clientele is in each of the following groups? (Note: For prosecutors "clientele" refers to defendants.)

a. WHITE	_____%
b. BLACK	_____%
c. HISPANIC	_____%
d. NATIVE AMERICAN	_____%
e. ASIAN/PACIFIC ISLANDER	_____%
f. OTHER (Specify)_____	_____%

Please circle the response that best reflects your experience, observation, or opinion about legal career issues in Minnesota during the last two years.

		MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
11.	More opportunities for positions in private law firms are available for attorneys who are:	1	2	3	9
12.	Fewer opportunities for promotion within your office are given to attorneys who are:	1	2	3	9
13.	More opportunities to develop mentor relationships are available to attorneys who are:	1	2	3	9
14.	Fewer desirable assignments to legal projects or clients are given to attorneys who are:	1	2	3	9

15. How many attorneys are employed, full- or part-time, by your office and how many practice criminal law? (Note: if you provide public defense services on a contractual basis, the following questions refer to your law office, not the public defender system.)

    Number of attorneys _____
    Number of criminal law attorneys _____

16. Does your office take steps specifically directed at recruiting minority attorneys?

    1 YES
    2 NO
    3 DON'T KNOW

17. In your opinion, are the efforts to recruit and hire minority attorneys adequate?

    1 YES
    2 NO If NO, why not? _____

18. Has your office hired any minority attorneys during the last five years?

    1 YES
    2 NO
    3 DON'T KNOW

19. During the past two years, have you personally encountered or observed in Minnesota any instances of racial bias or race-related problems in pursuing legal careers in Minnesota? If so, please describe. Use additional pages if needed.

If you have not appeared in Minnesota state trial courtrooms at any time during the past two years, you need not complete the remainder of the questionnaire. Sections B through F refer to substantive areas of the law. The directions will indicate which sections to complete. Section G and H should be completed by all attorneys with Minnesota courtroom experience during the last two years.

B. JUVENILE DELINQUENCY

IF YOU HAVE NOT REPRESENTED A PARTY IN A DELINQUENCY PROCEEDING IN THE LAST TWO YEARS, PLEASE SKIP TO SECTION C ON PAGE 6. In the following questions where the treatment of juveniles is compared, assume that all other factors are equal, including the type of offense and the number and type of previous offenses. Please circle the answer that best reflects your experience in Minnesota state trial courts during the past two years.

1. In approximately how many delinquency cases in Minnesota state trial courts have you represented a party in the last two years? Approximately what percentage of these cases involved minority juveniles?

Number of Delinquency Cases (Circle Category)					% Minority
NONE	1-5	6-25	26-100	More than 100	
1	2	3	4	5	

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
2. Juveniles are more likely to be released following a stop when they are:	1	2	3	9
3. Juveniles are more likely to be released pending dispositional hearings when they are:	1	2	3	9
4. Juveniles are more likely to be placed in detention for *misdemeanor* offenses when they are:	1	2	3	9
5. Juveniles are more likely to be placed in detention for *felony* offenses when they are:	1	2	3	9
6. The court is more likely to grant custodial responsibility to relatives other than the juveniles' parents when juveniles are:	1	2	3	9
7. Placement in early diversion programs is more likely when juveniles are:	1	2	3	9
8. At the detention hearing, juveniles are more likely to be represented by counsel if they are:	1	2	3	9
9. Multiple charges arising from a single incident are more likely to be entered against juveniles who are:	1	2	3	9
10. Juveniles are more likely to be certified as adults for trial when they are:	1	2	3	9
11. At the *delinquency* hearing, juveniles are more likely to be represented by counsel if they are:	1	2	3	9
12. At the *disposition* hearing, juveniles are more likely to be represented by counsel if they are:	1	2	3	9
13. The right to counsel is more likely to be waived by juveniles who are:	1	2	3	9
14. *Probation officers* are more likely to recommend alter-	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
natives to removal from the home when juveniles are:				
15. *Prosecutors* are more likely to recommend alternatives to removal from the home when juveniles are:	1	2	3	9
16. *Defense counsel* are more likely to recommend alternatives to removal from the home when juveniles are:	1	2	3	9
17. *Judges* are more likely to encourage juveniles to request counsel when juveniles are:	1	2	3	9
18. *Probation officers* are more likely to encourage juveniles to request counsel when juveniles are:	1	2	3	9
19. Juveniles are more likely to be removed from the home if they are:	1	2	3	9
20. Inadequate parental supervision is more likely to be a basis for out-of-home placement of juveniles who are:	1	2	3	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
21. While in custody or during a court appearance, minority juveniles are addressed in a racially derogatory manner by:						
a. other juveniles.	1	2	3	4	5	9
b. police.	1	2	3	4	5	9
c. detention staff.	1	2	3	4	5	9
d. attorneys.	1	2	3	4	5	9
e. judges.	1	2	3	4	5	9
f. probation officers.	1	2	3	4	5	9
22. The presence of a defense attorney adversely influences disposition.	1	2	3	4	5	9

23. During the past two years, have you personally observed in Minnesota any instances of racial bias in the Minnesota juvenile justice system including law enforcement agencies, the court, court services or attorneys? If so, please describe. Attach additional pages, if needed.

C. CHILD PROTECTION AND PLACEMENT (CHIPS) AND TERMINATION OF PARENTAL RIGHTS (TPR)

IF YOU HAVE NOT REPRESENTED A PARTY IN A CHIPS OR TPR CASE IN THE LAST TWO YEARS, PLEASE SKIP TO SECTION D ON PAGE 8. In the following questions where the treatment of children is compared, assume that all factors are equal including the family history and background. Please circle the answer that best reflects your experience in Minnesota state trial courts during the past two years.

1. In approximately how many cases involving children in need of protection or services (CHIPS) or termination of parental rights (TPR) in Minnesota state trial courts have you represented a party in the last two years? Approximately what percentage of these cases involved minority children or families of minority children?

Number of CHIPS and TPR Cases (Circle Category)					% Minority
NONE	1-5	6-25	26-100	More than 100	
1	2	3	4	5	

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
2. Attorneys understand the provisions of:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
3. Judicial decisions apply the provisions of:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
4. The permanent out-of-home placement of minority children is delayed by applying:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
5. Multiple out-of-home placements of minority children occur through application of:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
6. Social workers and court intake personnel are knowledgeable about the provisions of:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
7. Social workers and court intake personnel document their application of:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
8. When same-race foster homes are not available the *Minority Heritage Preservation Act* has the effect of preventing out-of-home placement of minority children.	1	2	3	4	5	9
9. When same-race foster homes are not available the *Indian Child Welfare Act* has the effect of preventing out-of-home placement of minority children.	1	2	3	4	5	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
10. In CHIPS and TPR cases involving minority families, the input of minority advocates is actively sought by social workers and court intake personnel.	1	2	3	4	5	9
11. Cultural insensitivity is demonstrated in working with minority families by:						
a. social workers and court intake personnel.	1	2	3	4	5	9
b. guardians ad litem.	1	2	3	4	5	9
c. attorneys.	1	2	3	4	5	9
d. judges.	1	2	3	4	5	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
12. Temporary out-of-home placements of minority children are generally of longer duration when foster families are:	1	2	3	9
13. Court intervention is more likely to occur in situations involving families who are:	1	2	3	9
14. Programs to help parents cope with child abuse or neglect problems are more readily available to families who are:	1	2	3	9
15. Removal from the home is more likely when children are:	1	2	3	9
16. Home-based services which allow a child to remain in the home are more readily available to families who are:	1	2	3	9
17. Social workers and court intake personnel are more likely to recommend terminating parental rights when parents are:	1	2	3	9
18. Social workers and court personnel make greater efforts to place children with members of their extended family when families are:	1	2	3	9

19. During the last two years, have you personally observed in Minnesota any examples of racial bias in the delivery of services to minority children or minority families by social service agencies, county attorneys, or the court? If so, please describe. Use additional pages, if needed.

D. CIVIL SETTLEMENTS AND DAMAGE AWARDS

IF YOU HAVE NOT REPRESENTED A PARTY IN A PERSONAL INJURY OR WRONGFUL DEATH PROCEEDING DURING THE PAST TWO YEARS, PLEASE SKIP TO SECTION E ON PAGE 9. The following questions refer to settlements and damage awards in personal injury and wrongful death cases. Where treatment of plaintiffs or litigants is compared, assume that the cases are comparable. Please circle the response that is closest to your own experience or observations in Minnesota in the last two years.

1. In approximately how many personal injury or wrongful death cases in Minnesota state trial courts have you represented a party in the last two years? Approximately what percentage of these cases involved minority plaintiffs or defendants?

	Number of Personal Injury and Wrongful Death Cases (Circle Category)					
	NONE	1-5	6-25	26-100	More than 100	% Minority
Represented Plaintiff	1	2	3	4	5	
Represented Defendant	1	2	3	4	5	

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
2. Attorneys base their preparation of litigants' cases on racial stereotypes.	1	2	3	4	5	9
3. Judges base their evaluations of litigants' claims on racial stereotypes.	1	2	3	4	5	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
4. Litigants are more likely to be represented by counsel when they are:	1	2	3	9
5. Judges are more likely to award sufficient relief to plaintiffs who prevail in court when plaintiffs are:	1	2	3	9
6. Juries award lower *compensatory damages* to plaintiffs who are:	1	2	3	9
7. Juries award lower *punitive damages* to plaintiffs who are:	1	2	3	9
8. *Plaintiffs' attorneys* recommend smaller settlements when plaintiffs are:	1	2	3	9
9. *Defense attorneys* recommend smaller settlements when plaintiffs are:	1	2	3	9
10. Cases are more likely to be regarded as "winnable" by *plaintiffs' attorneys* when the injured party is:	1	2	3	9
11. Cases are more likely to be regarded as "winnable" by *insurance companies* when the injured party is:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
12. Judges give more serious consideration to claims when plaintiffs are:	1	2	3	9
13. Attorneys give more serious consideration to claims when plaintiffs are:	1	2	3	9
14. *Plaintiffs' attorneys* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9
15. *Defense attorneys* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9

16. During the past two years, have you personally observed in Minnesota any instances of racial bias in the area of settlements or damage awards in personal injury or wrongful death cases? If so, please describe. (Attach additional pages as needed.)

E. FAMILY LAW (Including Adoption)

IF YOU HAVE NOT REPRESENTED A PARTY IN A FAMILY LAW MATTER DURING THE PAST TWO YEARS, PLEASE SKIP TO SECTION F ON PAGE 11. In the following questions where the treatment of couples is compared, assume that all factors are equal. Please circle the answer that best reflects your experience in Minnesota state trial courts during the past two years.

1. In approximately how many family law cases in Minnesota state trial courts have you represented a party in the last two years? Approximately what percentage of these cases involved minority children, minority parents, or minority couples?

Number of Family Cases (Circle Category)					
NONE	1-5	6-25	26-100	More than 100	% Minority
1	2	3	4	5	

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
2. Efforts are made to place minority children with same-race families before adoption by a white family is approved.	1	2	3	4	5	9

		Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
3.	Programs are provided to preserve the cultural heritage of minority children adopted by white families.	1	2	3	4	5	9
4.	White families are required to actively participate in programs to preserve the cultural heritage of adopted minority children.	1	2	3	4	5	9
5.	In dissolution of mixed Native American-white families, child custody orders prohibit visitation outside the county.	1	2	3	4	5	9

		MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
6.	Judges are more likely to issue mutual orders for protection in cases involving same-race couples who are:	1	2	3	9
7.	Judges are more likely to issue mutual orders for protection in cases involving mixed-race couples when the primary aggressor is:	1	2	3	9
8.	The arrest of both parties for violating orders for protection is more likely in cases involving same-race couples who are:	1	2	3	9
9.	The arrest of both parties for violating orders for protection is more likely in cases involving mixed-race couples when the primary aggressor is:	1	2	3	9
10.	In dissolution of mixed-race families, child custody is more often awarded to the parent who is:	1	2	3	9
11.	Child support and/or maintenance orders are more likely to be enforced when the parties are:	1	2	3	9

12. During the past two years, have you personally observed in Minnesota any instances of racial bias in the area of family law? If so, please describe. Attach additional pages, if needed.

F. CRIMINAL PROCESS (Not Juvenile)

IF YOU HAVE NOT REPRESENTED A PARTY IN A CRIMINAL PROCEEDING DURING THE LAST TWO YEARS, PROCEED TO SECTION G ON PAGE 16. In the following questions where the treatment of defendants is compared, assume that all other factors are equal including the type of offense, and the number and type of previous offenses. Please circle the response that best fits your experience or observations in Minnesota state trial courts during the last two years.

1. a. Indicate below the approximate number of criminal cases you prosecuted (trial or negotiated plea) in Minnesota state trial courts during the past two years and the approximate percentage that involved minority defendants or victims.

Case Type	Number of Cases Prosecuted (Circle Category)					% Minority Defendants	% Minority Victims
	NONE	1-5	6-25	26-100	More than 100		
Felony	1	2	3	4	5		
Gross Misdemeanor	1	2	3	4	5		
Misdemeanor	1	2	3	4	5		

b. Indicate below the approximate number of criminal cases in which you defended a client in Minnesota state trial courts during the past two years and the approximate percentage that involved minority defendants or victims.

Case Type	Number of Cases Defended (Circle Category)					% Minority Defendants	% Minority Victims
	NONE	1-5	6-25	26-100	More than 100		
Felony	1	2	3	4	5		
Gross Misdemeanor	1	2	3	4	5		
Misdemeanor	1	2	3	4	5		

Please circle the response that best fits your experience or observations in Minnesota state trial courts during the last two years.

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
2. Prosecutors are more likely to dismiss cases against first time drug offenders under M.S. 152.18 when offenders are:	1	2	3	9
3. While in custody, defendants are more likely to be physically mistreated when they are:	1	2	3	9
4. Defendants unable to post bail are more likely to be subsequently sentenced more severely when they are:	1	2	3	9
5. *Prosecutors* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
6. *Defense counsel* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9
7. Prosecutors are more likely to file charges when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
8. Defendants are more likely to remain in custody prior to trial when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
9. Prosecutors are more likely to make favorable plea offers when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
10. Judges give more serious consideration to domestic assault cases when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
11. Prosecutors are more likely to perceive their cases as strong when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
12. *Prosecutors* are more likely to recommend reduced sentences when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
13. *Probation officers* are more likely to recommend reduced sentences when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
14. *Prosecutors* are more likely to recommend intermediate sanctions in lieu of prison when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
15. *Defense counsel* are more likely to request intermediate sanctions in lieu of prison when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
16. Judges are more likely to stay imposition of sentence when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
17. Judges are more likely to impose severe sanctions for the actual or threatened use of violence when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
18. Judges are more likely to make mitigating departures from sentencing guidelines when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
19. Judges are more likely to make aggravating departures from sentencing guidelines when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
20. Statutory rights are more likely to be accorded				
a. by police to victims who are:	1	2	3	9
b. by prosecutors to victims who are:	1	2	3	9
c. by probation officers to victims who are:	1	2	3	9
d. by judges to victims who are:	1	2	3	9
21. Judges are more likely to provide victims an opportunity to make an oral impact statement at sentencing when victims are:	1	2	3	9
22. Judges are more likely to exercise their discretion to limit the time of oral impact statements when victims are:	1	2	3	9
23. Judges more seriously consider victim impact statements when victims are:	1	2	3	9
24. *Prosecutors* are more likely to make good faith efforts to obtain victim input in plea negotiations when victims are:	1	2	3	9
25. *Prosecutors* are more likely to make good faith efforts to notify victims of sentencing hearings when victims are:	1	2	3	9
26. *Probation officers* are more likely to make reasonable efforts to notify victims of scheduled sentencing dates when victims are:	1	2	3	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
27. The following perceive the court system as racially biased against them:						
a. minority defendants.	1	2	3	4	5	9
b. white defendants.	1	2	3	4	5	9
c. minority victims.	1	2	3	4	5	9
d. white victims.	1	2	3	4	5	9
28. Court decisions reflect racial bias against:						
a. minority defendants.	1	2	3	4	5	9
b. white defendants.	1	2	3	4	5	9
c. minority victims.	1	2	3	4	5	9
d. white victims.	1	2	3	4	5	9
29. Defense counsel use racial stereotypes:						
a. when *defendants* are minority.	1	2	3	4	5	9
b. when *victims* are minority.	1	2	3	4	5	9
30. Prosecutors use racial stereotypes:						
a. when *defendants* are minority.	1	2	3	4	5	9
b. when *victims* are minority.	1	2	3	4	5	9
31. Derogatory language is used towards minority *defendants* by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. victims and their families.	1	2	3	4	5	9
32. Derogatory language is used towards minority *victims* by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. defendants and their families.	1	2	3	4	5	9

33. Have you attended a formal training program or seminar on the rights of victims as set forth in Minnesota Statutes 611A?

1 YES
2 NO

a. In your opinion, was the training adequate?

1 YES
2 NO If NO, why not? _____

b. Was your participation in the training mandatory?

1 YES
2 NO

34. How and to what extent does the race relationship of the victim and offender (i.e., same race, different race) affect the treatment and handling of criminal offenders? Give examples if possible.

35. In the past two years, have you personally experienced or observed in Minnesota any instances of racial bias or lack of cultural sensitivity on the part of law enforcement, attorneys, judges, court personnel, probation officers, or others involved in the criminal process? If so, please describe. Attach additional pages, if needed.

G. ACCESS TO JUSTICE

The following questions refer to some possible problems parties may encounter in securing legal rights or in jury selection. Please circle the response that best reflects your experience, observation, or opinion about access issues in Minnesota during the last two years.

		MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
1.	Access to a lawyer is more likely to be available				
	a. in criminal cases to persons who are:	1	2	3	9
	b. in civil cases to persons who are:	1	2	3	9
2.	Adequate legal representation is more likely to be received				
	a. in criminal cases by persons who are:	1	2	3	9
	b. in civil cases by persons who are:	1	2	3	9
3.	In civil disputes, regardless of income, the cost of litigation is more likely to discourage utilization of the courts by persons who are:	1	2	3	9
4.	In civil disputes, lack of understanding of the legal system is more likely to discourage utilization of the courts by persons who are:	1	2	3	9
5.	In civil disputes, distrust of the legal system is more likely to discourage utilization of the courts by persons who are:	1	2	3	9

		Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
6.	Judges recognize tribal sovereignty and tribal court jurisdiction where appropriate.	1	2	3	4	5	9
7.	Interpreters are available for court participants who do not speak English.	1	2	3	4	5	9
8.	Court appointed interpreters are competent in translating for non-English speaking litigants.	1	2	3	4	5	9
Jury Selection and Decisions							
9.	During voir dire, *attorneys* question jurors to detect their biases against minorities.	1	2	3	4	5	9
10.	During voir dire, *judges* question jurors to detect their biases against minorities.	1	2	3	4	5	9
11.	The voir dire process is a satisfactory means of excluding racially biased jurors.	1	2	3	4	5	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
12. Minorities are adequately represented:						
a. in jury pools.	1	2	3	4	5	9
b. on jury panels.	1	2	3	4	5	9
c. on grand jury panels.	1	2	3	4	5	9
13. Verdicts are influenced by jurors' racial stereotypes when:						
a. victims are minority.	1	2	3	4	5	9
b. defendants are minority.	1	2	3	4	5	9
c. plaintiffs are minority.	1	2	3	4	5	9
14. Jurors weigh the testimony of witnesses without consideration of their race.	1	2	3	4	5	9

15. During the past two years, have you personally encountered or observed in Minnesota any instances of racial bias or race-related problems in obtaining legal representation, in the jury selection process, or in gaining access to the courts in Minnesota? If so, please describe. Use additional pages if needed.

H. COURTROOM INTERACTION

Speakers at public hearings and lawyers from a variety of legal areas have testified to various instances of unequal treatment of minorities in courtrooms and in judges chambers. The following questions ask how often you personally have observed or experienced specific types of behavior in Minnesota state courts in the last two years. Please circle the response that best fits with your observations.

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
1. Culturally insensitive behavior is displayed by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. other court participants.	1	2	3	4	5	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
2. Remarks or jokes demeaning to minorities are made in court or in chambers by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. other court participants.	1	2	3	4	5	9
3. Minorities receive adequate explanations of court procedures, either directly or through interpreters, by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
4. *Attorneys* are more likely to fail to show respect or courtesy toward				
a. litigants who are:	1	2	3	9
b. witnesses who are:	1	2	3	9
c. defendants who are:	1	2	3	9
d. victims who are:	1	2	3	9
e. judges who are:	1	2	3	9
f. court personnel who are:	1	2	3	9
5. *Judges* are more likely to fail to show respect or courtesy toward	1	2	3	9
a. litigants who are:	1	2	3	9
b. witnesses who are:	1	2	3	9
c. defendants who are:	1	2	3	9
d. victims who are:	1	2	3	9
e. attorneys who are:	1	2	3	9
f. court personnel who are:	1	2	3	9
6. *Court personnel* are more likely to fail to show respect or courtesy toward				
a. litigants who are:	1	2	3	9
b. witnesses who are:	1	2	3	9
c. defendants who are:	1	2	3	9
d. victims who are:	1	2	3	9
e. judges who are:	1	2	3	9
f. attorneys who are:	1	2	3	9
7. Judges are more likely to pay attention to statements made by attorneys who are:	1	2	3	9
8. Judges find more credible the testimony of *lay witnesses* who are:	1	2	3	9
9. Judges find more credible the opinions of *expert witnesses* who are:	1	2	3	9

10. Which of the following statements best describes your overall perception of bias against racial minorities in the Minnesota courts at the present time?

    1 There is no racial bias against minorities in the Minnesota courts.
    2 Racial bias against minorities exists, but only in a few areas and with certain individuals.
    3 Racial bias against minorities is widespread.

    a. IF YOU ANSWERED 2 OR 3, do you think that racial bias is subtle and hard to detect or readily apparent?

        1 Subtle and hard to detect.
        2 Readily apparent.

11. Which of the following statements best describes your overall perception of bias against racial minorities in the Minnesota courts over the past five to ten years?

    1 There has never been any racial bias, now or in the past.
    2 There is less racial bias now than in the past.
    3 There is more racial bias now than in the past.
    4 There is the same amount of racial bias now as in the past.

12. While working for your current employer have you received any formal cultural sensitivity training?

    1 YES
    2 NO

    a. In your opinion, was the training adequate?

        1 YES
        2 NO

        If NO, why not?

        _____

    b. Was your participation in the training mandatory?

        1 YES
        2 NO

13. Are you aware of any substantive areas of the law in which statutes, rules, jury instructions or courtroom practices appear racially neutral, but in practice have racially disparate impacts?

    1 YES
    2 NO

    a. If YES, please identify the specific statute, rule, jury instruction or practice and explain how it operates to discriminate against racial minorities.

14. Are you aware of ways in which individuals belonging to particular minority groups - Black, Native American, Hispanic, or Asian - are treated differently by the court system because of their race? Please explain.

15. In the last two years, have you personally experienced or observed any incidents subjecting minority judges, attorneys, defendants, victims, litigants, jurors, or other participants in the state courts to treatment that was unfair or insensitive, or *otherwise disparate* from the treatment of whites? If so, please give examples without naming the specific individuals. Attach additional pages, if necessary.

a. Did you or anyone else protest the unfair or insensitive treatment of minority judges, attorneys, defendants, litigants, victims, jurors, or other court participants?

1 YES
2 NO

i. If YES, how? _____

b. In your opinion, did this treatment affect the outcome of a case?

1 YES
2 NO

i. If YES, how? _____

Judge Questionnaire

Minnesota Supreme Court
Racial Bias Task Force

The Minnesota Supreme Court Racial Bias Task Force thanks you for taking the time to participate in the study of racial bias in the state trial courts.

Most questions ask you to just circle a response. Your written comments are also welcomed. If you wish to clarify your answers or comment on the clarity of the questions please feel free to use the blank space provided at the end of each section, or attach additional sheets of paper.

All responses will be treated confidentially and no individuals will be identifiable in any reports of the results nor will any questionnaire be identified with any individual. The questionnaire contains no information which will specifically identify you.

When completed, please return the questionnaire as soon as possible, or within one week, in the enclosed envelope or to the address below. Please return the separate postcard at the same time you return the questionnaire. This will allow the research staff to follow-up on unreturned questionnaires while maintaining the anonymity of responses.

Research & Planning
State Court Administration
25 Constitution Ave., Suite 120
St. Paul, MN 55155
Questions ? call (612) 297-7580

IN THIS SURVEY, <u>MINORITY</u> REFERS TO PERSONS WHO ARE IDENTIFIED AS: BLACK; HISPANIC (REGARDLESS OF SKIN COLOR); NATIVE AMERICAN; ASIAN/PACIFIC ISLANDER; OR OTHER RACIAL MINORITY GROUPS.

A. GENERAL BACKGROUND INFORMATION

Please circle the appropriate response or fill in the requested information in the space provided.

1. What is your gender?

1	MALE
2	FEMALE

2. Which one of the following best describes you?

1	WHITE
2	MINORITY

3. Age:

1	Under 35 years	5	50 - 54
2	35 - 39	6	55 - 59
3	40 - 44	7	60 - 64
4	45 - 49	8	65 and over

4. Year in which you were first admitted to the practice of law :

1	Prior to 1960
2	1960 - 1969
3	1970 - 1979
4	1980 or later

5. Year in which you first became a judge:

1	Prior to 1970
2	1970 - 1979
3	1980 or later

6. Area in which you serve:

1	Metro (Districts 2 and 4)
2	Suburban (Districts 1 and 10)
3	Greater Minnesota (Districts 3,5,6,7,8,9)

7. Before you became a judge, in which area(s) of specialization did you regularly practice? (Circle the numbers of all that apply.)

1	GENERAL PRACTICE	8	CIVIL LITIGATION
2	CRIMINAL PROSECUTION	9	LABOR/EMPLOYMENT
3	CRIMINAL DEFENSE - PRIVATE	10	APPELLATE
4	CRIMINAL DEFENSE - PUBLIC	11	CORPORATE
5	JUVENILE	12	REAL ESTATE
6	FAMILY LAW	13	OTHER (SPECIFY) _____
7	PROBATE		

8. Over the past two years, approximately what proportion of people appearing before you have been in the following groups?

a. WHITE	_____%
b. BLACK	_____%
c. HISPANIC	_____%
d. NATIVE AMERICAN	_____%
e. ASIAN/PACIFIC ISLANDER	_____%
f. OTHER (Specify)_____	_____%

Please circle the response that best reflects your experience, observation, or opinion about legal career issues currently.

		MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
9.	More opportunities for positions on the bench are available for attorneys who are:	1	2	3	9
10.	More opportunities for positions in the judicial branch are available for attorneys and law clerks who are:	1	2	3	9
11.	Fewer opportunities for administrative responsibilities are given to judges who are:	1	2	3	9
12.	Fewer desirable assignments to cases and specific calendars are given to judges who are:	1	2	3	9

13. In your opinion, are the efforts to recruit and hire minority attorneys or law clerks adequate?

    1 YES
    2 NO If NO, why not? _____

14. Have you hired any minority attorneys or law clerks during the last five years?

    1 YES
    2 NO

15. During the past two years, have you personally encountered or observed in Minnesota any instances of racial bias or race-related problems in pursuing judicial careers in Minnesota? If so, please describe. Use additional pages if needed.

B. JUVENILE DELINQUENCY

IF YOU HAVE NOT PRESIDED OVER A DELINQUENCY PROCEEDING IN THE LAST TWO YEARS, PLEASE SKIP TO SECTION C ON PAGE 7. In the following questions where the treatment of juveniles is compared, assume that all other factors are equal, including the type of offense and the number and type of previous offenses. Please circle the answer that best reflects your experience in Minnesota state trial courts during the past two years.

1. In approximately how many delinquency cases in Minnesota state trial courts have you presided over in the last two years? Approximately what percentage of these cases involved minority juveniles?

Number of Delinquency Cases (Circle Category)					
NONE	1-5	6-25	26-100	More than 100	% Minority
1	2	3	4	5	

		MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
2.	Juveniles are more likely to be released following a stop when they are:	1	2	3	9
3.	Juveniles are more likely to be released pending dispositional hearings when they are:	1	2	3	9
4.	Juveniles are more likely to be placed in detention for *misdemeanor* offenses when they are:	1	2	3	9
5.	Juveniles are more likely to be placed in detention for *felony* offenses when they are:	1	2	3	9
6.	The court is more likely to grant custodial responsibility to relatives other than the juveniles' parents when juveniles are:	1	2	3	9
7.	Placement in early diversion programs is more likely when juveniles are:	1	2	3	9
8.	At the detention hearing, juveniles are more likely to be represented by counsel if they are:	1	2	3	9
9.	Multiple charges arising from a single incident are more likely to be entered against juveniles who are:	1	2	3	9
10.	Juveniles are more likely to be certified as adults for trial when they are:	1	2	3	9
11.	At the *delinquency* hearing, juveniles are more likely to be represented by counsel if they are:	1	2	3	9
12.	At the *disposition* hearing, juveniles are more likely to be represented by counsel if they are:	1	2	3	9
13.	The right to counsel is more likely to be waived by juveniles who are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
14. *Probation officers* are more likely to recommend alternatives to removal from the home when juveniles are:	1	2	3	9
15. *Prosecutors* are more likely to recommend alternatives to removal from the home when juveniles are:	1	2	3	9
16. *Defense counsel* are more likely to recommend alternatives to removal from the home when juveniles are:	1	2	3	9
17. *Judges* are more likely to encourage juveniles to request counsel when juveniles are:	1	2	3	9
18. *Probation officers* are more likely to encourage juveniles to request counsel when juveniles are:	1	2	3	9
19. Juveniles are more likely to be removed from the home if they are:	1	2	3	9
20. Inadequate parental supervision is more likely to be a basis for out-of-home placement of juveniles who are:	1	2	3	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
21. While in custody or during a court appearance, minority juveniles are addressed in a racially derogatory manner by:						
a. other juveniles.	1	2	3	4	5	9
b. police.	1	2	3	4	5	9
c. detention staff.	1	2	3	4	5	9
d. attorneys.	1	2	3	4	5	9
e. judges.	1	2	3	4	5	9
f. probation officers.	1	2	3	4	5	9
22. The presence of a defense attorney adversely influences disposition.	1	2	3	4	5	9

23. During the past two years, have you personally observed in Minnesota any instances of racial bias in the Minnesota juvenile justice system including law enforcement agencies, the court, court services or attorneys? If so, please describe. Attach additional pages, if needed.

24. How would you rate the following recommendations to improve the delivery of judicial services to the minority community?

	Very Important	Somewhat Important	Not Important	No Basis For Judgment
a. Culturally specific treatment programs.	1	2	3	9
b. Availability of minority probation officers.	1	2	3	9
c. Effective and independent minority advocates.	1	2	3	9
d. Cultural sensitivity training for all court personnel.	1	2	3	9
e. Increasing the number of minority judges and attorneys.	1	2	3	9
f. Expand community-based programs and dispositional alternatives.	1	2	3	9
g. Develop alternatives to juvenile detention.	1	2	3	9

25. Based on your experiences, what improvements would you suggest to ensure the judicial system operates in a racially equitable manner in delinquency cases?

C. CHILD PROTECTION AND PLACEMENT (CHIPS) AND TERMINATION OF PARENTAL RIGHTS (TPR)

IF YOU HAVE NOT PRESIDED OVER A CHIPS OR TPR CASE IN THE LAST TWO YEARS, PLEASE SKIP TO SECTION D ON PAGE 10. In the following questions where the treatment of children is compared, assume that all factors are equal including the family history and background. Please circle the answer that best reflects your experience in Minnesota state trial courts during the past two years.

1. In approximately how many cases involving children in need of protection or services (CHIPS) or termination of parental rights (TPR) in Minnesota state trial courts have you presided over in the last two years? Approximately what percentage of these cases involved minority children or families of minority children?

Number of CHIPS and TPR Cases (Circle Category)					
NONE	1-5	6-25	26-100	More than 100	% Minority
1	2	3	4	5	

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
2. Attorneys understand the provisions of:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
3. Judicial decisions apply the provisions of:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
4. The permanent out-of-home placement of minority children is delayed by applying:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
5. Social workers and court intake personnel are knowledgeable about the provisions of:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
6. Social workers and court intake personnel document their application of:						
a. the Minority Heritage Preservation Act.	1	2	3	4	5	9
b. the Indian Child Welfare Act.	1	2	3	4	5	9
7. When same-race foster homes are not available the *Minority Heritage Preservation Act* has the effect of preventing out-of-home placement of minority children.	1	2	3	4	5	9
8. When same-race foster homes are not available the *Indian Child Welfare Act* has the effect of preventing out-of-home placement of minority children.	1	2	3	4	5	9
9. In CHIPS and TPR cases involving minority families, the input of minority advocates is actively sought by social workers and court intake personnel.	1	2	3	4	5	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
10. Cultural insensitivity is demonstrated in working with minority families by:						
a. social workers and court intake personnel.	1	2	3	4	5	9
b. guardians ad litem.	1	2	3	4	5	9
c. attorneys.	1	2	3	4	5	9
d. judges.	1	2	3	4	5	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
11. Temporary out-of-home placements of minority children are generally of longer duration when foster families are:	1	2	3	9
12. Court intervention is more likely to occur in situations involving families who are:	1	2	3	9
13. Programs to help parents cope with child abuse or neglect problems are more readily available to families who are:	1	2	3	9
14. Removal from the home is more likely when children are:	1	2	3	9
15. Home-based services which allow a child to remain in the home are more readily available to families who are:	1	2	3	9
16. Social workers and court intake personnel are more likely to recommend terminating parental rights when parents are:	1	2	3	9
17. Social workers and court personnel make greater efforts to place children with members of their extended family when families are:	1	2	3	9

18. During the last two years, have you personally observed in Minnesota any examples of racial bias in the delivery of services to minority children or minority families by social service agencies, county attorneys, or the court? If so, please describe. Use additional pages, if needed.

19. In your experience, what is necessary to ensure greater success in first placements under the:

    a. Minority Heritage Preservation Act?

    b. Indian Child Welfare Act?

20. How would you rate the following recommendations to improve the delivery of judicial services to the minority community?

	Very Important	Somewhat Important	Not Important	No Basis For Judgment
a. Effective and independent minority advocates.	1	2	3	9
b. Increased minority personnel to reflect populations served.	1	2	3	9
c. Culturally specific placement alternatives.	1	2	3	9
d. Increase home-based services.	1	2	3	9
e. Increase community-based programs.	1	2	3	9

21. Based on your experiences, what improvements would you suggest to ensure the judicial system operates in a racially equitable manner in CHIPS cases?

D. CIVIL SETTLEMENTS AND DAMAGE AWARDS

IF YOU HAVE NOT PRESIDED OVER A PERSONAL INJURY OR WRONGFUL DEATH PROCEEDING DURING THE PAST TWO YEARS, PLEASE SKIP TO SECTION E ON PAGE 12. The following questions refer to settlements and damage awards in personal injury and wrongful death cases. Where treatment of plaintiffs or litigants is compared, assume that the cases are comparable. Please circle the response that is closest to your own experience or observations in Minnesota <u>in the last two years.</u>

1. In approximately how many personal injury or wrongful death cases in Minnesota state trial courts have you presided over in the last two years? Approximately what percentage of these cases involved minority plaintiffs or defendants?

Number of Personal Injury and Wrongful Death Cases (Circle Category)					
NONE	1-5	6-25	26-100	More than 100	% Minority
1	2	3	4	5	

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
2. Attorneys base their preparation of litigants' cases on racial stereotypes.	1	2	3	4	5	9
3. Judges base their evaluations of litigants' claims on racial stereotypes.	1	2	3	4	5	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
4. Litigants are more likely to be represented by counsel when they are:	1	2	3	9
5. Judges are more likely to award sufficient relief to plaintiffs who prevail in court when plaintiffs are:	1	2	3	9
6. Juries award lower *compensatory damages* to plaintiffs who are:	1	2	3	9
7. Juries award lower *punitive damages* to plaintiffs who are:	1	2	3	9
8. *Plaintiffs' attorneys* recommend smaller settlements when plaintiffs are:	1	2	3	9
9. *Defense attorneys* recommend smaller settlements when plaintiffs are:	1	2	3	9
10. Cases are more likely to be regarded as "winnable" by *plaintiffs' attorneys* when the injured party is:	1	2	3	9
11. Cases are more likely to be regarded as "winnable" by *insurance companies* when the injured party is:	1	2	3	9
12. Judges give more serious consideration to claims when plaintiffs are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
13. Attorneys give more serious consideration to claims when plaintiffs are:	1	2	3	9
14. *Plaintiffs' attorneys* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9
15. *Defense attorneys* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9

16. During the past two years, have you personally observed in Minnesota any instances of racial bias in the area of settlements or damage awards in personal injury or wrongful death cases? If so, please describe. (Attach additional pages as needed.)

17. Based on your experiences, what improvements would you suggest to ensure the judicial system operates in a racially equitable manner in civil cases?

E. FAMILY LAW (Including Adoption)

IF YOU HAVE NOT PRESIDED OVER A FAMILY LAW MATTER DURING THE PAST TWO YEARS, PLEASE SKIP TO SECTION F ON PAGE 14. In the following questions where the treatment of couples is compared, assume that all factors are equal. Please circle the answer that best reflects your experience in Minnesota state trial courts during the past two years.

1. In approximately how many family law cases in Minnesota state trial courts have you presided over in the last two years? Approximately what percentage of these cases involved minority children, minority parents, or minority couples?

Number of Family Cases (Circle Category)					
NONE	1-5	6-25	26-100	More than 100	% Minority
1	2	3	4	5	

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
2. Efforts are made to place minority children with same-race families before adoption by a white family is approved.	1	2	3	4	5	9
3. Programs are provided to preserve the cultural heritage of minority children adopted by white families.	1	2	3	4	5	9
4. White families are required to actively participate in programs to preserve the cultural heritage of adopted minority children.	1	2	3	4	5	9
5. In dissolution of mixed Native American-white families, child custody orders prohibit visitation outside the county.	1	2	3	4	5	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
6. Judges are more likely to issue mutual orders for protection in cases involving same-race couples who are:	1	2	3	9
7. Judges are more likely to issue mutual orders for protection in cases involving mixed-race couples when the primary aggressor is:	1	2	3	9
8. The arrest of both parties for violating orders for protection is more likely in cases involving same-race couples who are:	1	2	3	9
9. The arrest of both parties for violating orders for protection is more likely in cases involving mixed-race couples when the primary aggressor is:	1	2	3	9
10. In dissolution of mixed-race families, child custody is more often awarded to the parent who is:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
11. Child support and/or maintenance orders are more likely to be enforced when the parties are:	1	2	3	9

12. During the past two years, have you personally observed in Minnesota any instances of racial bias in the area of family law? If so, please describe. Attach additional pages, if needed.

13. Based on your experiences, what improvements would you suggest to ensure the judicial system operates in a racially equitable manner in family law cases?

F. CRIMINAL PROCESS (Not Juvenile)

IF YOU HAVE NOT PRESIDED OVER A CRIMINAL PROCEEDING DURING THE LAST TWO YEARS, PROCEED TO SECTION G ON PAGE 19. In the following questions where the treatment of defendants is compared, assume that all other factors are equal including the type of offense, and the number and type of previous offenses. Please circle the response that best fits your experience or observations in Minnesota state trial courts during the last two years.

1. a. Indicate below the approximate number of criminal cases you presided over (trial or negotiated plea) in Minnesota state trial courts during the past two years and the approximate percentage that involved minority defendants or victims.

Case Type	Number of Cases Presided Over (Circle Category)					% Minority Defendants	% Minority Victims
	NONE	1-5	6-25	26-100	More than 100		
Felony	1	2	3	4	5		
Gross Misdemeanor	1	2	3	4	5		
Misdemeanor	1	2	3	4	5		

Please circle the response that best fits your experience or observations in Minnesota state trial courts during the last two years.

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
2. Prosecutors are more likely to dismiss cases against first time drug offenders under M.S. 152.18 when offenders are:	1	2	3	9
3. While in custody, defendants are more likely to be physically mistreated when they are:	1	2	3	9
4. Defendants unable to post bail are more likely to be subsequently sentenced more severely when they are:	1	2	3	9
5. *Prosecutors* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9
6. *Defense counsel* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9
7. Prosecutors are more likely to file charges when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
8. Defendants are more likely to remain in custody prior to trial when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
9. Prosecutors are more likely to make favorable plea offers when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
10. Judges give more serious consideration to domestic assault cases when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
11. Prosecutors are more likely to perceive their cases as strong when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
12. *Prosecutors* are more likely to recommend reduced sentences when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
13. *Probation officers* are more likely to recommend reduced sentences when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
14. *Prosecutors* are more likely to recommend intermediate sanctions in lieu of prison when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
15. *Defense counsel* are more likely to request intermediate sanctions in lieu of prison when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
16. Judges are more likely to stay imposition of sentence when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
17. Judges are more likely to impose severe sanctions for the actual or threatened use of violence when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
18. Judges are more likely to make mitigating departures from sentencing guidelines when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
19. Judges are more likely to make aggravating departures from sentencing guidelines when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
20. Statutory rights are more likely to be accorded				
a. by *police* to victims who are:	1	2	3	9
b. by *prosecutors* to victims who are:	1	2	3	9
c. by *probation* officers to victims who are:	1	2	3	9
d. by *judges* to victims who are:	1	2	3	9
21. Judges are more likely to provide victims an opportunity to make an oral impact statement at sentencing when victims are:	1	2	3	9
22. Judges are more likely to exercise their discretion to limit the time of oral impact statements when victims are:	1	2	3	9
23. Judges more seriously consider victim impact statements when victims are:	1	2	3	9
24. *Prosecutors* are more likely to make good faith efforts to obtain victim input in plea negotiations when victims are:	1	2	3	9
25. *Prosecutors* are more likely to make good faith efforts to notify victims of sentencing hearings when victims are:	1	2	3	9
26. *Probation officers* are more likely to make reasonable efforts to notify victims of scheduled sentencing dates when victims are:	1	2	3	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
27. The following perceive the court system as racially biased against them:						
a. minority defendants.	1	2	3	4	5	9
b. white defendants.	1	2	3	4	5	9
c. minority victims.	1	2	3	4	5	9
d. white victims.	1	2	3	4	5	9
28. Court decisions reflect racial bias against:						
a. minority defendants.	1	2	3	4	5	9
b. white defendants.	1	2	3	4	5	9
c. minority victims.	1	2	3	4	5	9
d. white victims.	1	2	3	4	5	9
29. Defense counsel base the defense on racial stereotypes:						
a. when *defendants* are minority.	1	2	3	4	5	9
b. when *victims* are minority.	1	2	3	4	5	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
30. Prosecutors base strategy and conduct of the case on racial stereotypes:						
a. when *defendants* are minority.	1	2	3	4	5	9
b. when *victims* are minority.	1	2	3	4	5	9
31. Derogatory language is used towards minority *defendants* by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. victims and their families.	1	2	3	4	5	9
32. Derogatory language is used towards minority *victims* by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. defendants and their families.	1	2	3	4	5	9

33. Have you attended a formal training program or seminar on the rights of victims as set forth in Minnesota Statutes 611A?

1 YES
2 NO

a. In your opinion, was the training adequate?

1 YES
2 NO If NO, why not? _____

34. How and to what extent does the race relationship of the victim and offender (i.e., same race, different race) affect the treatment and handling of criminal *offenders*? Give examples if possible.

35. How and to what extent does the race relationship of the victim and offender (i.e., same race, different race) affect the treatment of criminal *victims*? Give examples if possible.

36. In the past two years, have you personally experienced or observed in Minnesota any instances of racial bias or lack of cultural sensitivity on the part of law enforcement, attorneys, judges, court personnel, probation officers, or others involved in the criminal process? If so, please describe. Attach additional pages, if needed.

37. Based on your experiences, what improvements would you suggest to ensure the judicial system operates in a racially equitable manner in criminal cases?

G. ACCESS TO JUSTICE

The following questions refer to some possible problems parties may encounter in securing legal rights or in jury selection. Please circle the response that best reflects your experience, observation, or opinion about access issues in Minnesota during the last two years.

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
1. Access to a lawyer is more likely to be available				
a. in criminal cases to persons who are:	1	2	3	9
b. in civil cases to persons who are:	1	2	3	9
2. Adequate legal representation is more likely to be received				
a. in criminal cases by persons who are:	1	2	3	9
b. in civil cases by persons who are:	1	2	3	9
3. In civil disputes, regardless of income, the cost of litigation is more likely to discourage utilization of the courts by persons who are:	1	2	3	9
4. In civil disputes, lack of understanding of the legal system is more likely to discourage utilization of the courts by persons who are:	1	2	3	9
5. In civil disputes, distrust of the legal system is more likely to discourage utilization of the courts by persons who are:	1	2	3	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
6. Judges recognize tribal sovereignty and tribal court jurisdiction where appropriate.	1	2	3	4	5	9
7. Interpreters are available for court participants who do not speak English.	1	2	3	4	5	9
8. Court appointed interpreters are competent in translating for non-English speaking litigants.	1	2	3	4	5	9
Jury Selection and Decisions						
9. During voir dire, *attorneys* question jurors to detect their biases against minorities.	1	2	3	4	5	9
10. During voir dire, *judges* question jurors to detect their biases against minorities.	1	2	3	4	5	9
11. The voir dire process is a satisfactory means of excluding racially biased jurors.	1	2	3	4	5	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
12. Minorities are adequately represented:						
a. in jury pools.	1	2	3	4	5	9
b. on jury panels.	1	2	3	4	5	9
c. on grand jury panels.	1	2	3	4	5	9
13. Verdicts are influenced by jurors' racial stereotypes when:						
a. victims are minority.	1	2	3	4	5	9
b. defendants are minority.	1	2	3	4	5	9
c. plaintiffs are minority.	1	2	3	4	5	9
14. Jurors weigh the testimony of witnesses without consideration of their race.	1	2	3	4	5	9

15. During the past two years, have you personally encountered or observed in Minnesota any instances of racial bias or race-related problems in obtaining legal representation, in the jury selection process, or in gaining access to the courts in Minnesota? If so, please describe. Use additional pages if needed.

H. COURTROOM INTERACTION

Speakers at public hearings and lawyers from a variety of legal areas have testified to various instances of unequal treatment of minorities in courtrooms and in judges chambers. The following questions ask how often you personally have observed or experienced specific types of behavior in Minnesota state courts in the last two years. Please circle the response that best fits with your observations.

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
1. Culturally insensitive behavior is displayed by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. other court participants.	1	2	3	4	5	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
2. Remarks or jokes demeaning to minorities are made in court or in chambers by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. other court participants.	1	2	3	4	5	9
3. Minorities receive adequate explanations of court procedures, either directly or through interpreters, by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
4. *Attorneys* are more likely to fail to show respect or courtesy toward				
a. litigants who are:	1	2	3	9
b. witnesses who are:	1	2	3	9
c. defendants who are:	1	2	3	9
d. victims who are:	1	2	3	9
e. judges who are:	1	2	3	9
f. court personnel who are:	1	2	3	9
5. *Judges* are more likely to fail to show respect or courtesy toward				
a. litigants who are:	1	2	3	9
b. witnesses who are:	1	2	3	9
c. defendants who are:	1	2	3	9
d. victims who are:	1	2	3	9
e. attorneys who are:	1	2	3	9
f. court personnel who are:	1	2	3	9
6. *Court personnel* are more likely to fail to show respect or courtesy toward				
a. litigants who are:	1	2	3	9
b. witnesses who are:	1	2	3	9
c. defendants who are:	1	2	3	9
d. victims who are:	1	2	3	9
e. judges who are:	1	2	3	9
f. attorneys who are:	1	2	3	9
7. Judges are more likely to pay attention to statements made by attorneys who are:	1	2	3	9
8. Jurors find more credible the opinions of *expert witnesses* who are:	1	2	3	9

9. Which of the following statements best describes your overall perception of bias against racial minorities in the Minnesota courts at the present time?

1 There is no racial bias against minorities in the Minnesota courts.
2 Racial bias against minorities exists, but only in a few areas and with certain individuals.
3 Racial bias against minorities is widespread.

a. IF YOU ANSWERED 2 OR 3, do you think that racial bias is subtle and hard to detect or readily apparent?

1 Subtle and hard to detect.
2 Readily apparent.

10. Which of the following statements best describes your overall perception of bias against racial minorities in the Minnesota courts over the past five to ten years?

1 There has never been any racial bias, now or in the past.
2 There is less racial bias now than in the past.
3 There is more racial bias now than in the past.
4 There is the same amount of racial bias now as in the past.

11. Have you received any formal cultural sensitivity training?

1 YES
2 NO

If YES:

a. Was the training adequate, in your opinion?

1 YES
2 NO

If NO, why not? _____

b. Was your participation in the training mandatory?

1 YES
2 NO

12. In your opinion, which of the following groups would benefit from cultural sensitivity training? (Circle all that apply).

1 JUDGES
2 ATTORNEYS
3 COURT PERSONNEL
4 OTHER (Please specify) _____

13. Are you aware of any substantive areas of the law in which statutes, rules, jury instructions or courtroom practices appear racially neutral, but in practice have racially disparate impacts?

    1 YES
    2 NO

    a. If YES, please identify the specific statute, rule, jury instruction or practice and explain how it operates to discriminate against racial minorities.

14. Are you aware of ways in which individuals belonging to particular minority groups - Black, Native American, Hispanic, or Asian - are treated differently by the court system because of their race? Please explain.

15. In the last two years, have you personally experienced or observed any incidents subjecting minority judges, attorneys, defendants, victims, litigants, jurors, or other participants in the state courts to treatment that was unfair or insensitive, or *otherwise disparate* from the treatment of whites? If so, please give examples without naming the specific individuals. Attach additional pages, if necessary.

If YES:

a. Did you or anyone else protest the unfair or insensitive treatment of minority judges, attorneys, defendants, litigants, victims, jurors, or other court participants?

1 YES
2 NO

i. If YES, how? _____

b. In your opinion, did this treatment affect the outcome of a case?

1 YES
2 NO

i. If YES, how? _____

16. Other comments.

Probation Officer Questionnaire

Minnesota Supreme Court

Racial Bias Task Force

The Minnesota Supreme Court Racial Bias Task Force thanks you for taking the time to participate in the study of racial bias in the state trial courts.

Most questions ask you to just circle a response. Your written comments are also welcomed. If you wish to clarify your answers or comment on the clarity of the questions please feel free to use the blank space provided at the end of each section, or attach additional sheets of paper.

All responses will be treated confidentially and no individuals will be identifiable in any reports of the results, nor will any questionnaire be identified with any individual. The questionnaire contains no information which will specifically identify you.

When completed, please return the questionnaire as soon as possible, or within one week, in the enclosed envelope or to the address below.

Research & Planning
State Court Administration
25 Constitution Ave., Suite 120
St. Paul, MN 55155
Questions ? call (612) 297-7654

IN THIS SURVEY, <u>MINORITY</u> REFERS TO PERSONS WHO ARE IDENTIFIED AS: BLACK; HISPANIC (REGARDLESS OF SKIN COLOR); NATIVE AMERICAN; ASIAN/PACIFIC ISLANDER; OR OTHER RACIAL MINORITY GROUPS.

A. GENERAL BACKGROUND INFORMATION

Please circle the appropriate response or fill in the requested information in the space provided.

1. What is your gender?
   1 MALE
   2 FEMALE

2. Which one of the following best describes you?

   1 WHITE (NON-HISPANIC)
   2 AFRICAN AMERICAN
   3 HISPANIC
   4 ASIAN/PACIFIC ISLANDER
   5 NATIVE AMERICAN
   6 OTHER (SPECIFY)_____

3. In what year were you born: _____

4. How many years have you been employed as a probation officer: _____

5. In your current position as a probation officer, do you supervise:

   1 ADULTS
   2 JUVENILES
   3 BOTH OF THE ABOVE
   4 NOT APPLICABLE

6. How many years have you been employed in your current position: _____

7. How many years have you worked in the criminal justice system (in any capacity): _____

8. In what county and judicial district is your primary office?

   County: _____ Judicial District: _____

9. Approximately what proportion of your clientele is in each of the following groups?

   a. WHITE _____%
   b. AFRICAN AMERICAN _____%
   c. HISPANIC _____%
   d. NATIVE AMERICAN _____%
   e. ASIAN/PACIFIC ISLANDER _____%
   f. OTHER (Specify)_____ _____%

10. Does your department take steps specifically directed at recruiting minority probation officers?

    1 YES
    2 NO
    3 DON'T KNOW

11. In your opinion, are the efforts to recruit and hire minority probation officers adequate?

    1 YES
    2 NO If NO, why not? _____

12. Has your department hired any minority probation officers during the last five years?

    1 YES If YES, approximately how many were hired? _____
    2 NO
    3 DON'T KNOW

13. Has your department hired any minority supervisors during the last five years?

1 YES If YES, approximately how many were hired? _____
2 NO
3 DON'T KNOW

14. During the past two years, have you personally encountered or observed any instances of racial bias or race-related problems in your work environment (including the pursuit of career advancement) that affected you or your co-workers? If so, please describe below. Attach additional pages if needed.

B. JUVENILE DELINQUENCY

IF YOU HAVE NOT BEEN INVOLVED IN A DELINQUENCY CASE IN THE LAST TWO YEARS, PLEASE SKIP TO SECTION C ON PAGE 10. In the following questions where the treatment of juveniles is compared, assume that **all other factors are equal, including the type of offense and the number and type of previous offenses.** Please circle the answer that best reflects your experience in Minnesota's juvenile justice system during the past two years.

1. In approximately how many delinquency cases have you been involved during the last two years in Minnesota? Approximately what percentage of these cases involved minority juveniles?

Number of Delinquency Cases (Circle Category)					% Minority
NONE	1-5	6-25	26-100	More than 100	
1	2	3	4	5	

		MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
2.	Juveniles are more likely to be released following a stop when they are:	1	2	3	9
3.	Juveniles are more likely to be released pending dispositional hearings when they are:	1	2	3	9
4.	Juveniles are more likely to be placed in detention for *misdemeanor* offenses when they are:	1	2	3	9
5.	Juveniles are more likely to be placed in detention for *felony* offenses when they are:	1	2	3	9
6.	The court is more likely to grant custodial responsibility to relatives other than the juveniles' parents when juveniles are:	1	2	3	9
7.	Placement in early diversion programs is more likely when juveniles are:	1	2	3	9
8.	At the detention hearing, juveniles are more likely to be represented by counsel if they are:	1	2	3	9
9.	Multiple charges arising from a single incident are more likely to be entered against juveniles who are:	1	2	3	9
10.	Juveniles are more likely to be certified as adults for trial when they are:	1	2	3	9
11.	At the *delinquency* hearing, juveniles are more likely to be represented by counsel if they are:	1	2	3	9
12.	At the *disposition* hearing, juveniles are more likely to be represented by counsel if they are:	1	2	3	9

		MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
13.	The right to counsel is more likely to be waived by juveniles who are:	1	2	3	9
14.	*Probation officers* are more likely to recommend alternatives to removal from the home when juveniles are:	1	2	3	9
15.	*Prosecutors* are more likely to recommend alternatives to removal from the home when juveniles are:	1	2	3	9
16.	*Defense counsel* are more likely to recommend alternatives to removal from the home when juveniles are:	1	2	3	9
17.	*Judges* are more likely to encourage juveniles to request counsel when juveniles are:	1	2	3	9
18.	*Probation officers* are more likely to encourage juveniles to request counsel when juveniles are:	1	2	3	9
19.	Juveniles are more likely to be removed from the home if they are:	1	2	3	9
20.	Inadequate parental supervision is more likely to be a basis for out-of-home placement of juveniles who are:	1	2	3	9
21.	Placement in a treatment program as an alternative to incarceration is more likely when juveniles are:	1	2	3	9
22.	Juveniles are more likely to waive their right to have their parents present at a hearing if they are:	1	2	3	9
23.	Judges are more likely to seek parental input into a dispositional decision when juveniles are:	1	2	3	9
24.	Statutory rights are more likely to be accorded				
	a. by *police* to victims who are:	1	2	3	9
	b. by *prosecutors* to victims who are:	1	2	3	9
	c. by *probation* officers to victims who are:	1	2	3	9
	d. by *judges* to victims who are:	1	2	3	9
25.	Judges are more likely to provide victims an opportunity to make an oral impact statement at sentencing when victims are:	1	2	3	9
26.	Judges are more likely to exercise their discretion to limit the time of oral impact statements when victims are:	1	2	3	9

		MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
27.	Judges more seriously consider victim impact statements when victims are:	1	2	3	9
28.	*Prosecutors* are more likely to make good faith efforts to obtain victim input in plea negotiations when victims are:	1	2	3	9
29.	*Prosecutors* are more likely to make good faith efforts to notify victims of sentencing hearings when victims are:	1	2	3	9
30.	*Probation officers* are more likely to make reasonable efforts to notify victims of scheduled sentencing dates when victims are:	1	2	3	9

		Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
31.	While in custody or during a court appearance, minority juveniles are addressed in a racially derogatory manner by:						
	a. other juveniles.	1	2	3	4	5	9
	b. police.	1	2	3	4	5	9
	c. detention staff.	1	2	3	4	5	9
	d. attorneys.	1	2	3	4	5	9
	e. judges.	1	2	3	4	5	9
	f. probation officers.	1	2	3	4	5	9
32.	The presence of a defense attorney adversely influences disposition.	1	2	3	4	5	9
33.	Court decisions reflect racial bias against:						
	a. minority defendants.	1	2	3	4	5	9
	b. white defendants.	1	2	3	4	5	9
	c. minority victims.	1	2	3	4	5	9
	d. white victims.	1	2	3	4	5	9
34.	Defense counsel base the defense on racial stereotypes:						
	a. when *defendants* are minority.	1	2	3	4	5	9
	b. when *victims* are minority.	1	2	3	4	5	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
35. Prosecutors base strategy and conduct of the case on racial stereotypes:						
a. when *defendants* are minority.	1	2	3	4	5	9
b. when *victims* are minority.	1	2	3	4	5	9
36. Derogatory language is used towards minority *victims* by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. defendants and their families.	1	2	3	4	5	9

37. How would you rate the following **recommendations** to improve the delivery of judicial services to the minority community?

	Very Important	Somewhat Important	Not Important	No Basis For Judgment
a. Culturally specific treatment programs.	1	2	3	9
b. Availability of minority probation officers.	1	2	3	9
c. Effective and independent minority advocates.	1	2	3	9
d. Cultural sensitivity training for all court personnel.	1	2	3	9
e. Increasing the number of minority judges and attorneys.	1	2	3	9
f. Expand community-based programs and dispositional alternatives.	1	2	3	9
g. Develop alternatives to juvenile detention.	1	2	3	9

38. Based on your experiences, what improvements would you suggest to ensure the judicial system operates in an equitable manner in delinquency cases?

39. In your experience over the past two years, have you seen instances of a juvenile failing a treatment program due to lack of cultural sensitivity in the program? Please explain.

40. During the past two years, have you personally observed in Minnesota any instances of racial bias in the Minnesota juvenile justice system including law enforcement agencies, court services, judges, attorneys, or probation staff? If so, please describe. Attach additional pages, if needed.

41. Have you attended a formal training program or seminar on the rights of victims as set forth in Minnesota Statutes 611A?

1 YES
2 NO

a. In your opinion, was the training adequate?

1 YES
2 NO If NO, why not? _____

42. How and to what extent does the race relationship of the victim and offender (i.e., same race, different race) affect the treatment and handling of juvenile *offenders*? Give examples if possible.

43. How and to what extent does the race relationship of the victim and offender (i.e., same race, different race) affect the treatment of *victims*? Give examples if possible.

C. CRIMINAL PROCESS (Not Juvenile)

IF YOU HAVE NOT WORKED WITH ADULT PROBATIONERS DURING THE LAST TWO YEARS, YOU MAY SKIP THIS SECTION AND PROCEED TO SECTION D. In the following questions where the treatment of defendants is compared, assume that **all other factors are equal including the type of offense, and the number and type of previous offenses.** Please circle the response that best fits your experience or observations in Minnesota's criminal justice system during the last two years.

1. In approximately how many criminal cases have you been involved during the last two years in Minnesota? Approximately what percentage of these cases involved minority defendants?

Number of Criminal Cases (Circle Category)					% Minority
NONE	1-5	6-25	26-100	More than 100	
1	2	3	4	5	

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
2. Prosecutors are more likely to dismiss cases against first time drug offenders under M.S. 152.18 when offenders are:	1	2	3	9
3. While in custody, defendants are more likely to be physically mistreated when they are:	1	2	3	9
4. Defendants unable to post bail are more likely to be subsequently sentenced more severely when they are:	1	2	3	9
5. *Prosecutors* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9
6. *Defense counsel* are more likely to use peremptory challenges to disqualify jurors who are:	1	2	3	9
7. Prosecutors are more likely to file charges when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
8. Defendants are more likely to remain in custody prior to trial when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
9. Prosecutors are more likely to make favorable plea offers when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
10. Judges give more serious consideration to domestic assault cases when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
11. Prosecutors are more likely to perceive their cases as strong when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
12. *Prosecutors* are more likely to recommend reduced sentences when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
13. *Probation officers* are more likely to recommend reduced sentences when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
14. *Prosecutors* are more likely to recommend intermediate sanctions in lieu of prison when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
15. *Defense counsel* are more likely to request intermediate sanctions in lieu of prison when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
16. Judges are more likely to stay imposition of sentence when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
17. Judges are more likely to impose severe sanctions for the actual or threatened use of violence when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
18. Judges are more likely to make mitigating departures from sentencing guidelines when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9
19. Judges are more likely to make aggravating departures from sentencing guidelines when				
a. defendants are:	1	2	3	9
b. victims are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
20. Statutory rights are more likely to be accorded				
a. by *police* to victims who are:	1	2	3	9
b. by *prosecutors* to victims who are:	1	2	3	9
c. by *probation* officers to victims who are:	1	2	3	9
d. by *judges* to victims who are:	1	2	3	9
21. Judges are more likely to provide victims an opportunity to make an oral impact statement at sentencing when victims are:	1	2	3	9
22. Judges are more likely to exercise their discretion to limit the time of oral impact statements when victims are:	1	2	3	9
23. Judges more seriously consider victim impact statements when victims are:	1	2	3	9
24. *Prosecutors* are more likely to make good faith efforts to obtain victim input in plea negotiations when victims are:	1	2	3	9
25. *Prosecutors* are more likely to make good faith efforts to notify victims of sentencing hearings when victims are:	1	2	3	9
26. *Probation officers* are more likely to make reasonable efforts to notify victims of scheduled sentencing dates when victims are:	1	2	3	9
27. Probation officers are more likely to file a probation violation when defendants are:	1	2	3	9
28. Probation officers are more likely to recommend a prison term at a probation violation hearing when defendants are:	1	2	3	9
29. Probation officers are more likely to be reluctant to go on a home visit when defendants are:	1	2	3	9
30. Probation officers are more likely to assign maximum risk supervision to defendants who are:	1	2	3	9
31. Probation officers are more likely to file a probation violation for non-payment of restitution when defendants are:	1	2	3	9

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
32. The following perceive the court system as racially biased against them:						
a. minority defendants.	1	2	3	4	5	9
b. white defendants.	1	2	3	4	5	9
c. minority victims.	1	2	3	4	5	9
d. white victims.	1	2	3	4	5	9
33. Court decisions reflect racial bias against:						
a. minority defendants.	1	2	3	4	5	9
b. white defendants.	1	2	3	4	5	9
c. minority victims.	1	2	3	4	5	9
d. white victims.	1	2	3	4	5	9
34. Defense counsel base the defense on racial stereotypes:						
a. when *defendants* are minority.	1	2	3	4	5	9
b. when *victims* are minority.	1	2	3	4	5	9
35. Prosecutors base strategy and conduct of the case on racial stereotypes:						
a. when *defendants* are minority.	1	2	3	4	5	9
b. when *victims* are minority.	1	2	3	4	5	9
36. Derogatory language is used towards minority *defendants* by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. victims and their families.	1	2	3	4	5	9
37. Derogatory language is used towards minority *victims* by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. defendants and their families.	1	2	3	4	5	9

38. Have you attended a formal training program or seminar on the rights of victims as set forth in Minnesota Statutes 611A?

1 YES
2 NO

a. In your opinion, was the training adequate?

1 YES
2 NO If NO, why not? _____

39. How and to what extent does the race relationship of the victim and offender (i.e., same race, different race) affect the treatment and handling of criminal *offenders*? Give examples if possible.

40. How and to what extent does the race relationship of the victim and offender (i.e., same race, different race) affect the treatment of criminal *victims*? Give examples if possible.

41. In the past two years, have you personally experienced or observed in Minnesota any instances of racial bias or lack of cultural sensitivity on the part of law enforcement, attorneys, judges, court personnel, probation officers, or others involved in the criminal process? If so, please describe. Attach additional pages, if needed.

D. COURTROOM INTERACTION

Speakers at public hearings and lawyers from a variety of legal areas have testified to various instances of unequal treatment of minorities in courtrooms and in judges chambers. The following questions ask how often you personally have observed or experienced specific types of behavior in Minnesota state courts in the last two years. Please circle the response that best fits with your observations.

	Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
1. Culturally insensitive behavior is displayed by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. other court participants.	1	2	3	4	5	9
2. Remarks or jokes demeaning to minorities are made in court or in chambers by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9
d. other court participants.	1	2	3	4	5	9
3. Minorities receive adequate explanations of court procedures, either directly or through interpreters, by:						
a. judges.	1	2	3	4	5	9
b. attorneys.	1	2	3	4	5	9
c. court personnel.	1	2	3	4	5	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
4. *Attorneys* are more likely to fail to show respect or courtesy toward				
a. witnesses who are:	1	2	3	9
b. defendants who are:	1	2	3	9
c. victims who are:	1	2	3	9
d. judges who are:	1	2	3	9
e. court personnel who are:	1	2	3	9
5. *Judges* are more likely to fail to show respect or courtesy toward				
a. witnesses who are:	1	2	3	9
b. defendants who are:	1	2	3	9
c. victims who are:	1	2	3	9
d. attorneys who are:	1	2	3	9
e. court personnel who are:	1	2	3	9
6. *Court personnel* are more likely to fail to show respect or courtesy toward				
a. witnesses who are:	1	2	3	9
b. defendants who are:	1	2	3	9
c. victims who are:	1	2	3	9
d. judges who are:	1	2	3	9
e. attorneys who are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
7. Judges are more likely to pay attention to statements made by attorneys who are:	1	2	3	9

8. Which of the following statements best describes your overall perception of bias against racial minorities in the Minnesota courts at the present time?

   1 There is no racial bias against minorities in the Minnesota courts.
   2 Racial bias against minorities exists, but only in a few areas and with certain individuals.
   3 Racial bias against minorities is widespread.

   a. IF YOU ANSWERED 2 OR 3, do you think that racial bias is subtle and hard to detect or readily apparent?

      1 Subtle and hard to detect.
      2 Readily apparent.

9. Which of the following statements best describes your overall perception of bias against racial minorities in the Minnesota courts over the past five to ten years?

   1 There has never been any racial bias, now or in the past.
   2 There is less racial bias now than in the past.
   3 There is more racial bias now than in the past.
   4 There is the same amount of racial bias now as in the past.

10. Have you received any formal cultural sensitivity training?

    1 YES
    2 NO

    a. In your opinion, was the training adequate?

       1 YES
       2 NO

       If NO, why not?

       _____

    b. Was your participation in the training mandatory?

       1 YES
       2 NO

11. In your opinion, which of the following groups would benefit from cultural sensitivity training? (Circle all that apply).

    1 Attorneys
    2 Court personnel
    3 OTHER (Please specify) _____

Victim Service Providers' Survey

Racial Bias Task Force

Minnesota Supreme Court

The Minnesota Supreme Court Racial Bias Task Force thanks you for taking the time to participate in the study of racial bias in the state courts. Your input is critical in evaluating the extent to which race is a factor in the operation of the legal system. Your written comments are welcomed. Please attach additional sheets as needed.

All of your responses will remain confidential. Your answers will be grouped together with those of other victim service providers so that you cannot be identified. An ID number appears on the survey for processing purposes only.

When you have completed the survey, please return the questionnaire today in the enclosed postage paid envelope to:

Research and Planning
State Court Administration
25 Constitution Avenue, Suite 120
St. Paul, MN 55155

Questions ? Call (612)297-5436

IN THIS SURVEY, MINORITY REFERS TO PERSONS WHO ARE IDENTIFIED AS: AFRICAN AMERICAN; HISPANIC (REGARDLESS OF SKIN COLOR); NATIVE AMERICAN; ASIAN/PACIFIC ISLANDER; OR OTHER RACIAL MINORITY GROUPS.

A. General Background Information

1. What is your gender?

   1 FEMALE
   2 MALE

2. How do you identify yourself?

   a. Asian/Pacific Islander
   b. African American
   c. Hispanic
   d. Native American
   e. White
   f. Other _____

3. In what year were you born? ___ ___ ___ ___

4. Number of years in current position ___ ___

5. In what county do you work? _____

6. Does your office offer culturally specific services?

   1 YES
   2 NO

   a. If Yes, please describe:

7. Have you attended a formal training program or seminar on the rights of victims as set forth in Minnesota Statues 611A?

   1 YES
   2 NO

   a. Did you feel the training you received was adequate?

      1 YES
      2 NO If NO, why not? _____

   b. Was participation in the training mandatory?

      1 YES
      2 NO

8. Have you ever received any cultural sensitivity training?

1 Yes
2 No

a. If yes, was this training provided by your current position or did you receive the training somewhere else?

1. Current position
2. Somewhere else
3. Both

b. Did you feel the training you received was adequate?

1 YES
2 NO

c. Was the training mandatory?

1 YES
2 NO

9. Approximately how many clients have you personally served in the past year? Approximately what percentage of these clients are minority?

Number of Victims Served (Circle Category)					% Minority
NONE	1 - 5	6 - 25	26 - 100	More than 100	
1	2	3	4	5	

10. Approximately what percentage of your minority clients have reported the crime committed against them to police? ___ ___ ___ %

11. Approximately what percentage of your white clients have reported the crime committed against them to police? ___ ___ ___ %

12. Are the reasons given by minority and white victims for not reporting these crimes different?

    1 YES
    2 NO

    a. If Yes, what are the reasons given by minority victims? Be specific. Attach additional pages if needed.

    b. If Yes, what are the reasons given by white victims? Be specific. Attach additional pages if needed.

B. Criminal Process

Please circle the response that best describes the treatment of victims based on your own experience and observations about the criminal process during the last two years.

		Minority	White	No Difference	No Basis For Judgement
1.	Law enforcement officers are less likely to give the victim information concerning a preliminary victim impact summary when victims are:	1	2	3	9
2.	Victims are more likely to file a preliminary victim impact summary when they are:	1	2	3	9
3.	Probation officers are more likely to fail to obtain a victim impact statement when victims are:	1	2	3	9
4.	Law enforcement personnel are more likely to provide information on victim rights when victims are:	1	2	3	9
5.	Victims are more likely to request restitution when they are:	1	2	3	9
6.	Victims are more likely to obtain restitution when they are:	1	2	3	9
7.	Prosecutors are more likely to file charges when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
8.	Defendants are more likely to remain in custody prior to trial when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
9.	Prosecutors are more likely to make favorable plea offers when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
10.	Prosecutors are more likely to request higher bail when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
11.	Judges are more lenient in setting bail when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9

		Minority	White	No Difference	No Basis For Judgement
12.	Judges give more serious consideration to domestic assault cases when:				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
13.	Prosecutors are more likely to perceive their cases as strong when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
14.	*Prosecutors* recommend reduced sentences when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
15.	*Probation officers* recommend reduced sentences when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
16.	*Prosecutors* are more likely to recommend intermediate sanctions in lieu of prison when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
17.	*Defense counsel* are more likely to request intermediate sanctions in lieu of prison when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
18.	Prosecutors notify victims that they have a right to have input prior to referring a defendant into a pretrial diversion program when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
19.	Judges are more likely to stay imposition of sentence when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
20.	Judges are more likely to impose severe sanctions for the actual or threatened use of violence when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
21.	Judges make mitigating departures from sentencing guidelines when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9

		Minority	White	No Difference	No Basis For Judgement
22.	Judges make aggravating departures from sentencing guidelines when				
	a. defendants are:	1	2	3	9
	b. victims are:	1	2	3	9
23.	Statutory rights are more likely to be accorded				
	a. by *police* to victims who are:	1	2	3	9
	b. by *prosecutors* to victims who are:	1	2	3	9
	c. by *probation* officers to victims who are:	1	2	3	9
	d. by *judges* to victims who are:	1	2	3	9
24.	Judges are more likely to provide victims an opportunity to make an oral impact statement at sentencing when victims are:	1	2	3	9
25.	Judges are more likely to exercise their discretion to limit the time of oral impact statements when victims are:	1	2	3	9
26.	Judges more seriously consider victim impact statements when victims are:	1	2	3	9
27.	Prosecutors are more likely to make good faith efforts to obtain victim input in *plea negotiations* when victims are:	1	2	3	9
28.	Prosecutors inform the victim of the contents of a plea agreement when victims are:	1	2	3	9
29.	*Prosecutors* are more likely to make good faith efforts to notify victims of *sentencing hearings* when victims are:	1	2	3	9
30.	Probation officers are more likely to make reasonable efforts to notify victims of scheduled sentencing dates when victims are:	1	2	3	9

		Always	Often	Sometimes	Rarely	Never	No Basis For Judgement
31.	Minority victims perceive the court system as racially biased against them:	1	2	3	4	5	9
32.	Court decisions reflect racial bias against minority victims:	1	2	3	4	5	9
33.	Jury verdicts reflect racial bias against minority victims:	1	2	3	4	5	9

		Always	Often	Sometimes	Rarely	Never	No Basis For Judgement
34.	Defense counsel base the defense on racial stereotypes:						
	a. when defendants are minority.	1	2	3	4	5	9
	b. when victims are minority.	1	2	3	4	5	9
35.	Prosecutors use racial stereotypes when:						
	a. defendants are minority	1	2	3	4	5	9
	b. victims are minority	1	2	3	4	5	9
36.	Derogatory language is used toward minority victims by:						
	a. judges	1	2	3	4	5	9
	b. attorneys	1	2	3	4	5	9
	c. court personnel	1	2	3	4	5	9
	d. defendants and their families	1	2	3	4	5	9

37. How and to what extent does the race relationship of the victim and offender (i.e. same race, different race) affect the treatment and handling of cases? Give examples if possible.

C. COURTROOM INTERACTION

Speakers at public hearings and lawyers from a variety of legal areas have testified to various instances of unequal treatment of minorities in courtrooms and in judges chambers. Please circle the response that best describes how often you personally have observed or experienced specific types of behavior in Minnesota state courts in the last two years.

		Always	Often	Sometimes	Rarely	Never	No Basis For Judgment
1.	Culturally insensitive behavior is displayed by:						
	a. judges.	1	2	3	4	5	9
	b. attorneys.	1	2	3	4	5	9
	c. court personnel.	1	2	3	4	5	9
	d. other court participants.	1	2	3	4	5	9
2.	Remarks or jokes demeaning to minorities are made in court or in chambers by:						
	a. judges.	1	2	3	4	5	9
	b. attorneys.	1	2	3	4	5	9
	c. court personnel.	1	2	3	4	5	9
	d. other court participants.	1	2	3	4	5	9
3.	Minorities receive adequate explanations of court procedures, either directly or through interpreters, by:						
	a. judges.	1	2	3	4	5	9
	b. attorneys.	1	2	3	4	5	9
	c. court personnel.	1	2	3	4	5	9

		MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
4.	*Attorneys* are more likely to fail to show respect or courtesy toward				
	a. witnesses who are:	1	2	3	9
	b. defendants who are:	1	2	3	9
	c. victims who are:	1	2	3	9
	d. judges who are:	1	2	3	9
	e. court personnel who are:	1	2	3	9
5.	*Judges* are more likely to fail to show respect or courtesy toward				
	a. witnesses who are:	1	2	3	9
	b. defendants who are:	1	2	3	9
	c. victims who are:	1	2	3	9
	d. attorneys who are:	1	2	3	9
	e. court personnel who are:	1	2	3	9

	MINORITY	WHITE	NO DIFFERENCE	NO BASIS FOR JUDGMENT
6. *Court personnel* are more likely to fail to show respect or courtesy toward				
a. witnesses who are:	1	2	3	9
b. defendants who are:	1	2	3	9
c. victims who are:	1	2	3	9
d. judges who are:	1	2	3	9
e. attorneys who are:	1	2	3	9

7. Which of the following statements best describes your overall perception of bias against racial minorities in the Minnesota courts at the present time?

1 There is no racial bias against minorities in the Minnesota courts.
2 Racial bias against minorities exists, but only in a few areas and with certain individuals.
3 Racial bias against minorities is widespread.

a. IF YOU ANSWERED 2 OR 3, do you think that racial bias is subtle and hard to detect or readily apparent?

1 Subtle and hard to detect.
2 Readily apparent.

8. Which of the following statements best describes your overall perception of bias against racial minorities in the Minnesota courts over the past five to ten years?

1 There has never been any racial bias, now or in the past.
2 There is less racial bias now than in the past.
3 There is more racial bias now than in the past.
4 There is the same amount of racial bias now as in the past.

9. Are you aware of any substantive areas of the law in which statutes, rules, jury instructions or courtroom practices appear racially neutral, but in practice have racially disparate impacts?

1 YES
2 NO

a. If YES, please identify the specific statute, rule, jury instruction or practice and explain how it operates to discriminate against racial minorities.

10. Are you aware of ways in which individuals belonging to particular minority groups - Black, Native American, Hispanic, or Asian - are treated differently by the court system because of their race? Please explain.

11. In the last two years, have you personally experienced or observed any incidents subjecting minority judges, attorneys, defendants, victims, jurors, or other participants in the state courts to treatment that was unfair or insensitive, or *otherwise different* from the treatment of whites? If so, please give examples without naming the specific individuals. Attach additional pages, if necessary.

a. Did you or anyone else protest the unfair or insensitive treatment of minority judges, attorneys, defendants, victims, jurors, or other court participants?

1 YES
2 NO

i. If YES, how? _____

b. In your opinion, did this treatment affect the outcome of a case?

1 YES
2 NO

i. If YES, how? _____

D. CRIMINAL PROCESS (Not Juvenile)

This section examines the treatment of victims and their rights in the criminal process. The statements below ask you to indicate whether treatment is likely to differ depending on the race of the victim and the race of the defendant. Please circle the response that best describes the treatment of victims based on your own experience, observations, peceptions and opinions about the criminal process during the last two years.

	Most Likely				Least Likely	No Basis For Judgment
1. Law enforcement officers give the victim information concerning a preliminary victim impact summary when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
2. Victims are arrested when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
3. Law enforcement personnel provide information on victim rights when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
4. Probation officers obtain a victim impact statement when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/ white defendant	1	2	3	4	5	9
5. Prosecutors file charges when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
6. Defendants remain in custody prior to trial when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9

	Most Likely				Least Likely	No Basis For Judgment
7. Prosecutors make favorable plea offers when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
8. Judges give more serious consideration to domestic assault cases when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
9. Prosecutors perceive their cases as strong when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
10. Prosecutors recommend reduced sentences when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
11. Probation officers recommend reduced sentences when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
12. Prosecutors recommend intermediate sanctions in lieu of prison when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
13. Defense counsel request intermediate sanctions in lieu of prison when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9

	Most Likely				Least Likely	No Basis For Judgment
14. Judges stay imposition of sentence when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
15. Judges impose severe sanctions for the actual or threatened use of violence when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
16. Judges make mitigating departures from sentencing guidelines when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9
17. Judges make aggravating departures from sentencing guidelines when there is a						
a. white victim/minority defendant	1	2	3	4	5	9
b. minority victim/minority defendant	1	2	3	4	5	9
c. white victim/white defendant	1	2	3	4	5	9
d. minority victim/white defendant	1	2	3	4	5	9

18. Based on your experiences, what improvements would you suggest to ensure the judicial system operates in a racially equitable manner in the treatment of victims?

COUNTY:__ __

DATE: __/__/92

Juvenile Exit Survey

Minnesota Supreme Court
Racial Bias Task Force

June, 1992

Thank you for helping the Minnesota Supreme Court Racial Bias Task Force by completing this survey. The Racial Bias Task Force was created to look at racial bias issues in the court system and make recommendations based on the information collected. Information from juveniles such as yourself will allow us to see if juveniles are treated fairly by the court system regardless of race. All your answers are completely confidential. There is no way anyone will be able to identify you based on your answers. Responses to the survey will be put together with those of many other juveniles and analyzed in groups.

Background Information

Please circle the number next to the response which best describes your situation.

1. **Race**

   1 African American
   2 Asian/Pacific Islander
   3 White
   4 Hispanic
   5 Native American
   6 Other _____

2. **Age** ____

3. **Gender**

   1 Female
   2 Male

4. Why were you in court today? What offense are you here on?

5. Have you ever appeared in juvenile court before today?

   1 Yes
   2 No

   a. **(IF YES)** About how many times? ____

6. Were you arrested or taken into custody at any time for this particular incident?

   1 Yes
   2 No

IF NO, GO TO QUESTION 28, PAGE 5

ARREST

7. What was the race of the arresting officer?

   1 White
   2 Minority
   3 Don't remember

8. At the time you were taken into custody, why did the police officers say they were arresting you?

		YES	NO	DON'T KNOW
9.	At the time you were taken into custody, were you treated in a rough or violent manner by the arresting officer?	1	2	9
10.	At the time you were taken into custody, did you feel that your race was a factor in your being arrested?	1	2	9
11.	At the time you were taken into custody, did you experience any verbal put-downs that had to do with your race?	1	2	9
12.	At the time you were taken into custody, did you hear racial put-downs being made even though they were not directed at you?	1	2	9
13.	At the time you were taken into custody, were there other kinds of behavior, speech, harassment, attitude, roughness or violence that indicated to you that race was a factor in your arrest?	1	2	9

   a. **(IF YES)** Please explain:

		YES	NO	DON'T KNOW
14.	Were there any other juveniles involved in this incident?	1	2	9
	a. **(IF YES)** Were they all the same race as you?	1	2	9
	i. **(IF NO to Q14a)** Do you feel anyone was treated differently because of their race?	1	2	9
	(1) **(IF YES to Q14ai)** Please explain:			

		YES	NO	DON'T KNOW
15.	After you were taken into custody, were you released to your parents or legal guardian?	1	2	9
16.	Before you appeared in court today, were you referred to another program for the same incident?	1	2	9
17.	Before you appeared in court today, were you referred to shelter placement because of this incident?	1	2	9

DETENTION

		YES	NO	DON'T KNOW
18.	Were you held in detention at any time before you appeared in court?	1	2	9

IF NO, GO TO QUESTION 28, PAGE 5

		YES	NO	DON'T KNOW
19.	Were you informed of your right to talk to an attorney after your arrest but before your detention hearing?	1	2	9
	a. Did you choose to talk to an attorney?	1	2	9
	i. If not, why not?			
20.	Were your parents or legal guardians notified of your arrest?	1	2	9
	a. **(If YES)** Were you given an opportunity to speak with them?	1	2	9
21.	At the detention hearing, were you released?	1	2	9

(IF NO, GO TO QUESTION 23)

22. **(IF RELEASED)** Were you released to your parents or guardians, a shelter, or somewhere else? (Circle one)

a. parents/guardians
b. shelter placement
c. somewhere else (specify) _____

GO TO QUESTION 25

23. **(IF NOT RELEASED)** At the detention hearing, what reason did the Judge/referee give for not releasing you? Was it because of the: (Circle all that apply)

a. Seriousness of the offense?
b. Seriousness of your prior record?
c. Injury to another person during the incident for which you were arrested?
d. Inability to contact someone to release you to?
e. Some other reason (Please explain)

_____

24. At the detention hearing, why do you think you were not released?

		YES	NO	DON'T KNOW
25.	While you were in detention, were any racial put-downs made to you by:			
	a. people who worked in detention?	1	2	9
	b. other juveniles in detention?	1	2	9
26.	While you were in detention, did you hear <u>any</u> racial put-downs even though they were not addressed towards you that were made by:			
	a. people who worked in detention?	1	2	9
	b. other juveniles in detention?	1	2	9
27.	While you were in detention, were you disciplined for any reason just because of your race?	1	2	9

a. **(IF YES)** Please explain:

JUVENILE HEARING

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28. What type of hearing did you have today?
(Circle one)

a. arraignment.
b. detention hearing.
c. detention review.
d. pretrial hearing.
e. disposition hearing.
f. other (specify) _____

		YES	NO	DON'T KNOW
29.	At any time before or during your hearing, did you experience any racial put-downs by: (Circle one response for each person)			
a.	the county attorney?	1	2	9
b.	your attorney?	1	2	9
c.	the judge or referee?	1	2	9
d.	the arresting officer?	1	2	9
e.	the bailiff (person bringing you into the courtroom)?	1	2	9
f.	the probation officer?	1	2	9
g.	other court personnel? (specify) _____	1	2	9

IF NO TO ALL OF THE ABOVE, GO TO QUESTION 31

30.	**(IF YES TO ANY OF THE ABOVE)** Did anyone speak up or try to stop the remarks?	1	2	9
a.	**(IF YES)** Who? (Circle one response for each person)			
i.	the county attorney?	1	2	9
ii.	your attorney?	1	2	9
iii.	the judge or referee?	1	2	9
iv.	the arresting officer?	1	2	9
v.	the bailiff (person bringing you into the courtroom)?	1	2	9
vi.	the probation officer?	1	2	9
vii.	other court personnel? (specify)_____	1	2	9
31.	Were there other types of behavior in the court that made you feel that race was a factor handling the hearing?	1	2	9
a.	**(IF YES)** Please explain:			

DISPOSITION

		YES	NO	DON'T KNOW
32.	What was the result of the hearing? What do you have to do? (Circle all that apply)			
	a. dismissal.	1	2	9
	b. release to home on probation; house arrest; home detention.	1	2	9
	c. release to foster care.	1	2	9
	d. release to a community program.	1	2	9
	e. assignment to a program outside the community.	1	2	9
	f. chemical dependency treatment in the community.	1	2	9
	g. chemical dependency treatment outside the community.	1	2	9
	h. assignment to a juvenile correction facility.	1	2	9
	i. return to court at a later date.	1	2	9
	j. other (please specify)_____	1	2	9
33.	Do you think this was the best decision for your case?	1	2	9

33a. **(IF NO)** Why not?

APPENDIX D

Data Analysis Reports

Juvenile Case Processing Analysis

Task Force on Racial Bias in the Courts

Minnesota Supreme Court

April 28, 1992

Sharon Krmpotich, M.A.

State Court Administration
Research & Planning
25 Constitution Avenue
St. Paul, MN 55155

Research Design

The purpose of this study is to determine the extent of differential processing of juvenile cases in Minnesota courts based on race. Are minority juveniles treated differently than white juveniles during the delinquency adjudication process? The specific questions asked were the following:

1. Controlling for current offense and delinquency history, are minority juveniles more likely to receive an "out of home" dispositional placement than their white peers?

2. Controlling for current offense and delinquency history, are minority juveniles more likely to be held in pre-disposition detention than their white peers?

3. Controlling for current offense and delinquency history, are minority juveniles more likely to be certified as adults than their white peers?

4. Is attorney representation related to the race of the juvenile?

In order to answer these questions, we retrieved and consolidated five years (1987-1991) of juvenile delinquency data from the State Judicial Information System (SJIS). We would have preferred to analyze data for the entire state, but due to the fact that many counties fail to report the race of juveniles to SJIS, we were unable to do so. It was necessary to select a sample of specific counties with a high proportion of cases with reported race.

We first examined the 1990 census data to identify counties with a high minority population. We then did a breakdown of race by county in the 5-year juvenile delinquency database. Counties were selected for analysis if they had at least 50% of their cases reported with known race, and 5% or more of their juveniles were racial minorities. The one exception to this selection criteria was St. Louis county. Even though over 50% of the cases in St. Louis had an unknown race value, the county was included in the analysis because it still contributed a significant number of Native American and Asian juveniles to the sample.

Methodology

Fifteen outstate counties were chosen for analysis, along with Hennepin County. Counties included in the outstate sample are the following: St. Louis, Carlton, Clay, Becker, Mahnomen, Clearwater, Hubbard, Cass, Mille Lacs, Traverse, Chippewa, Kandiyohi, Renville, Pipestone, and Freeborn. By using these specific counties, we are including the majority of the African American, Native American, and Hispanic juveniles who were processed throughout the state as delinquents in the 1987-91 time frame.

We decided to analyze the Hennepin County data separately from the outstate data. The Hennepin County sample is larger (10,000+ cases) than all of the outstate counties combined (8,000+ cases), thus it would tend to dominate the analysis and perhaps mask trends that occurred in the outstate counties. Also, the racial composition of the two samples

is quite different. The Hennepin sample is 61% white, with African Americans being the largest minority group. The outstate sample is 78% white and its dominant minority group is Native American. The racial composition of both samples is displayed in Table 1 below.

Table 1. Race Distributions

Hennepin County

	N Cases	Percent	Valid Pct.
White	5154	47.6%	60.8%
Black	2490	23.0%	29.4%
Amer. Indian	723	6.7%	8.5%
Hispanic	51	0.5%	0.6%
Asian	57	0.5%	0.7%
Unknown	2359	21.8%	--
Total	10834	100%	100%

Outstate Counties

	N Cases	Percent	Valid Pct.
White	3814	45.6%	78.0%
Black	26	0.3%	0.5%
Amer. Indian	801	9.6%	16.4%
Hispanic	196	2.3%	4.0%
Asian	46	0.5%	1.0%
Unknown	3486	41.7%	--
Total	8369	100%	100%

The factors of interest in this study are race, current offense type, and delinquency history of the juvenile. We defined current offense type as the most severe charge filed in the most recent delinquency petition against the juvenile for which there was a disposition. Offenses were categorized into five classification types: felony against a person, felony against property, minor offense against a person, minor property offense, and other delinquency. The two "minor" offense categories included both misdemeanors and gross misdemeanors. The category of "other delinquency" included all other offenses, both felony and non-felony crimes, which did not fall into the other four categories. Drug offenses and "victimless" crimes are in this category.[1] The distributions of offense types are displayed in

[1] The "other delinquency" category included all drug offenses, escape, traffic/accidents, disturbing the peace, weapons possession, alcohol offenses, etc. The "minor property" category included non-felony property offenses such as theft, forgery, property damage, etc. The "minor person" category included non-felony assaults. The "felony property" category

Table 2. The "minor property" offense category accounted for the greatest proportion of offenses in both samples.

Table 2. Offense Type Distributions

	Outstate		Hennepin	
	N Cases	Percent	N Cases	Percent
Felony Person	323	4.2%	903	9.3%
Felony Property	1426	18.4%	2366	24.4%
Minor Person	594	7.7%	904	9.3%
Minor Property	3187	41.2%	3654	37.8%
Other Delinq	2204	28.5%	1853	19.2%
Total	7734	100%	9680	100%

In order to determine delinquency history, the petitions filed against each youth from 1987 through 1991 were counted. In Hennepin County, petition counts ranged from 1 to 27, with 98% of the juveniles having 10 petitions or less. First time offenders made up 54% of the sample. In the outstate sample, petition counts ranged from 1 to 19, with 98% of the juveniles having 6 or less petitions. First time delinquents made up 68% of the outstate sample. For all of the analyses, this delinquency history variable was collapsed into two categories: 0 for no prior petitions and 1 for any prior petitions.

The racial distribution for both samples is displayed in Table 1. Because some minority groups had very few cases, the race variable was collapsed into two categories, white and minority, for all analyses. The minority category includes all racial minorities and Hispanics. The Hennepin sample is 61% white and the outstate sample is 78% white.

The age distribution is quite similar for both whites and minorities in each sample. The average age is 15.5 years for both whites and minorities in Hennepin County. In the outstate sample, the average age is 15 years in both racial categories. Since the age distribution within each racial category is so similar, age should not be a confounding factor in the analyses.

The legal factors and decisions to be examined are certification to adult court, pre-disposition detention, removal from home as a disposition, and attorney representation. We are interested in examining the relationships between these factors and race. All of these variables are dichotomous with a "yes" or "no" response. The statistical techniques employed

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included felony theft, burglary, forgery, arson, auto theft, etc. The "felony person" category included felony assaults, robbery, homicide, and criminal sexual conduct.

are contingency table analysis (using the chi-square statistic) and logistic regression.[2] Both methods are well suited for categorical data analysis. The chi-square statistic is used in the cross-tabulations to compare observed and expected counts to determine if there is a significant association between two variables.[3]

As can be seen in Table 1, 22% of the Hennepin sample and 42% of the outstate sample had race reported as unknown. This could present a problem in the analyses if a systematic bias was evident in the cases with missing race data. In order to check for systematic bias, a comparison was made between the "known race" and the "unknown race" subsamples within both the Hennepin and outstate samples. The frequency distributions for offense type, delinquency history, removal from home, certification, and pre-disposition detention were examined to see if there were differences between the "known race" and "unknown race" subsamples. These distributions were found to be quite similar. Thus, the cases for both the Hennepin and outstate samples with missing race information do not appear to introduce any systematic bias. We are confident that the following analyses provide a valid examination of the effects of race on certification, detention, and dispositions in Hennepin and the outstate counties. However, we cannot assume that the findings are representative of the entire state since our samples were not randomly drawn.

Findings

Certification to Adult Court

The first variable to be examined was the rate of certification of juveniles to adult criminal court. We wanted to know if minority juveniles were more likely to be certified than white juveniles after controlling for offense type and delinquency history. Of the 4,883 juveniles with known race in the outstate sample, only 87 were certified as adults (1.8%). The racial breakdown for certification was 1.7% of whites and 2.2% of minorities. In Hennepin County, there were 8,475 juveniles with known race of which 96 were certified as adults (1.1%). The racial breakdown was 0.7% of whites and 1.8% of minorities.

Since so few juveniles were certified in both samples, it was not feasible to proceed with this analysis. There were not enough certification cases to allow controls for offense type and delinquency history.

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[2] Logistic regression is similar to multiple regression in the techniques used for model building and hypothesis testing. However, in multiple regression a model is built to predict the value of a continuous, interval level variable in which error terms are minimized between predicted and observed values. In logistic regression, the dependent variable is binary (a yes or no response) and the model is built to predict the probability of membership in one of two categories.

[3] Much of the analyses and discussion of the findings will be based upon the chi-square measure of association and the tables produced by cross-tabulation. A statistically significant association means that the relationship is not due to random chance.

Attorney Representation

The second variable to be examined was attorney representation at the adjudication hearing and at disposition. Table 3 displays the relationship between the juvenile's race and whether an attorney was present to represent them at adjudication and disposition in the Hennepin County sample. Approximately 39% of the whites and 47% of the minorities were represented by an attorney at the adjudication hearing. These numbers dropped somewhat by the time the case reached disposition. Approximately 26% of the whites and 35% of the minorities had attorney representation at disposition. There is a significant relationship between race and attorney representation at both the disposition and adjudication hearing[4].

Table 3. Attorney Rèpresentation - Hennepin

	Adjudication Hearing				
	White		Minority		**
Attorney	N Cases	%	N Cases	%	
No	3051	61.2	1647	53.4	
Yes	1937	38.8	1440	46.6	

	Disposition				
	White		Minority		**
Attorney	N Cases	%	N Cases	%	
No	3584	74.1	1826	65.4	
Yes	1253	25.9	966	34.6	

** Chi-square signif. $p < .01$

Although minority juveniles were more likely to be represented by an attorney at both adjudication and disposition, white juveniles were more likely to be represented by a private attorney. For those juveniles who had legal representation at adjudication, 24% of the whites had a private attorney while only 11% of minorities had private counsel.

Table 4 displays attorney information for the outstate sample. The differences between attorney representation for whites and minorities are even greater than they were in the Hennepin sample. In the outstate sample, approximately 36% of the whites as opposed to 57% of the minorities had attorney representation at the adjudication hearing. At

[4] The chi-square is statistically significant at the $p < .01$ level.

disposition, the percentages were about the same, with 37% of the whites and 57% of the minorities being represented by attorneys. Again, there was a statistically significant association between race and attorney representation[5]. Over half of the minority juveniles had attorney representation at both points in the process while approximately one third of the whites were represented by counsel. For those juveniles who had legal representation at adjudication, 11% of the whites and 3% of the minorities had private attorneys.

Table 4. Attorney Representation - Outstate

	Adjudication Hearing				
	White		Minority		**
Attorney	N Cases	%	N Cases	%	
No	2277	64.5	402	43.0	
Yes	1252	35.5	532	57.0	

	Disposition				
	White		Minority		**
Attorney	N Cases	%	N Cases	%	
No	2214	63.2	405	43.4	
Yes	1289	36.8	529	56.6	

** Chi-square signif. $p < .01$

In order to get a better understanding of the relationship between race and attorney representation, this analysis was taken a step further by doing cross-tabulations between the two variables within each offense category. In the outstate sample, the relationship between race and attorney representation was statistically significant ($p < .01$) within the offense categories of felony property, minor property, and other delinquency. Again, minorities were more likely to be represented by an attorney at both the adjudication hearing and disposition. The race-attorney representation relationship was not statistically significant within the "person" offense categories. Both whites and minorities had similar rates of representation.

The findings were slightly different for the Hennepin sample. The association between race and attorney representation was statistically significant within all of the offense types. Minorities had a higher rate of attorney representation than whites for all of the offense categories, and at both the adjudication hearing and disposition.

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[5] The relationship was significant at the $p < .01$ level.

Detention Prior to Disposition

The next variable to be analyzed was the rate of detention prior to disposition. We wanted to know if minority youths were detained in greater proportions than their white peers, after controlling for current offense type and prior delinquency petitions. It seemed logical to assume that juveniles who were arrested for similar offenses and had similar histories would receive similar outcomes in the detention decision. Table 5 contains the detention data for Hennepin County. The table is divided into two sections which distinguish the juveniles who had only one petition filed against them (first-time delinquents) in the 1987-91 time frame from the juveniles who had more than one petition in that time period (repeat delinquents). Within each offense category, the proportion of juveniles detained is listed by race.

Table 5. Detention Rates - Hennepin

	First-Time Delinquents				
	White		Minorities		
	N Cases	Detained	N Cases	Detained	
Felony Person	240	20.0%	162	49.4%	**
Felony Property	773	8.2%	203	16.7%	**
Minor Person	244	9.0%	151	7.3%	
Minor Property	1195	4.9%	423	6.6%	
Other Delinq	506	6.5%	224	24.6%	**
Total	2958	7.6%	1163	17.9%	

	Repeat Delinquents				
	White		Minorities		
	N Cases	Detained	N Cases	Detained	
Felony Person	107	50.5%	233	66.1%	**
Felony Property	549	33.3%	325	46.5%	**
Minor Person	143	21.7%	164	30.5%	
Minor Property	737	17.1%	548	26.8%	**
Other Delinq	315	23.8%	343	35.0%	**
Total	1851	25.3%	1613	38.6%	

** Chi-square signif. p < .01 (Assoc. btwn. Race and Detain)

For the first-time delinquents in Hennepin County, there is a statistically significant association ($p < .01$) between race and detention within three of the offense categories: felony against a person, felony property, and other delinquency. Minorities are detained at a higher rate than their white peers in these three offense categories. The situation is similar for the repeat delinquents within the same three offense categories. Along with the addition of

the minor property offense category, a significant association exists between race and detention.

To further explore the relationship between detention and race for Hennepin County, a logistic regression was run on the data. Offense type, prior history, race, and gender were specified as variables to be included in a model to predict the probability of a juvenile being held in detention. With the exception of gender, all of these variables were statistically significant ($p < .01$) in predicting the probability of detention. However, the model was capable of correctly predicting a "yes" response for detention in a limited number of the cases. This may indicate that our model does not fit the data very well, and there may be other variables that influence the detention decision which we have not included in our analysis. Regardless of how well the model fits the data, race was statistically significant.

Table 6 contains the detention data for the outstate sample. For the first-time delinquents, there is a statistically significant association between race and detention within two of the offense categories: minor property and other delinquency. Once again minorities are detained at a higher rate than whites within these offense categories. For the repeat delinquents, we find a significant association between race and detention within the offense categories of felony property and minor property.

Table 6. Detention Rates - Outstate

	First-Time Delinquents				
	White		Minorities		
	N Cases	Detained	N Cases	Detained	
Felony Person	101	42.6%	24	54.2%	
Felony Property	393	21.4%	108	28.7%	
Minor Person	133	26.3%	53	22.6%	
Minor Property	1195	8.5%	251	17.9%	**
Other Delinq	678	11.4%	114	21.9%	**
Total	2500	13.6%	550	22.9%	

	Repeat Delinquents				
	White		Minorities		
	N Cases	Detained	N Cases	Detained	
Felony Person	36	36.1%	29	55.2%	
Felony Property	236	18.2%	90	38.9%	**
Minor Person	98	22.4%	40	20.0%	
Minor Property	372	12.9%	123	26.8%	**
Other Delinq	298	23.2%	113	24.8%	
Total	1040	18.8%	395	30.4%	

** Chi-square signif. $p < .01$ (Assoc. btwn. Race and Detain)

In looking at the felony person offense category for both first-time and repeat delinquents, one may wonder why the relationship between race and detention is not statistically significant. First-time minority delinquents are detained at a rate that is 12% higher than their white peers, while repeat minority delinquents are detained at a rate 19% higher than their white peers. The lack of statistical significance is most likely due to the small number of cases within each subgroup. The chi-square statistic is sensitive to sample size in that statistical significance is easier to achieve with a large number of cases.

A logistic regression was also run on the outstate sample, using the same model specification as was previously described for Hennepin County. Once again, offense type, prior history, and race were statistically significant ($p < .01$) in predicting the probability of detention. However, this model also presents us with the same problem we encountered with the Hennepin model, which is a lack of predicting power.

Disposition

The final variable to be analyzed was the juvenile's disposition. This variable was constructed by classifying all possible dispositions into two categories. If a disposition resulted in the juvenile's removal from his/her home, the youth was coded as being removed regardless of whether the removal resulted in a secure facility placement. Thus the "remove" variable is coded as "yes" for any disposition that causes the juvenile to receive an out-of-home placement.

Table 7 displays the data for the Hennepin County sample. The only statistically significant association between race and removal from home for first-time delinquents is found within the "felony person" offense category. Within all the other offense categories, the rate of removal is quite similar for whites and minorities. For the repeat delinquents, the "other delinquency" category is the only one to indicate a significant association between race and removal.

Table 7. Removed from Home - Hennepin

	First-Time Delinquents				
	White		Minorities		
	N Cases	Removed	N Cases	Removed	
Felony Person	226	19.9%	153	30.1%	*
Felony Property	641	14.7%	180	14.4%	
Minor Person	218	5.5%	141	5.0%	
Minor Property	982	4.7%	370	6.2%	
Other Delinq	453	7.5%	210	11.0%	
Total	2520	9.2%	1054	11.9%	

	Repeat Delinquents				
	White		Minorities		
	N Cases	Removed	N Cases	Removed	
Felony Person	99	45.5%	214	43.0%	
Felony Property	518	39.8%	310	45.2%	
Minor Person	134	27.6%	159	28.3%	
Minor Property	705	20.1%	522	22.0%	
Other Delinq	302	21.9%	334	29.3%	*
Total	1758	28.2%	1539	31.8%	

* Chi-square signif. $p < .05$ (Assoc. btwn. Race and Remove)

A logistic regression model was also specified for this data sample. Offense type, prior history, race, gender, attorney representation at disposition, and detention were specified in a regression equation to predict the probability of removal from home. All of the above variables, with the exception of race, were statistically significant ($p < .01$) in predicting the probability of removal from the juvenile's home. The fact that race is not significant in this model supports the results in Table 7.

The data for the outstate sample are displayed in Table 8. For the first-time delinquents, there is a statistically significant association between race and removal within three offense categories: felony property, minor property, and other delinquency. Minorities are removed at a higher rate than whites. However, for the repeat delinquents, there are no offense categories that show a significant association between race and removal. It appears that race plays a factor in the removal decision only for first-time delinquents.

Table 8. Removed from Home - Outstate

	First-Time Delinquents				
	White		Minorities		
	N Cases	Removed	N Cases	Removed	
Felony Person	86	22.1%	23	34.8%	
Felony Property	355	10.1%	94	30.9%	**
Minor Person	121	16.5%	47	14.9%	
Minor Property	1112	4.0%	231	7.8%	*
Other Delinq	646	6.3%	108	14.8%	**
Total	2320	6.9%	503	15.5%	

	Repeat Delinquents				
	White		Minorities		
	N Cases	Removed	N Cases	Removed	
Felony Person	31	32.3%	24	37.5%	
Felony Property	205	30.2%	76	38.2%	
Minor Person	89	21.3%	34	23.5%	
Minor Property	341	18.8%	105	24.8%	
Other Delinq	278	24.5%	99	23.2%	
Total	944	23.6%	338	28.1%	

** Chi-square signif. $p < .01$ (Assoc. btwn. Race and Remove)
* Chi-square signif. $p < .05$

The same logistic regression model that was previously specified for the Hennepin sample was applied to this outstate sample in an attempt to predict the probability of removal.

The regression results indicated that race, offense type, prior history, detention, and attorney representation at disposition were statistically significant ($p < .01$). However, race was the weakest of the predictor variables. This model correctly predicts only a limited number of the cases in which the juvenile was removed from home. It appears that there may be other factors that influence the removal decision which we were unable to take into account for this analysis.

Differences between Hennepin and Outstate

Up to this point, all of the analyses have examined the Hennepin County sample separately from the outstate sample. Our focus has concentrated on investigating differential treatment based upon race of the juvenile. We felt that it would be interesting to conduct some additional analyses to examine differences between the two samples. We wanted to know if juveniles with similar characteristics and offenses were treated differently in Hennepin County than they were in the outstate counties. Specifically, the question now asked is whether geographic area has an effect upon the decision to detain or remove a juvenile after controls are set for race, offense type, and delinquency history.

Table 9 displays data on detention rates for first-time delinquents. Comparisons are made between the Hennepin and outstate samples after controlling for race and offense type. By examining the detention rates for the white juveniles, we see that there is a statistically significant association between detention and geographic area within each offense category. The white outstate juveniles are consistently detained at a higher rate than the Hennepin juveniles. For minority juveniles, a significant association exists between detention and area within three offense categories: felony property, minor person, and minor property. Again, the outstate offenders are detained at higher rates than the Hennepin County offenders.

Table 9. Detention Rates for First-Time Delinquents

	Whites				
	Outstate		Hennepin		
	N Cases	Detained	N Cases	Detained	
Felony Person	101	42.6%	240	20.0%	**
Felony Property	393	21.4%	773	8.2%	**
Minor Person	133	26.3%	244	9.0%	**
Minor Property	1195	8.5%	1195	4.9%	**
Other Delinq	678	11.4%	506	6.5%	**
Total	2500	13.6%	2958	7.6%	
	Minorities				
	Outstate		Hennepin		
	N Cases	Detained	N Cases	Detained	
Felony Person	24	54.2%	162	49.4%	
Felony Property	108	28.7%	203	16.7%	*
Minor Person	53	22.6%	151	7.3%	**
Minor Property	251	17.9%	423	6.6%	**
Other Delinq	114	21.9%	224	24.6%	
Total	550	22.9%	1163	17.9%	

** Chi-square signif. $p < .01$ (Assoc. btwn. Area and Detain)
* Chi-square signif. $p < .05$

Table 10 displays detention rate for repeat delinquents while controlling for race and offense type. The results are almost the opposite of those in Table 9. White repeat delinquents were detained at a higher rate by Hennepin County (as compared to the outstate sample) in almost every offense category. However, none of the associations between detention and geographic area are statistically significant except for the "felony property" offense category. A similar pattern is present for the minority juveniles, with the "other delinquency" offense category indicating the only statistically significant association between detention and geographic area ($p < .05$).

Table 10. Detention Rates for Repeat Delinquents

	Whites				
	Outstate		Hennepin		
	N Cases	Detained	N Cases	Detained	
Felony Person	36	36.1%	107	50.5%	
Felony Property	236	18.2%	549	33.3%	**
Minor Person	98	22.4%	143	21.7%	
Minor Property	372	12.9%	737	17.1%	
Other Delinq	298	23.2%	315	23.8%	
Total	1040	18.8%	1851	25.3%	

	Minorities				
	Outstate		Hennepin		
	N Cases	Detained	N Cases	Detained	
Felony Person	29	55.2%	233	66.1%	
Felony Property	90	38.9%	325	46.5%	
Minor Person	40	20.0%	164	30.5%	
Minor Property	123	26.8%	548	26.8%	
Other Delinq	113	24.8%	343	35.0%	*
Total	395	30.4%	1613	38.6%	

** Chi-square signif. $p < .01$ (Assoc. btwn. Area and Detain)
* Chi-square signif. $p < .05$

Turning to an examination of geographical association with removal rates for first-time delinquents, we find some mixed results in Table 11 for white juveniles. One geographic area does not consistently remove white juveniles at a higher rate than the other area. There is no consistent pattern as in previous tables. There is a significant association between area and removal in only two of the offense categories: felony property and minor person. Within the felony property category, Hennepin juveniles are removed at a higher rate than their outstate

peers. For those charged with "minor person" offenses, the outstate counties removed white juveniles at a much higher rate than Hennepin County.

The same two offense categories, felony property and minor person, display statistically significant associations between geographic area and removals for minority juveniles. The outstate counties removed minorities at a higher rate in these two categories. For minorities, we also see a consistent pattern in the other three offense categories as the outstate counties removed offenders at a higher rate than Hennepin County, but not to a degree of statistical significance.

Table 11. Removal Rates for First-Time Delinquents

	Whites				
	Outstate		Hennepin		
	N Cases	% Removed	N Cases	% Removed	
Felony Person	86	22.1%	226	19.9%	
Felony Property	355	10.1%	641	14.7%	*
Minor Person	121	16.5%	218	5.5%	**
Minor Property	1112	4.0%	982	4.7%	
Other Delinq	646	6.3%	453	7.5%	
Total	2320	6.9%	2520	9.2%	

	Minorities				
	Outstate		Hennepin		
	N Cases	% Removed	N Cases	% Removed	
Felony Person	23	34.8%	153	30.1%	
Felony Property	94	30.9%	180	14.4%	**
Minor Person	47	14.9%	141	5.0%	*
Minor Property	231	7.8%	370	6.2%	
Other Delinq	108	14.8%	210	11.0%	
Total	503	15.5%	1054	11.9%	

** Chi-square signif. $p < .01$ (Assoc. btwn. Area and Remove)
* Chi-square signif. $p < .05$

The final set of analyses examines the association between geographic area and removal from home for repeat delinquents. Table 12 displays the information broken out between whites and minorities. It appears that Hennepin County removed a higher

percentage of juveniles, both whites and minorities, across all offense categories except one ("other delinquency" for whites and "minor property" for minorities). However, only one offense category, felony property (for whites), shows a statistically significant association between geographic area and removal.

Table 12. Removal Rates for Repeat Delinquents

	Whites				
	Outstate		Hennepin		
	N Cases	% Removed	N Cases	% Removed	
Felony Person	31	32.3%	99	45.5%	
Felony Property	205	30.2%	518	39.8%	*
Minor Person	89	21.3%	134	27.6%	
Minor Property	341	18.8%	705	20.1%	
Other Delinq	278	24.5%	302	21.9%	
Total	944	23.6%	1758	28.2%	

	Minorities				
	Outstate		Hennepin		
	N Cases	% Removed	N Cases	% Removed	
Felony Person	24	37.5%	214	43.0%	
Felony Property	76	38.2%	310	45.2%	
Minor Person	34	23.5%	159	28.3%	
Minor Property	105	24.8%	522	22.0%	
Other Delinq	99	23.2%	334	29.3%	
Total	338	28.1%	1539	31.8%	

** Chi-square signif. $p < .01$ (Assoc. btwn. Area and Remove)
* Chi-square signif. $p < .05$

Summary and Conclusions

Geographic Differences

This study found significant differences in detention rates prior to disposition, especially for first-time delinquents, between Hennepin and the outstate counties. The outstate counties consistently detained white juveniles with no prior record at significantly higher rates than Hennepin County. Across all offense categories, there was a statistically significant association between geographic area and detention for whites. For minority juveniles with no prior record, we found a statistically significant association between geographic area and detention within three offense categories. Again, the outstate counties detained these juveniles at a higher rate than did Hennepin.

For repeat delinquents, we found that Hennepin County usually detained both white and minority juveniles at a higher rate. However, most of the offense categories did not indicate a statistically significant association between geographic area and detention. In other words, Hennepin detained a higher proportion of repeat delinquents, but not to the degree necessary to establish a statistical significance.

These findings differ slightly from those cited by Barry Feld in his paper "Justice by Geography."[6] Feld found detention rates to be higher across all offense types in his "urban county" category. The difference in findings between the two studies may be attributable to different data classification systems employed. Feld used both Hennepin and Ramsey counties in his "urban" category while this present study looks at only Hennepin. Feld also put St. Louis County into his "suburban" classification, while the present study includes St. Louis in the outstate sample. There were also slight differences in the classification of offense types and delinquency history between the studies, as well as a different interpretation of what constituted detention before disposition.[7]

This study also found some significant differences in removal rates between Hennepin and the outstate counties. For minority juveniles with no prior delinquency history, the outstate counties consistently removed at a higher rate than did Hennepin County. However, only two offense categories (felony property and minor person) indicated a statistically significant association between removal and geographic area. The findings were not as clear cut for white juveniles with no prior record. In some offense categories, Hennepin removed these juveniles at a higher rate, while in other categories it was the outstate sample that

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[6] See Barry Feld, "Justice by Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration", Journal of Criminal Law and Criminology (1991), Vol. 82, No. 1.

[7] Feld used a more restrictive definition of detention than the present study. In Feld's study, a juvenile was coded as being detained only if s/he was held in a secure detention center or jail prior to disposition. In the present study, any pre-disposition detention is noted, regardless of whether it was in a secure lockup facility, a local residential facility, an in-patient treatment program, etc.

removed a higher proportion. A consistent pattern was not present. The findings for repeat delinquents revealed that Hennepin County tended to remove a greater proportion of both white and minority juveniles, but not at a statistically significant rate.

These findings on removal rates again differ somewhat from Feld's research. After controlling for offense type and prior history, Feld found that urban counties removed a higher proportion of "similarly situated" juveniles. The current study finds that to be true only for the repeat delinquents.

Racial Differences

This study uncovered a significant association between race and detention rates in both the Hennepin and outstate samples. Even after controlling for current offense and prior delinquency, race was found to have a statistically significant relationship with detention. Minorities were consistently detained prior to disposition at much higher rates than whites in both samples. Both the chi-square and logistic regression analyses confirmed this finding. It is also consistent with Barry Feld's findings in his analysis of 1986 juvenile data from Hennepin County.[8]

In the analyses of racial differences in dispositions, the findings indicated that race was not a significant factor in predicting the decision to remove a juvenile from his/her home in Hennepin County. The cross-tabulation data indicated that removal rates were fairly similar between whites and minorities for both first-time and repeat delinquents. The results of the logistic regression analysis also indicated that race was not statistically significant for predicting removal in Hennepin County. This finding contradicts Feld's conclusions as previously cited (see footnote #7). Although Feld found race to be a significant factor in predicting removal from home, he noted that it was the weakest predictor in his model.

In the analyses of the outstate sample, race was found to be significantly associated with the decision to remove a juvenile from home at disposition. The chi-square analysis revealed a statistically significant relationship between race and removal within three of the five offense categories for first-time delinquents. However, for repeat delinquents, none of the relationships between race and removal were statistically significant. The logistic regression analysis confirmed that race was statistically significant in predicting the probability of removal from home in the outstate sample, although it was the weakest predictor in the model which included prior history, offense type, detention, and attorney representation. It appears that race is a significant factor in the outstate sample due to its strong association with removal for first-time delinquents.

Rate of attorney representation was the only area in which minorities may have received better treatment than whites (if one considers legal representation to be an asset in

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[8] See Barry Feld, "The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make", Journal of Criminal Law and Criminology (1989), Vol. 79, No. 4. Feld found race to be statistically significant in predicting the decision to detain juveniles prior to disposition and to remove them from their home at disposition.

juvenile court)[9]. The findings revealed that minorities had significantly higher rates of attorney representation in both the Hennepin and outstate samples, even when controlling for type of offense. However, white juveniles were more likely than minorities to retain private counsel. These findings coincide with those of Barry Feld in his "Right to Counsel" study.[10] In examining racial differences in the rates of attorney representation in Hennepin County, Feld found that blacks had a higher rate of representation than whites. He also found that whites were more likely than blacks to obtain a private attorney.

In the final analysis, what can be said about differential processing of juveniles based on race? The findings of this study indicate that a problem exists. After controlling for offense type and delinquency history, minorities were detained at significantly higher rates than whites in both the Hennepin and outstate samples. They were also removed from their homes at significantly higher rates in the outstate sample. What is the cause of differential treatment of minorities? It is not possible to say that minorities are treated more harshly simply because of their skin color. The statistical analyses undertaken cannot prove causation. They can, however, point to significant associations and relationships between race and the legal factors examined.

The juvenile court system still operates, to a certain degree, under the model of "parens patriae". Judges have a great deal of discretion to do whatever they feel is in the best interest of the juvenile. There are no rules that stipulate juveniles who are charged with similar offenses must be treated in a like manner. Any number of factors (e.g. the juvenile's family situation, treatment evaluation reports, etc.) may influence the judge's decision to detain or remove the juvenile from home. Therefore, the variations in rates of detention and removal may reflect social characteristics of juveniles for which this study could not control, and for which race was an indirect indicator. Regardless of whatever good intentions the juvenile court system may possess, it appears that it is in need of a serious policy evaluation at this time.

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[9] Feld found attorney representation to be associated with a more severe disposition in his "Right to Counsel" study (op. cit.).

[10] ibid.

Non-Imprisonment Sentences: An Analysis of the Use of Jail Sanctions for Minnesota Offenders

Task Force on Racial Bias in the Courts

Minnesota Supreme Court

September 24, 1992

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Research Design

The purpose of this study is to examine the relationship between race and length of jail time served by felons in Minnesota jails. The relationship between race and whether or not any time was spent in jail, regardless of duration, will also be examined. Jail time served will include any and all time spent in jail, both pre sentence and post sentence. It is important to include all offenders who served jail time, both prior to sentencing and after sentencing, since a judge's decision to pronounce jail as a condition of probation may depend on whether the offender has already served time in jail while awaiting trial or disposition.[1]

The specific questions to be addressed by this study are the following:

1. Does an offender's race or minority status have a significant effect on his/her odds of serving time in jail (either pre or post disposition)?

2. Does an offender's race or minority status have a significant effect on the length of jail time served (either pre or post disposition)?

Data were obtained from the Minnesota Sentencing Guidelines Commission (MSGC) regarding non-imprisonment sanctions. The MSGC collected the data from around the state in order to get information on offenders who were given stayed sentences and non-imprisonment sanctions. The MSGC sampled cases from the population of convicted felons sentenced to stayed sentences between November 1, 1986, and October 31, 1987.

The data analysis conducted by the MSGC examined the types of intermediate sanctions given to offenders in this sample, and is mostly descriptive in nature. The findings of the MSGC were presented in the "Report to the Legislature on Intermediate Sanctions" (February, 1991). The data analyses and methodologies employed in the present study will go beyond what was done in the MSGC study in an effort to discover and explain any racial differences in the use of jail sanctions and length of jail time served.

Methodology

The data set includes demographic and sentencing information on 1,794 felons who were given stayed incarceration sentences in 37 of 87 counties, including presumptive non-imprisonment sentences, and all offenders who received a stayed sentence when the sentencing guidelines recommended a prison term. The sample was stratified by race and gender and weighted by the MSGC research staff in order to reflect the actual felon population proportions for each county.[2] The total number of weighted cases in the study is 4,190.

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[1] Minnesota Sentencing Guidelines Commission (Feb., 1991) Report to the Legislature on Intermediate Sanctions.

[2] ibid.

This study will analyze two factors (dependent variables). Whether an offender served time in jail and length of jail time served. As can be seen in Table 1, the distribution of offenders who received a pronounced jail sentence does not appear to differ by race, with 71% of minorities and 70.8% of whites with pronounced jail time. However, the distribution of offenders who actually served jail time does appear to differ by race, with 92% of minorities and 85.3% of whites with served jail time. Contingency table analysis and logistic regression techniques will be used to determine if these differences are statistically significant.[3]

Table 1. Pronounced Jail vs. Jail Served Distributions

Pronounced Jail Sentence

	All Cases		Minorities		Whites	
	N Cases	Percent	N Cases	Percent	N Cases	Percent
No	1222	29.2	296	29.0	926	29.2
Yes	2968	70.8	726	71.0	2242	70.8
Totals	4190	100.0	1022	100.0	3168	100.0

Offender Served Jail Time

	All Cases		Minorities		Whites	
	N Cases	Valid %	N Cases	Valid %	N Cases	Valid %
No	534	13.1	77	8.0	457	14.7
Yes	3534	86.9	886	92.0	2648	85.3
Unknown	121	-	58	-	63	-
Totals	4190	100.0	1022	100.0	3168	100.0

Table 1 indicates that over 86% of the offenders in the sample served some time in jail. Length of jail time served ranged from 1 day to 365 days, with 73% of the offenders serving 90 days or less. The average jail time served was 69 days and the median jail time was 47 days.[4]

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[3] Logistic regression is similar to ordinary least squares multiple regression in the techniques used for model building and hypothesis testing. However, in multiple regression a model is built to predict the value of a continuous, interval level variable in which error terms are minimized between predicted and observed values. In logistic regression, the dependent variable is binary (a yes or no outcome) and the model is built to predict the probability of membership in one of two categories.

[4] The median is the midway point in a distribution where half of the cases fall above that point and half of the cases fall below it. In other words, half of the offenders served more than 47 days and half served less than 47 days. The fact that the mean or average jail time served is higher than the median jail time served indicates a positively skewed distribution, with a few cases with much higher jail terms pulling the average above the median.

Ordinary least squares multiple regression will be used to analyze a variety of the felons' demographic and criminal history characteristics to determine their significance in predicting length of jail time served. The race of the offender is of particular interest in this analysis.

Table 2 displays the demographic and criminal history variables (independent variables) that will be analyzed in order to determine what influence they may have in affecting an offender's odds of serving jail time as well as the length of time served. The majority of these variables are categorical (i.e., a yes or no response, a membership in a specific racial category) with the exceptions of age, criminal history score, and offense severity. The scales (coding schemes) for offense severity and criminal history were constructed by calculating the marginal averages for each level of each variable as depicted in the MSGC's sentencing guidelines grid. Each scale (value) for criminal history is the mean presumptive prison sentence for that particular history score level. Likewise, each scale for offense severity is the mean presumptive prison sentence for that severity level. These calculations were based upon the presumptive sentence lengths in the sentencing guidelines grid that was in effect for the 1986-87 time frame, since that is the time period in which these offenders were sentenced. Scaling of these two variables (rather than using the values 0-6 for history and 1-10 for severity) was an attempt to create an interval (and linear) measure more conducive to regression analysis.

The frequency distributions for race are displayed in Table 2. Whites comprise approximately 75% of the sample. African Americans are the largest minority group, comprising approximately 17% of the sample. The "Other" race category consists mostly of Hispanics and Asians. For contingency table analysis, the race variable will be collapsed into two categories, white and minority. This is necessary because of the small number of cases in some of the non-white race categories. In the regression analyses, race will be coded as a set of "dummy variables" which will indicate membership in one of the four race categories displayed in Table 2. This method of dummy coding will allow comparisons to be made between whites and African Americans, whites and American Indians, and whites and the "Other" race category.

Review of the relevant literature justified the inclusion of these variables (shown in Table 2) in the analyses. Although the principles of sentencing guidelines demand that sentencing be neutral with respect to race, gender, and socio-economic status of the offender, non-imprisonment sanctions are not subject to the guidelines. Therefore, it is anticipated that some of these factors may be significant in predicting length of jail time served, or in influencing the odds of serving jail time. However, one must keep in mind that this analysis includes pre-trial jail time as part of jail time served. This means that some offenders may have served jail time due to their inability to post bail, rather than as a judge's sentencing decision.

Table 2. Independent Variables: Scales and Frequencies

Variable	Scale		N Cases	Percent
Race	0	White	3168	75.6
	1	Black	721	17.2
	2	Am. Indian	188	4.5
	3	Other	113	2.7
Gender	0	Female	850	20.3
	1	Male	3340	79.7
Offense Severity	14	1-UUMV	597	14.2
	16	2-Check Forg	779	18.6
	18	3-Theft < 2500	915	21.8
	23	4-NonRes Burgl	968	23.1
	34	5-Res Burglary	363	8.7
	39	6-Crim Sex 2	477	11.4
	56	7-Agg Robbery	36	.9
	83	8-CSC1/Aslt 1	56	1.3
Criminal History	47	No points	2516	60.0
	54	1 point	678	16.2
	60	2 points	474	11.3
	68	3 points	278	6.6
	79	4 points	131	3.1
	90	5 points	79	1.9
	102	6+ points	36	.8
Weapon Use/Possess	0	No	3862	92.2
	1	Yes	328	7.8
County	0	Outstate	1468	35.0
	1	7-Cnty Metro	2722	65.0
Conviction Method	0	Strght Plea	557	13.3
	1	Trial	77	1.8
	2	Negot Plea	3548	84.7
	-	Missing	7	.2
Employed at Sentencing	0	No	2013	48.0
	1	Yes	2086	49.8
	-	Missing	92	2.2
High School Graduate	0	No	1588	37.9
	1	Yes	2552	60.9
	-	Missing	50	1.2
Age	Mean = 27.3 years		4190	100.0

Findings

Predicting a Stay in Jail

The first jail factor to be examined is the likelihood that an offender served some time in jail, **including either pre or post disposition jail time.** Table 3 displays the relationship between the offender's race and the likelihood of serving jail time, controlling for the offense of conviction. Overall, and also within offense types, minorities were more likely than whites to serve jail time. Minorities had an overall jail rate of approximately 92%, while whites were jailed in 85% of the cases. When controlling for type of offense, there was a statistically significant relationship between race and a jail stay in the person and property offense categories. The relationship between race and jail was not statistically significant for drug offenders.

Table 3. Jail Rates by Race and Offense Type

	White		Minority		
	N Cases	Jailed	N Cases	Jailed	
Person	601	92.3%	189	98.1%	*
Property	1923	81.1%	652	89.6%	**
Drug	513	91.6%	85	94.7%	
Total	3037	85.1%	926	91.8%	**

** Chi-square signif. p < .001
* Chi-square signif. p < .01

Although the data displayed in Table 3 indicate that there is a significant association between race and serving some time in jail (pre or post disposition), it does not control for any factors other than offense type which may influence the likelihood of serving jail time. In other words, there may be factors (variables) besides race and offense type that have not yet been considered which could affect the probability of serving jail time. In order to further explore the relationship between race and serving jail time, the statistical analysis technique of logistic regression was used to evaluate the influence of all the variables from Table 2 on the probability of serving jail time. This technique allows the evaluation of influence that each variable has in predicting the odds of serving jail time, while controlling for the influence of all other variables in the model.

The results from the logistic regression procedure are displayed in Table 4. The interpretations of logistic regression coefficients and statistics are not very straightforward. The regression coefficients are displayed in the column labeled "Beta". Every predictor variable that was analyzed by the regression procedure has a Beta value. Each Beta estimates the change in **log odds** of being in the "Yes" category for jail (those that served jail time) for a one-unit increase in that particular predictor (factors such as race, gender, offense severity, etc.). Since almost no

one can think in terms of log odds, alternative interpretations have been developed.[5] The columns of "Exp(B)" and "Percent Change" are two such alternatives which are easier to understand. Each value under "Exp(B)" is the estimated multiplicative change in the **odds** of serving jail time for a one-unit increase in that particular predictor. In Table 4, the Exp(B) for gender is 5.78, which indicates that an offender's odds of serving time in jail are multiplied by a factor of 5.78 if that offender is male (since females are coded as 0 and males are coded as 1).

The values in the column "Percent Change" are calculated from the formula **100[Exp(B)-1]** and represent the estimated **percentage change in the odds** of serving jail time for a one-unit increase in that particular predictor. Returning to the gender variable, it would appear (from Table 4) that a person's odds of serving jail time increase by 478% (over even odds) if that person is male. The other column of information in Table 4 not yet discussed contains the standard errors of each regression coefficient. The standard error is used to calculate the statistical significance of a particular variable in predicting an outcome.[6] The variables that are statistically significant in predicting a stay in jail are flagged in the table by an asterisk(s).

Table 4. Logistic Regression Coefficients and Related Statistics for Any Jail Stay Regressed on All Independent Variables

Variable	Beta	Standard Error	Exp(B)	Pct. Change in Odds	
Gender	1.754	.1124	5.78	478%	***
County	.704	.1118	2.02	102%	***
CONVMETH					
Trial	2.222	.7543	9.22	822%	**
Negot Plea	.170	.1540	1.18	18%	
Employed	-.377	.1086	.69	-31%	***
Crim History	.041	.0076	1.04	4%	***
Offense Sev	.027	.0066	1.03	3%	***
Weapon Use	2.385	.6253	10.85	985%	***
RACE					
Black	.808	.1785	2.24	124%	***
Am Indian	.492	.3154	1.64	64%	
Other	-.175	.3405	.84	-16%	
Age	-.038	.0055	.96	-4%	***

Model Chi-Square 585.71 p < .0001

*** p < .001
** p < .01

R^2_L = .191 N of Cases = 3970

[5] This explanation of logistic regression interpretations is based upon the discussion and explanations put forth by Alfred Demaris in his article "Logit Modeling - Practical Applications", from the Sage University Papers, 1991.

[6] The standard error for a regression coefficient represents an estimate of the fluctuation in the regression coefficient that could be expected with normal sample variation.

As you may recall, all of the independent variables (predictors) from Table 2 were specified for entry into the logistic regression model. Table 4 displays the results of the regression. Most of these predictors appear to be statistically significant in predicting the odds of a stay in jail. The education variable did not enter into the model due to a lack of significance in predicting a jail stay. Other variables which are not statistically significant in predicting a jail stay include "negotiated plea" and the racial variables American Indian and "Other Race" (Hispanic & Asian). Since conviction method and race were coded as dummy variables, we should interpret the findings as follows: (1) Those who negotiated a plea rather than accepting a straight guilty plea did NOT significantly change their odds of serving jail time; (2) American Indians and "Other Race" were NOT significantly more likely than whites to serve jail time.

The factors that are statistically significant in predicting a jail stay are **gender, county, trial, employment status, criminal history, offense severity, weapon use, age, and African American racial status.** The results in Table 4 indicate the following: being male increases the odds of doing jail time by a multiplicative factor of 5.78; being in the seven county metro area (rather than outstate) increases the odds of a jail stay by a multiplicative factor of 2.02; eventually going to trial rather than taking a straight guilty plea increases the odds of a jail stay by a multiplicative factor of 9.22; being employed decreases the odds of a jail stay by a multiplicative factor of .69; for a one point increase in the offender's **calculated** criminal history scale, the odds of a jail stay are multiplied by a factor of 1.04; for a one point increase in the **calculated** offense severity scale, the odds of a jail stay are multiplied by a factor of 1.03; for offenders who used or possessed a weapon, the odds of a jail stay are multiplied by a factor of 10.85; for a one year increase in age, the odds of a jail stay are decreased by a multiplicative factor of .96; if the offender was African American rather than white, the odds of a jail stay increased by a multiplicative factor of 2.24. Therefore, even when controlling for all of the other factors in the model (such as gender, offense severity, etc.), African Americans had statistically significant higher odds of spending time in jail in comparison to whites.

Another important issue in this analysis is the question of how well the regression model explains the variance in the jail stay variable. In other words, how good is the model (from Table 4) in predicting the odds of a jail stay? The value shown in Table 4 for R^2_L is a rough approximation of the predictive power of the model. It indicates that this model may explain approximately 19% of the variance in the jail outcome. This is not an impressive result, but is probably due to the fact that there is little variance to start with in the jail outcome. As you may recall from Table 1, only 13% of the sample did not serve jail time. The jail outcome variable is very one-sided. Since the vast majority of offenders served some time in jail, it is difficult for the model to predict for those who did not serve time. Also, it is not possible for the model to consider the factor of limited jail space since we do not have that information.

The issue of "one-sided" factors also comes to play in the trial and weapon use variables. The strong effect these two factors have displayed in increasing the odds of a jail stay is most likely due to the distribution of the variables. For those offenders who had a trial, over 97% served jail time; and for those who had a weapon involved in their crime, 99% served jail time.

To sum up, the findings indicate that African Americans had statistically significant higher odds of serving jail time in comparison to white offenders. The odds of serving jail time are NOT significantly different for American Indians, Asians, and Hispanics in comparison to white offenders. Even though the results of the regression indicate that American Indians had 64%

higher odds than whites in getting jail time, this difference is not statistically significant. However, the lack of statistical significance may be due to the small number of American Indians in the study. The regression model explains approximately 19% of the variance in the jail stay variable, which indicates that there may be other factors not considered in this analysis that may influence the jail outcome for offenders. Also, prediction is difficult when so few observations fall into some of the categories of specific variables (e.g., conviction method has only 77 observations in the trial category).

It is difficult to say what factors may be responsible for this differential jail outcome for African Americans. Although the analysis set controls for numerous other factors which affected jail outcome, it is difficult to determine the degree of influence exerted by variables that are correlated with each other. In this sample of offenders, both "county" and "employment status" had high correlations with African Americans. The vast majority of black offenders (over 90%) were sentenced in Hennepin or Ramsey counties. Although the analysis held county constant, it only differentiated between outstate and the 7-county metro area. It could be that conditions or situations specific to Ramsey and Hennepin had an influence in the jail outcome for blacks. Also, since the analysis counted pre-trial jail time as a stay in jail, it is possible that African Americans had a more difficult time making bail (which may be related to their higher unemployment rate).

Although the data do not contain information on bail, it does present the opportunity to remove pre-trial jail time from total jail time served. The offenders who served a post disposition jail sentence can be identified and separated from those who served only pre disposition jail time. Table 5 displays the distribution of cases by race for those offenders who served post disposition jail time. A slightly higher proportion of white offenders (63.7%) served post disposition jail time as compared to minority offenders (60.5%).

Table 5. Offender Served Post-Disposition Jail Time

	All Cases		Minorities		Whites	
	N Cases	Percent	N Cases	Percent	N Cases	Percent
No	1454	37.0	362	39.5	1092	36.3
Yes	2472	63.0	554	60.5	1918	63.7
Totals	3926	100.0	916	100.0	3010	100.0

Another logistic regression analysis was conducted to determine which factors are significant in predicting the odds of serving a post disposition jail sentence. These results are displayed in Table 6, and differ substantially from the previous regression results (Table 4) which included pre-trial jail terms. The most noteworthy difference is that race, weapon use, and employment are no longer significant in predicting a stay in jail. In the previous results, African Americans had statistically significant higher odds of serving time in jail when pre-trial jail time was counted as a stay in jail. This relationship does not hold true in the prediction of post disposition jail terms.

The results in Table 6 indicate no significant differences between whites and the racial minority groups in the likelihood of serving post disposition jail time. The factors that are statistically significant in predicting a post disposition stay in jail are gender, county, trial, negotiated plea, criminal history, offense severity, and age. All of these variables, except negotiated plea, were also significant in the regression which counted pre-trial jail as a stay in jail. Another difference to note is the change in sign for the county variable (see Table 6 as compared to Table 4). County is statistically significant in predicting the odds of a post disposition jail sentence, but offenders in the 7-county metro area had a 17% decrease in the odds of doing jail time as compared to outstate offenders. Perhaps this is due to a wider availability of alternative sanctions in the metro area which judges can use in lieu of jail.

Table 6. Logistic Regression Coefficients for Post-Disposition Jail Stay Regressed on All Independent Variables

Variable	Beta	Standard Error	Exp(B)	Pct. Change in Odds	
Gender	1.036	.0870	2.82	182%	***
County	-.189	.0758	.83	-17%	*
CONVMETH					
Trial	1.156	.3239	3.18	218%	***
Negot Plea	.221	.1058	1.25	25%	*
Crim History	.028	.0040	1.03	3%	***
Offense Sev	.042	.0043	1.04	4%	***
Age	-.024	.0041	.98	-2%	***

Model Chi-Square 454.18 p < .0001
N of Cases = 3840

R^2_L = .090

*** p < .001
** p < .01
* p < .05

Hennepin and Ramsey counties accounted for approximately 92% of all African Americans in this study, as well as 82% of all minorities. Therefore, we decided to run another logistic regression using only Hennepin and Ramsey counties in an effort to determine what factors might be significant in predicting the odds of receiving a post disposition jail term in these two counties. The results are displayed in Table 7.

These findings indicate that gender, trial, employment status, criminal history, offense severity, and age are statistically significant in predicting the odds of getting a post disposition jail sentence in Hennepin and Ramsey counties. The most noteworthy difference between Table 7 (Hennepin-Ramsey) and Table 6 (entire sample) is that employment status is statistically significant in predicting the odds of a post disposition jail sentence in Hennepin-Ramsey, but not in the state sample. Offenders who were employed had a 32% decrease in their odds of getting a post disposition jail term.

Table 7. Hennepin-Ramsey Subsample
Logistic Regression Coefficients for Post-Disposition Jail Stay Regressed on All Independent Variables

Variable	Beta	Standard Error	Exp(B)	Pct. Change in Odds	
Gender	1.034	.1297	2.81	181%	***
CONVMETH					
Trial	1.305	.5822	3.69	269%	*
Negot Plea	-.117	.1522	.89	-11%	
Employed	-.386	.1004	.68	-32%	***
Crim History	.030	.0057	1.03	3%	***
Offense Sev	.045	.0068	1.05	5%	***
Age	-.014	.0064	.99	-1%	*

Model Chi-Square 216.45 p < .0001
N of Cases = 1658

*** p < .001
** p < .01
* p < .05

R^2_L = .097

It is also important to note that race is not significant in predicting the post disposition jail outcome in the Hennepin-Ramsey sample. Also recall that race was not significant (see Table 6) in predicting the post disposition jail outcome when we analyzed the entire sample. The only situation in which race was found to be significant in predicting the odds of a jail term was when pre-disposition jail time was counted as a stay in jail (recall Table 4). African Americans were found to have significantly higher odds than whites in serving a jail term in that analysis. These findings seem to indicate that it was pre-trial or pre-disposition jail time that made race a significant factor in predicting the jail outcome in the first regression model (Table 4).

Due to the fact that approximately 82% of all minorities in this study were sentenced in either Hennepin or Ramsey counties, it becomes clear that the pre-trial detention and sentencing practices of these two counties greatly influence the jail outcomes for minorities. Another important point to consider is the fact that nearly 93% of all offenders in the Hennepin-Ramsey sample served some time in jail, either pre-trial or post disposition or both. The Hennepin-Ramsey sample also had a pre-trial detention rate of 89% (87% of white offenders and 92% of minority offenders were detained). Therefore, since the vast majority of minorities in the study came from Hennepin or Ramsey counties, and these two counties detained the vast majority of their offenders at some point prior to case disposition, it is somewhat unclear as to whether the racial effect we saw in Table 4 is truly attributable to race, or possibly to geography.

It was not possible to rerun the model from Table 4 to predict "any" jail stay (either pre or post disposition) using just the Hennepin-Ramsey sample, due to the fact that the vast majority of these offenders served some time in jail. Since so few offenders (less than 200) served no time at all, the logistic regression procedure was unable to build a reliable model. In order to overcome this limitation, the county variable was reconstructed in a manner that would isolate Hennepin and Ramsey counties from all other counties, and the entire sample was used. The

values for county were recoded to "1" for Hennepin-Ramsey and "0" for all other counties. Once again the logistic regression procedure was used to predict any stay in jail. The results are displayed in Table 7B.

This new analysis (Table 7B) indicates that African Americans are still significantly more likely than whites to serve time in jail (either pre or post disposition) even after controlling for the geographical influence of Hennepin-Ramsey counties, and all other factors listed in Table 7B. In comparing the results in Table 7B to Table 4 for the racial and county variables, one can see two important differences.[7] The Exp(B) value for county (2.98) in Table 7B indicates that offenders convicted in the Hennepin-Ramsey area were nearly 3 times as likely to serve jail time as their counterparts in the "all other" county group. This is a fairly large increase over the result we saw in Table 4 where the Exp(B) value for county (2.02) indicated that those convicted in the 7-county metro area were about twice as likely to do jail time as their counterparts in the outstate counties.

Table 7B. Logistic Regression Coefficients and Related Statistics for Any Jail Stay Regressed on All Independent Variables (County2 variable isolates Hennepin-Ramsey from other counties)

Variable	Beta	Standard Error	Exp(B)	Pct. Change in Odds	
Gender	1.751	.1132	5.76	476%	***
County2	1.090	.1338	2.98	198%	***
CONVMETH					
Trial	2.069	.7536	7.92	692%	**
Negot Plea	.084	.1568	1.09	9%	
Employed	-.324	.1101	.72	-28%	***
Crim History	.038	.0075	1.04	4%	***
Offense Sev	.027	.0065	1.03	3%	***
Weapon Use	2.392	.6247	10.93	993%	***
RACE					
Black	.409	.1929	1.51	51%	*
Am Indian	.302	.3235	1.35	35%	
Other	-.527	.3427	.59	-41%	
Age	-.038	.0056	.96	-4%	***

*** p < .001
** p < .01
* p < .05

Model Chi-Square 625.71 p < .0001

R^2_L = .204 N of Cases = 3970

[7] Table 4 and Table 7B are essentially the same analyses, with the exception of the county variable. In Table 4, the county variable differentiates between the 7-county metro area and the outstate counties. Table 7B uses the county variable to compare Hennepin and Ramsey counties to all others. The same dependent variable, any jail stay, is analyzed in both tables.

Also in Table 4, the race variable indicated that blacks were 2.24 times more likely than whites to do jail time. In the current analysis (Table 7B), blacks are 1.51 times more likely than whites to serve jail time after controlling for the possibility of being in the Hennepin-Ramsey area. In other words, holding all factors constant in Table 7B and using the county variable to differentiate between Hennepin-Ramsey and all other counties, we find that the odds of doing jail time increase by a multiplicative factor of 1.51 if the offender is black rather than white. This difference between blacks and whites was greater in Table 4 because that model did not adequately control for the effect of being in the Hennepin-Ramsey area. Some of the influence attributed to race in Table 4 was really due to the influence of being detained or convicted in the Hennepin-Ramsey area. Also note the decrease in statistical significance for race in Table 7B ($p < .05$) compared to Table 4 ($p < .001$).

As to whether the pre-trial detention and bail setting practices of Hennepin and Ramsey counties are fair and unbiased, that is a question that cannot be answered by this study. We did try to determine if race was significant in predicting pre-trial detention in the Hennepin-Ramsey sample, but the effort was basically unsuccessful. Since there were so few offenders who were not detained (196 out of 1747), the logistic regression procedure was unable to build a stable model to predict pre-trial detention.

In summary, race is a significant factor (not due to random chance) in predicting the likelihood of a stay in jail when **pre-trial jail time is counted as a stay in jail.** This relationship exists after other important factors are held constant. In other words, two offenders have the same criminal history score, offense severity level, gender, employment status, etc., but the African American is still more likely than the white to do jail time. Race is **not a significant factor** in predicting the likelihood of **a post disposition jail term.** The analyses found no significant differences between whites and the racial minority groups in predicting the odds of receiving a post disposition jail sentence.

Predicting Length of Jail Time Served

The second jail factor to be examined is the length of jail time served by offenders. The length of time served (for those who actually served jail time) ranged from 1 day to 365 days. The average time served was 69 days and the median term was 47 days. **This measure includes both pre and post disposition jail time.** In order to explore the relationship between race and length of time served, the statistical analysis technique of ordinary least squares multiple regression was used to determine the influence of all the variables from Table 2 on the length of time served. This technique allows the evaluation of the influence that each variable has in predicting the length of jail time served while controlling for the influence of all other variables in the model.

The first model to examine total length of jail time served **includes only those offenders who actually served some jail time (either pre or post disposition).** The results of the OLS multiple regression are displayed in Table 8. The interpretations of OLS regression coefficients and statistics are much more straightforward and easier to understand than those discussed in the previous section on logistic regression. The regression coefficients are displayed in the column labeled "Beta". Every predictor variable that was analyzed by the regression procedure has a Beta value. Each Beta estimates the amount of change in the length of jail time served (in days) for a one-unit change in that particular predictor (factors such as race, criminal history, etc.). In Table 8, the Beta for gender is 25.86 which indicates that the length of jail time served increases by 26 days as gender changes from female to male. Likewise, the length of jail time served increases by 13 days when weapon use changes from "no" to "yes" since the weapon use Beta is 12.81 (recall from Table 2 that weapon use is coded 0 for "no" and 1 for "yes").

Table 8. OLS Regression Coefficients and Related Statistics for Total Length of Jail Time Regressed on All Independent Variables

Variable	Beta	Standard Error	Standardized Beta	Cumulative Adj R^2
Offense Sev	2.676 ***	.097	.411	.160
Crim History	2.117 ***	.105	.295	.267
Employed	-20.732 ***	2.150	-.139	.286
Gender	25.862 ***	2.980	.125	.303
County	-10.933 ***	2.266	-.069	.308
Weapon	12.806 **	3.997	.047	.311
Am Indian	11.864 *	5.199	.033	.311
Other Race	15.252 *	6.907	.031	.312
Trial	21.754 **	7.835	.042	.313
Negot Plea	7.480 *	3.176	.036	.314

F-Test 158.68 p < .0001
N of Cases = 3453
Adjusted R^2 = .314

*** p < .001
** p < .01
* p < .05

Another important point in the interpretation of Betas is the sign of the Beta. A positive Beta (indicated by no sign) tells us that as the value of the predictor variable increases, so does the value of the dependent variable (length of jail time). A negative Beta (indicated by a minus sign) implies that as the value of the predictor variable increases, the value of the dependent variable decreases (an inverse relationship exits between the two factors).

With these facts in mind, the interpretations of the Betas in Table 8 are as follows: as **offense severity** increases so does the length of jail time served (approximately 2.7 days for each one point increase in the **calculated severity scale**); as **criminal history** increases so does length of jail time served (approximately 2 days for each one point increase in the **calculated history scale**); **employment status** has an inverse relationship with length of jail time, therefore, an employed offender served approximately 21 days less than an unemployed offender; **males** served nearly 26 days longer than females; **county** has an inverse relationship with length of time served, therefore, those offenders who were convicted in the 7-county metro area served approximately 11 days less than those held in the outstate counties; offenders who had a **weapon** during the commission of their crime served almost 13 days longer than those who had no weapon; **American Indians** served almost 12 days longer than whites, and offenders in the **"Other Race"** category served approximately 15 days longer than whites; offenders who eventually went to **trial** or **negotiated a plea** rather than entering a straight guilty plea served (respectively) about 22 days and 7.5 days longer.

Since the magnitude of the Beta is affected, in part, by the scale of measurement that is being used to measure the variable with which the Beta is associated, it is inappropriate to interpret the Betas as indicators of the relative importance of variables (unless all predictors are measured in the same units). Researchers who wish to discuss the relative importance of predictor variables often resort to comparisons among "standardized betas". Standardized betas are the coefficients of the predictor variables when all predictors are expressed in standardized form (Z-scores).[8] In other words, all predictor variables have now been converted to the same units of measurement, thus allowing direct comparisons among the standardized betas. In this analysis, offense severity appears to have the strongest effect on length of jail time since it has the largest standardized beta of .411; criminal history has the second strongest effect since its standardized beta (.295) is the second largest.

The standard errors (see Table 8) are used to calculate the statistical significance of the predictor variables in affecting the length of sentence in this model. The factors that are statistically significant in predicting the length of jail time served are flagged by an asterisk(s). The values under the column "Adj R^{2}" indicate the amount of variance in the length of jail time that can be explained or attributed to the predictors in the regression model up to that point. The values for this column in Table 8 are cumulative, therefore, we can explain 31.4% of the variance in jail time served by offenders with the model that includes all the variables displayed in Table 8.

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[8] This discussion of standardized betas is taken from "Multiple Regression in Behavioral Research" by Elazar J. Pedhazur (1982).

All variables from Table 2 were specified for entry into the regression model. Those factors which did not enter into the model due to lack of statistical significance in predicting length of jail time served are the following: education, age, and the racial status variable African American. We can interpret this finding to indicate that African Americans did not serve jail time that had a statistically significant difference from the time served by whites. Also, the age and educational status of the offenders did not significantly affect the length of their jail time.

Those factors that are statistically significant in influencing the length of jail time served include **offense severity, criminal history, gender, employment, weapon use, county, trial, negotiated plea,** and the racial status factors of **American Indian and "Other Race"**. These factors and their statistics are all listed in Table 8. Offense severity and criminal history are the most influential factors, followed by employment status and gender (based upon the values of their standardized betas). After these four factors are in the model, the other factors listed in the table are marginally influential in affecting the length of time served. If one examines the Adjusted R^2 value as it changes for each of these last six variables as they enter into the model, one can see very little change. This means that adding these variables into the model helps very little in explaining the variance in jail time served. In fact, they only add another 1% of variance explanation.

In summary, these findings indicate that the racial statuses of American Indian and "Other Race" (Hispanic and Asian), as opposed to being white, are statistically significant in predicting length of jail time served. However, these racial factors contribute very little (less than 0.5%) in explaining the overall variance in length of jail time. The entire regression model explains 31.4% of the variance in the length of jail time.

The previous model did not include any of the offenders who served no jail time at all (approximately 500 cases). The racial composition of this small group (roughly 13% of the total sample) is 85.6% white, 9.2% black, 2.6% American Indian, and 2.6% Asian and Hispanic. The gender breakdown is 51.7% male and 48.3% female. Whites and females are over represented in this group in comparison to their proportions in the total sample (which was 75% white and 20% female). A second regression was run to predict total length of jail time, this time including those offenders who served no jail time (0 days). The results of this regression are displayed in Table 9. We were curious to see if any significant changes would occur by including this group in our model to predict length of jail time served.

The results in Table 9 do not differ substantially from the previous regression results in Table 8. The same variables are still statistically significant in predicting length of time served, but some of the levels of significance have changed (denoted by the number of asterisks following each Beta value). Significance levels increased for weapon use, trial, and the racial status of American Indian. The county variable was the only predictor to show a decrease in significance level, but still remained statistically significant in predicting length of jail time. The amount of variance in jail length explained by this model improved slightly from 31.4% to 32.5%. The four most influential predictors of jail time length are still offense severity, criminal history, employment status, and gender. The addition of the last six factors in Table 9 contribute only 1% of the explained variance in jail length (since the Adjusted R^2 increases from .315 to .325). These six factors, which include the racial status factors, have a very minimal influence in explaining length of jail time served. This is the same situation that occurred in the previous regression model.

Table 9. OLS Regression Coefficients and Related Statistics for Total Length of Jail Time Regressed on All Independent Variables (includes offenders who did not serve time)

Variable	Beta		Standard Error	Standardized Beta	Cumulative Adj R^2
Offense Sev	2.579	***	.091	.389	.159
Crim History	2.030	***	.096	.285	.268
Gender	29.905	***	2.454	.164	.293
Employed	-21.425	***	1.958	-.146	.315
Weapon	17.851	***	3.863	.062	.319
County	-6.373	**	2.028	-.042	.321
Trial	26.037	***	7.471	.049	.322
Am Indian	13.786	**	4.844	.038	.323
Negot Plea	6.876	*	2.876	.033	.324
Other Race	12.550	*	6.296	.026	.325

F-Test 191.80 p < .0001

*** p < .001
** p < .01
* p < .05

N of Cases = 3970

Adjusted R^2 = .325

We thought it would be interesting to subtract all pre-trial jail time from total length of time served and examine the length of post disposition jail sentences. We wanted to see if the same factors that were significant in predicting the length of total jail time served (from Table 8) would be significant in predicting the length of post disposition jail terms. We ran a regression procedure to predict the **length of post disposition jail time served**, and the results are displayed in Table 10 below. This analysis includes only those offenders who actually served post disposition jail time.

Table 10. OLS Regression Coefficients and Related Statistics for Length of Post-Disposition Jail Time Served

Variable	Beta		Standard Error	Standardized Beta	Cumulative Adj R^2
Offense Sev	2.301	***	.106	.402	.142
Crim History	1.902	***	.122	.282	.224
Age	.835	***	.143	.105	.232
Gender	17.386	***	3.778	.083	.239
County	-8.494	***	2.531	-.059	.242

F-Test 156.55 p < .0001

*** p < .001

N of Cases = 2434

Adjusted R^2 = .242

The results in Table 10 differ from those we saw in Table 8 (total jail time served). The variables that are significant in predicting the length of post disposition jail time served are offense severity, criminal history, age, gender, and county (outstate vs. 7-county metro). With the exception of age, all of these factors were significant in predicting length of total jail time served (Table 8). The biggest difference between Table 8 and Table 10 can be found in the employment and racial status factors. Employment was one of the four most influential variables in predicting length of total jail time served. However, employment is not significant in predicting length of post disposition jail time. Likewise, the racial status factors (American Indian and "Other") that were marginally influential in predicting total jail time served are not significant in predicting post disposition jail time. It is also important to note that offense severity and criminal history are by far the most influential variables in the model, accounting for over 22% of the explained variance. The addition of age, gender, and county only contribute an additional 2% of explained variance in length of post disposition jail time. One can attribute these differences between Table 8 and Table 10 to the removal of pre-trial jail time from the analysis.

Conclusions

This research project attempted to answer two questions regarding the relationship between race and jail sanctions, while holding constant various demographic, criminal history, and offense factors.

Question 1: Does an offender's race or minority status have a significant effect on the odds of serving time in jail? The analysis of this question was set up to compare the treatment of whites to African Americans, whites to American Indians, and whites to Hispanics and Asians (jointly). The findings indicated that the odds of serving jail time were 1.51 times greater for African Americans than for whites, 1.35 times greater for American Indians than for whites, and .59 times less for the Hispanic/Asian group than for whites when the analysis counted both pre-trial jail terms and post disposition jail terms as a stay in jail (see Table 7B). These differences are great enough to be considered statistically significant for African Americans, but they are not great enough to be statistically significant for the other racial categories. We can make the statement that African Americans had significantly higher odds (not due to random chance) in doing jail time in comparison to whites. Although American Indians had higher odds than whites, and the Hispanic/Asian group had lower odds than whites, we cannot say those difference were due to anything other than random chance.

When the analysis counted only post disposition jail terms as a stay in jail, race was not significant in predicting the jail outcome. This was true when the entire sample was analyzed, as well as when Hennepin and Ramsey counties were analyzed as a subsample. This leads to the conclusion that it was pre disposition jail time that made race a significant factor in predicting jail outcomes in the previous analyses. This study was unable to determine if race was a significant factor in the pre-trial detention decision. However, there is the Hennepin County Pre-Trial Release study which found that black defendants were significantly less likely to be released with no bail required (NBR) as compared to white defendants in Hennepin county.[9] The same study also found that blacks were significantly more likely to be detained (from first appearance through case resolution) than whites in the offense categories of felony person and felony property, although bail amounts did not differ significantly by race. This lead the research staff to conclude that blacks were detained more often due to their inability to make bail. Future studies seem to be necessary in order to answer the questions of fairness and equity in pre-trial detention decisions and bail setting practices.

Question 2: Does an offender's race or minority status have a significant effect on the length of jail time served? Again the analysis was set up to compare whites to each of the other racial categories. When total jail time served (including pre-trial jail time) was examined, the findings indicated that American Indians and the Hispanic/Asian group both served longer jail terms than whites, and these differences were statistically significant at the $p = .05$ level (which indicates a low level of significance using a sample of this size). African Americans did not serve

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[9] The Hennepin County Pre-Trial Release study was conducted by the Hennepin County Bureau of Community Corrections, Planning and Evaluation Unit (March, 1992). A summary of their findings was presented earlier this year to the Race Bias Task Force.

significantly longer jail terms than whites. This finding coincides with that of the MSGC which reported that average jail time served was the same for whites and African Americans, but longer for American Indians, Hispanics and Asians.[10] However, we should be cautious in our interpretation of these results. The current analysis indicated that offense severity, criminal history, gender, and employment status actually explained most of the variance in total jail time served for this model. Including racial status in the model offers less than 1% additional explanation for jail length variance.

Although the analyses in this study consistently found males serving longer jail terms than females, it is important to note possible explanations for this difference that the current study could not control or analyze. For example, jail resources are usually more scarce for females than for males. Also, offense patterns generally differ by gender. This study did control for offense severity level as defined in the MSGC sentencing grid, but did not differentiate between offenses within the same severity levels. It should be noted that approximately 36% of all females in this study were convicted for welfare or food stamp fraud, as compared to only 2% of the males.[11] There may be a reluctance to detain or sentence these women to jail terms, especially if they are single parents.

When pre-trial jail time was excluded from the analysis, and only the length of post disposition jail time was examined, race was not significant in predicting time served. This is not surprising since race was only marginally influential in predicting total jail time served (a measure which included pre-trial jail time). The analysis of the length of post disposition jail terms indicated that offense severity and criminal history were the most important factors in predicting the amount of jail time served. It is fairly safe to state that race had very little direct influence in determining total length of jail time served, and no direct influence in the length of post disposition jail terms.

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[10] Minnesota Sentencing Guidelines Commission (Feb., 1991) "Report to the Legislature on Intermediate Sanctions".

[11] ibid.

Hennepin County Misdemeanor Processing Analysis

Task Force on Racial Bias in the Courts

Minnesota Supreme Court

January 28, 1993

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Research Design

This study was requested by the Criminal Process Committee of the Racial Bias Task Force. The purpose of the study is to determine if any racial differences exist in the processing and sentencing of misdemeanor offenders in Hennepin County. The specific research questions examined are the following:

1. Are there any differences by race in the processing of misdemeanor defendants in the areas of setting bail, use of summons vs. arrest, attorney representation, rate of trial vs. pleading guilty, conviction rate, and dismissal rate?

2. Are there any differences by race in sentences pronounced for misdemeanor offenders, in the use of specific sanctions such as jail, probation, and fines?

In order to make legitimate comparisons in the processing and disposition of cases by race, certain influential factors must be controlled and held constant. Two important factors, type of offense and prior convictions, are held constant in the analyses of racial differences in case processing and case outcome factors.

The data were obtained from Hennepin County's SIP computer system (Subject in Process). All misdemeanor assault, theft, and prostitution offenses charged in Hennepin County during January 1989 through April 1992 were retrieved for this analysis. Due to the time constraints of the study and the lack of available data from other counties, Hennepin is the only county from which data were obtained.

Methodology

The data include case processing and sentencing information on nearly 19,000 defendants. Assault, prostitution, and theft offenses were chosen for analysis. This decision was made to simplify the analysis and to control for type of offense charged. In examining differences by race in case processing and outcome, racial comparisons are made within each offense category, thus holding constant the effect of the offense charged. For each offender with multiple offenses charged during the time period analyzed, the most recent offense is used to categorize the type of offense for analysis purposes.

The other factor which is controlled in the analyses is the defendant's prior conviction record dating back to 1989. Due to time, resource, and technology limitations, only the misdemeanor data residing on the "online" SIP computer system were available from Hennepin County. Data prior to January 1989 are not available. Prior conviction history was constructed by determining if any convictions (misdemeanor, gross misdemeanor, or felony) were recorded in the 1989-92 time frame. If a defendant had no convictions recorded on the SIP system (other than the current case outcome) during the time frame, they are classified as a "first-time" offender in the analyses. If a defendant had any number of previous convictions, they are classified as a "repeat" offender for analytical purposes. This is a limitation in the study since we cannot identify defendants with convictions prior to 1989, nor can we determine the severity of the offense of conviction in the 1989-92 time frame. Approximately one-fifth of the sample are "repeat offenders"

under the classification system described. Table 1 displays the frequency distributions and categories of the various factors analyzed in the study.

Table 1. Variables of Interest: Frequency Distributions

Variable	Categories		N Cases	Percent
Race	0	White	9253	48.9
	1	Black	7633	40.4
	2	Am. Indian	1401	7.4
	3	Other	630	3.3
Sex	0	Female	4015	21.2
	1	Male	14902	78.8
Repeat Offender	0	No	14938	79.0
	1	Yes	3979	21.0
Offense	1	Assault	11656	61.6
	2	Prostitution	731	3.9
	3	Theft	6530	34.5
Bail Status	0	NBR	4226	24.9
	1	Bail Set	12718	75.1
Charging Method	0	Summons/Ticket	2669	15.4
	1	Arrest/Tab	14701	84.6
Attorney	1	Private Def.	2017	10.7
	2	Public Def.	9929	52.5
	3	Pro Se	6971	36.9
Trial Held	0	No	18516	97.9
	1	Yes	401	2.1
Case Outcome	1	Convict	8426	49.3
	2	Dismiss	6589	38.6
	3	Continue	2016	11.8
	4	Acquit	52	0.3

The frequency distribution for race (Table 1) indicates that whites comprise nearly 49% of the sample, followed by African Americans at approximately 40%, and American Indians at slightly above 7%. The "other" category consists mostly of Asians and Hispanics, and comprises approximately 3% of the sample. For the analyses conducted in this study, the race variable is collapsed into two categories: white and minority. This is necessary due to the relatively small number of cases in some of the minority categories. There are not enough American Indian and "other race" people in the sample to control for current offense and conviction history and still

produce meaningful analyses of the various case processing and outcome factors. Therefore, this analysis uses two categories: white and minority.

As previously noted, only three misdemeanor offense categories were selected for analysis. Table 1 displays the frequency distributions for these offenses. Defendants charged with assault account for the majority of the sample (approximately 62%). Theft is the next largest offense category (roughly 34%), and prostitution contributes the smallest number of cases at only 4% of the total. It is important to note that most of the assault cases are domestic assaults. These domestic assault cases account for approximately 72% of the assault cases in this study. This fact should be kept in mind as the analysis proceeds, since domestic assaults may often be treated differently than other assaults.

In looking at some of the other variables displayed in Table 1, such as bail status, we find that 75% of the defendants had bail set while 25% were released with no bail required (NBR). The frequency distribution for charging method indicates that approximately 15% of the defendants were charged by a summons or ticket, while nearly 85% were charged by tab or arrest warrant.[1] For attorney representation, the majority of the defendants (52%) had a public defender, 11% had a private attorney, and 37% appeared without an attorney.

Trials are very rare for these misdemeanor defendants; only 2% of the defendants went to trial. The distribution of all known case outcomes (regardless of trial status) indicates that 49% of the defendants were convicted, approximately 39% had their cases dismissed, nearly 12% were continued for dismissal, and less than 1% were acquitted.

The legal and case processing factors include charging method, bail status, trial rates, guilty pleas, attorney representation, and case outcome (convicted, dismissed, or continued). For those defendants convicted or continued, the likelihood of receiving a specific sanction (jail, fines, probation) is analyzed. Contingency table analysis is used to determine if there is a relationship between the defendant's race and these factors of interest while controlling for current offense and conviction history of the defendant. For those defendants who have bail set, analysis of variance is used to determine if average bail amounts differ by race while holding offense type and conviction history constant. This same methodology is employed to analyze the length of jail terms given to those offenders sentenced to jail.

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[1] Charging method consists of four possibilities: ticket, summons, warrant, and tab. A ticket indicates that some infraction took place and the defendant was issued a ticket by a police officer (there was no arrest). A summons indicates that the defendant was mailed a summons to appear in court (no arrest). A tab charge indicates that some incident was witnessed by a police officer and the defendant was booked on probable cause. A warrant indicates that an arrest warrant was issued for the defendant. For the analysis of charging method, the categories are combined to reflect arrest vs. no arrest.

Findings

Charging Methods

We first examine the effect of the defendant's race on the charging method, while holding constant the present offense. Recall that the Hennepin County Pre-Trial Release study (which analyzed felonies and gross misdemeanors) found whites were significantly more likely than blacks to receive a summons.[2] Table 2 displays the relationship between race and charging method within each offense category.

Table 2. Charging Method

Charging Method	Assault		Prostitution		Theft	
	White	Minority	White	Minority	White	Minority
Summ/Tick	17%	11%	20%	16%	21%	14%
Arrested	83%	89%	80%	84%	79%	86%
Total N	4719	5856	302	404	3380	2709

Conviction history is not considered in Table 2 since the arresting police officer has no knowledge of the defendant's prior convictions. A large majority of the defendants (slightly more than 76%) were charged by tab. Recall that a tab charge indicates a probable cause arrest took place due to an incident witnessed by an officer in the line of duty. Since the officer would not be aware of a defendant's record at the time of arrest, it does not make sense to include it in the analysis.

The information displayed in Table 2 indicates that the vast majority of defendants in each offense category are arrested. However, within each offense category, whites are slightly more likely than minorities to receive a summons/ticket. The difference in the summons rate between whites and minorities varies from 4% (prostitution) to 7% (theft). There is a weak relationship between race and charging method, with whites having a slightly higher rate of summons in comparison to minorities.

Bail Status

Once charged, defendants may be released with no bail required (NBR) or have bail set at a specific amount. Obviously, release on NBR status is preferable since it places no financial burden on the defendant. Is there a difference by race in the likelihood of release on NBR status? Holding constant the defendant's conviction history and current offense, Table 3 displays the NBR rates by race.

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[2] The Hennepin County Pre-Trial Release study was conducted by the Hennepin County Bureau of Community Corrections, Planning and Evaluation Unit (March, 1992). A summary of their findings was presented earlier this year to the Racial Bias Task Force.

Table 3. Bail Status - NBR (No Bail Required) [3]

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	4203	20%	4207	8%	775	13%	1747	5%
Prostitution	155	24%	215	16%	84	25%	127	16%
Theft	2596	63%	1872	40%	373	46%	590	32%

The information in Table 3 indicates that whites are more likely than minorities to be released on NBR status, after controlling for conviction history and offense category. There are some large differences by race in NBR status. For defendants with no prior convictions who are charged with assault, 20% of the 4,203 whites are released on NBR compared to only 8% of the 4,207 minorities. The largest differences occur in the theft offense categories: white defendants with no priors have a NBR rate of 63% compared to 40% for minorities, while white defendants with prior convictions have a NBR rate of 46% compared to 32% for their minority counterparts. All of the differences in NBR rates are large enough to be statistically significant (except for the prostitution category with prior convictions).

This finding is similar to that of the Hennepin County Pre-Trial Release study which examined felonies and gross misdemeanors, and found that whites were significantly more likely than blacks to obtain NBR release when those who received a summons were included in the analysis. However, when those who received a summons were excluded from the analysis, there were no significant racial differences in NBR status. Since the information in Table 3 includes defendants who received a summons, we decided to exclude them and redo the analysis to see if any significant changes would occur in NBR rates. The racial differences in NBR rates become smaller in five of the six categories, but whites are still more likely to receive NBR status. There is still a significant relationship between race and NBR status in the assault and theft categories for both first-time and repeat offenders. This is not too surprising since we previously determined that charging methods are not significantly different for whites and minorities in this study.

Bail Amount

For those defendants who are required to post bail, is there a significant difference by race in the amount of bail required? A statistical technique, analysis of variance, can help determine if there are significant bail differences between groups (i.e., do bail amounts differ between offense types; do they differ between racial categories?), and also to determine if any of

[3] Please note that the table includes conditional release defendants (110 cases) in the category of NBR. Conditional release does not require the posting of monetary bail, but it does require the defendant to meet specific conditions set by the court. Also note that those defendants on 24-hour hold with no bail set (91 cases) are excluded from the analysis.

the factors (race, offense, conviction history) has a significant effect on the amount of bail. We expect that offense type, and perhaps conviction history, influence the amount of bail required. Once these two factors are held constant, bail amount should not differ by race. Table 4 displays average bail amounts for each combination of race, offense, and conviction history categories.

Table 4. Average Bail Amounts by Race (Number in parenthesis is N of cases for avg.)

Offense	No Prior Convictions		Prior Convictions	
	White	Minority	White	Minority
Assault	$1059 (3361)	$1027 (3861)	$1100 (671)	$1137 (1659)
Prostitution	$196 (118)	$252 (181)	$612 (63)	$630 (107)
Theft	$244 (959)	$225 (1115)	$209 (202)	$208 (401)

The data in Table 4 indicate that there are some differences in average bail amounts. Assault has the highest average bail amount of the offense categories, and repeat offenders tend to have higher bail amounts than first-time offenders (except in the theft offense category). The greatest effect of being a repeat offender is seen in the increase of average bail amounts for the prostitution offense category. The influence of race on bail amounts does not display a consistent pattern. For those with no prior convictions, whites have slightly higher average bail amounts than minorities in the assault and theft categories. For defendants with prior convictions, minorities have higher bail amounts than whites in the assault and prostitution offense categories. Are any of these differences large enough to be statistically significant (i.e., not due to random chance)?

Several tests were conducted to determine which factors, if any, have a significant effect on the amount of bail set. The race factor was first tested by itself (without holding offense or conviction history constant) to see if average bail amounts differed significantly between whites and minorities. The test indicated there were NO significant differences in bail amounts by race.[4] The offense factor was tested to see if average bail amounts differed significantly between offense types. Testing indicated that statistically significant bail differences existed between all three offense categories.[5] Conviction history was tested to determine if significant differences in average bail amounts existed between first-time and repeat offenders. Results indicated that significant differences did indeed exist between first-time and repeat offenders.[6] All of these tests are "oneway" analysis of variance tests. Factors are tested individually, one at a time, without holding other factors constant. Using this method of analysis, there are no significant differences in the average bail amounts set for whites and minorities.

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[4] Average bail amount for whites is $863; for minorities average bail amount is $860.

[5] Average bail amount for assault is $1062, for prostitution $373, and for theft $228.

[6] Average bail amount for first-time offenders is $842, and for repeat offenders it is $920.

A final analysis of variance test was conducted to determine if race has a significant effect on the amount of bail set for a defendant, while offense type and conviction history are held constant. Race, offense, and conviction history are entered into an equation, and each factor is tested for its influence on bail amount while the other factors are held constant. Results of this test indicated that offense and conviction history have a statistically significant effect on the amount of bail set, but race does not significantly influence bail amounts. This finding is consistent with that of the Hennepin County Pre-Trial Release study which also found that average bail amounts did not differ significantly by race when offense type was held constant.[7]

Trial

The next factor examined is the likelihood of going to trial. Holding constant the defendant's offense and conviction history, is there a difference by race in the likelihood of going to trial? The results of this analysis are displayed in Table 5.

Table 5. Trial Rates

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	4544	0.9%	4466	1.0%	827	1.0%	1819	1.0%
Prostitution	201	0.5%	278	2.2%	105	1.0%	147	0.0%
Theft	3159	5.4%	2290	4.3%	417	1.0%	664	0.9%

Recall from Table 1 that only 401 defendants went to trial (about 2% of the sample). With so few cases going to trial, it is difficult to set controls for offense and history factors and have enough cases to make meaningful comparisons by race. Most of the categories displayed in Table 5 do not contain enough cases that went to trial to make meaningful comparisons. For those categories that do contain a sufficient number of cases, there are no significant differences in trial rates between whites and minorities.

Guilty Pleas

The next factor of interest is the likelihood of pleading guilty. Does race have a significant relationship with entering a guilty plea after controls are set for offense and conviction history? The data in Table 6 indicate that there are some racial differences in guilty plea rates. White defendants are more likely than minority defendants to plead guilty in all of the offense and conviction categories. Some of these differences are quite large. For example, white defendants

[7] Hennepin County Pre-Trial Release, Hennepin County Bureau of Community Corrections, Planning & Evaluation Unit (March 1992).

who have no prior convictions and are charged with assault plead guilty at a rate of 43%, while their minority counterparts plead guilty at a rate of 29% (a difference of 14%). All of the racial differences in guilty plea rates for first-time offenders are large enough to be statistically significant. For repeat offenders, only the theft offense category has a large enough racial difference in guilty pleas to be considered statistically significant. It is also interesting to note that most of the differences in guilty plea rates between whites and minorities hold steady around 8% to 11%, except for the assault offenses. There we see a decrease from a 14% difference (no priors) to only a 5% difference (prior convictions). The larger variation in plea rates for assault offenses may be partially attributable to the nature of the cases (recall that most of the assault cases are domestic assaults), or perhaps it is related to attorney representation.

Table 6. Guilty Pleas

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	4544	43%	4466	29%	827	35%	1819	30%
Prostitution	201	66%	278	56%	105	61%	147	50%
Theft	3159	57%	2290	49%	417	60%	664	51%

Attorney Representation

In conjunction with trial rates and guilty pleas comes the question of attorney representation. Since the presence and/or quality of an attorney can influence the processing and outcome of a case, it makes sense to explore the relationship between race and attorney representation. The data in Table 7 provide a description of the relationship between race, offense, and attorney representation.

Table 7. Attorney Representation

Type of Attorney	Assault		Prostitution		Theft	
	White	Minority	White	Minority	White	Minority
Private	18%	7%	14%	3%	12%	4%
Public	41%	70%	60%	70%	32%	57%
Pro Se	41%	23%	26%	27%	56%	39%
Total N	5371	6285	306	425	3576	2954

There are some interesting patterns in the table above. Most defendants in each offense category, regardless of race, are represented by public defense or appear pro se. However, whites are more likely than minorities to be represented by a private attorney in each of the

offense categories. Minority defendants are more likely to have a public defender, regardless of offense type. Whites are generally more likely to appear pro se, which may in part account for their higher guilty plea rates. The next section examines more closely the relationships between race, attorney representation, and the likelihood of pleading guilty.

The Effect of Attorney Representation on Guilty Plea Rates

The next two tables examine the effect of attorney representation on the likelihood of pleading guilty. This analysis basically duplicates Table 6 (Guilty Pleas), but adds a control for the presence of an attorney. Table 8 examines the guilty plea rate for those defendants who appeared without attorneys (pro se), while Table 9 looks at the defendants who had attorney representation (either public or private).

Table 8. Guilty Pleas - Pro Se Defendants

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	1967	48%	1180	31%	214	38%	260	25%
Prostitution	69	48%	90	18%	11	9%	25	16%
Theft	1841	59%	926	40%	176	46%	212	29%

Table 9. Guilty Pleas - Defendants with Attorney Representation

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	2577	39%	3286	28%	613	34%	1559	31%
Prostitution	132	75%	188	75%	94	67%	122	57%
Theft	1318	54%	1364	55%	241	70%	452	61%

We first examine the racial differences in the likelihood of pleading guilty for those defendants who appeared pro se (Table 8). Whites are much more likely to plead guilty than minorities in all of the offense/conviction categories, except prostitution with priors (which has too few cases to make a meaningful comparison). All of these differences are large enough to be statistically significant (except repeat prostitution). The differences in the guilty plea rates between whites and minorities in Table 8 tend to be larger than those we saw in Table 6 (which did not control for attorney representation). For those defendants who have an attorney (Table 9), whites plead guilty at a higher rate in four of the six categories, but these racial differences are not as great as those in the pro se table (Table 8). The plea rates are fairly even in the other

two categories (first-time offenders in prostitution and theft). Only two categories, assault with no priors and theft with priors, display a racial difference in pleading guilty that is statistically significant.

It seems that attorney representation tends to decrease the racial differences in the guilty plea rates for most offense categories. In some offense categories, the guilty plea rate decreases for whites and increases for minorities when they have attorney representation (e.g., theft with no priors and assault with priors). For defendants charged with prostitution, the guilty plea rate increases greatly for both racial groups when they have attorney representation. This may simply be a function of the defendant's desire to plead not guilty against the advice of their lawyer. Defendants who refuse to take their lawyer's advice may simply choose to appear pro se and contest the charges.

Discussion

Up to this point we have concentrated on examining the racial differences among several case processing variables and legal factors. Some significant racial differences were found along with some marginal differences. Although the great majority of all defendants were charged by arrest/tab, white defendants were slightly more likely than minority defendants to receive a summons/ticket. White defendants were significantly more likely to be released with no bail required (NBR status). For those defendants who had bail set, there were no significant differences by race in the average amount of bail required (holding constant offense type and conviction history).

Very few defendants went to trial, thus making it difficult to do any meaningful comparisons by race. White defendants were significantly more likely than minorities to plead guilty in most of the comparison categories (when attorney representation was not held constant). After controlling for attorney representation, we found that whites were significantly more likely than minorities to plead guilty when they appeared pro se. Racial differences in guilty plea rates diminished when defendants had attorney representation. There was also a distinct racial pattern in the type of attorney representation for the defendants. Whites were more likely than minorities to appear pro se or with private defense, while minorities were more likely to be represented by a public defender. The analysis now turns to the examination of case outcomes and sanctions imposed upon offenders.

Likelihood of Conviction

The first case outcome factor examined is the likelihood of conviction for the defendant. Table 10 displays the conviction rates by race while controlling for offense type and conviction history. We would expect white defendants to have a higher rate of conviction for most offense categories since they were more likely to plead guilty.

Table 10. Conviction Rates

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	4339	46%	4129	32%	762	39%	1665	34%
Prostitution	160	84%	190	86%	86	76%	108	68%
Theft	2877	69%	1878	65%	336	75%	501	69%

In all of the offense/conviction categories, except prostitution with no priors, white defendants are convicted at a higher rate than minority defendants. This pattern is not surprising, considering that whites were more likely to plead guilty than minorities (Table 6). The category of assault with no prior convictions displays the largest difference in conviction rates between whites and minorities. We see that 46% of 4,339 white defendants are convicted, while only 32% of 4,129 minorities are convicted. The relationship between race and conviction in this category is statistically significant. None of the other offense/conviction categories display a significant relationship between race and likelihood of conviction, with the exception of defendants charged with theft who have prior convictions.

Likelihood of Dismissal

The next case outcome factor for examination is the likelihood of dismissal. This outcome had the second highest frequency of occurrence (Table 1) after conviction. For whatever reason, the case against the defendant is dismissed (perhaps due to lack of evidence) and the charges are dropped. Table 11 displays the dismissal rate by race, controlling for offense and prior convictions.

Table 11. Case Dismissed

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	4339	38%	4129	59%	762	53%	1665	62%
Prostitution	160	14%	190	10%	86	24%	108	31%
Theft	2877	14%	1878	22%	336	20%	501	28%

Information displayed in Table 11 indicates that the assault offense type has a much greater dismissal rate than the other offense categories. This is probably due to domestic assault cases where the victim is unwilling to pursue charges against the defendant. The data also indicate that minority defendants have a higher dismissal rate than whites in five of the six

categories examined. Some of these differences are quite large, as in the assault category with no prior convictions; 38% of the white defendants had their cases dismissed as compared to 59% of the minority defendants. The relationship between race and case dismissal is statistically significant in both of the assault and theft categories, with minorities being more likely to have their cases dismissed.

Another case outcome factor is "continued for dismissal". The court orders the defendant to meet some criteria within a specified time frame, and then dismisses the charge if the criteria is met. Table 12 displays cases continued for dismissal by race, controlling for offense and prior convictions.

Table 12. Continued for Dismissal

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	4339	16%	4129	9%	762	8%	1665	5%
Prostitution	160	3%	190	4%	86	0%	108	2%
Theft	2877	17%	1878	14%	336	5%	501	3%

The information in Table 12 indicates that first-time offenders are more likely to be continued for dismissal than repeat offenders. There are some minor differences by race in the rates. Whites tend to have a slightly higher continuation rate than minorities in the assault and theft offense categories. The only statistically significant racial difference in likelihood of continuation is found in the category of assault with no prior convictions.

Sanctions

The next area of examination is the imposition of specific sanctions. Is there any difference by race in the likelihood of receiving a specific type of sanction, controlling for the offender's current offense and prior convictions? Three types of sanctions are examined; probation, fines, and jail sentences. Originally, this study intended to also examine the use of restitution and community service sanctions. Due to an insufficient number of cases involving these two sanctions, quantitative analysis is not possible.

It should be noted that the following analyses of sanctions are confined to those offenders who were convicted or had their cases continued (and actually received some type of sanction). Those who were acquitted or had their cases dismissed are excluded from the analyses. Also, a word of caution should be heeded in the interpretation of the analysis in the use of sanctions. One sanction is not used at the exclusion of others. A close examination of the following tables indicates that many offenders received a combination of sanctions.

Probation is the first sanction examined for racial differences in the likelihood of imposition. Table 13 displays the probation rates by race, holding constant the offender's offense and conviction history.

Table 13. Probation

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	2714	95%	1704	94%	356	91%	639	92%
Prostitution	138	86%	171	93%	65	97%	75	87%
Theft	2479	72%	1472	70%	270	73%	359	72%

The information in Table 13 indicates that the majority of offenders in all offense, conviction, and racial categories receive probation. Racial differences in probation rates are very minimal in most of the offense/conviction categories. Prostitution (regardless of prior history) is the only offense category where some differences by race can be seen, but the pattern is not consistent. For those offenders with no history, minorities are more likely than whites to get probation. The opposite is true for those offenders with prior convictions.

Table 14. Fines Imposed

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	2714	18%	1704	12%	356	16%	639	8%
Prostitution	138	23%	171	8%	65	5%	75	0%
Theft	2479	34%	1472	26%	270	23%	359	14%

The next sanction analyzed is the imposition of a fine. Table 14 displays the rates of fine impositions by race for each offense/conviction category. Whites are more likely than minorities to receive a fine in all of the categories. The largest discrepancy is in the prostitution/no priors category where 23% of the whites are fined in comparison to only 8% of the minorities. All of the offense/conviction categories display a significant relationship between race and the likelihood of receiving a fine, except for the prostitution/prior conviction category. It is also interesting to note that the likelihood of getting fined drops off considerably for repeat offenders in the prostitution and theft offense categories.

The analysis of jail sentences is the last topic for discussion. Are minorities more likely than whites to receive a jail sentence, controlling for offense and prior convictions? For those

offenders who have a jail sentence imposed upon them, does the length of the jail term differ by race? The first question is addressed in Table 15. It displays the relationship between race and the likelihood of receiving a jail sentence.

Table 15. Jail Sentences

Offense	No Prior Convictions				Prior Convictions			
	White		Minority		White		Minority	
	N	Pct.	N	Pct.	N	Pct.	N	Pct.
Assault	2714	18%	1704	27%	356	42%	639	52%
Prostitution	138	12%	171	23%	65	66%	75	67%
Theft	2479	12%	1472	24%	270	48%	359	68%

Minorities are more likely than whites to receive a jail sentence in all of the offense and conviction categories, and most of the racial differences are fairly large. The largest difference is in the theft with priors category where 48% of the whites are sentenced to jail as compared to 68% of the minorities. All of the categories, except prostitution with priors, display a statistically significant relationship between race and the likelihood of a jail sentence. There is also a large increase in the likelihood of going to jail if one is a repeat offender as opposed to a first-time offender.

Also worth noting is the comparison of Table 14 (Fines Imposed) to Table 15 (Jail Sentences). Looking at first-time offenders, whites are fined at a higher rate than they are jailed in two of three offense categories (they have equal jail and fine rates in the assault category). The opposite is true for minorities; jail rates are higher than fine rates in two offense categories.

The second question regarding length of jail sentence is addressed in Table 16. For those offenders who receive a jail sentence, is there a significant difference by race in the length of the pronounced sentence? Table 16 displays the average jail sentences (in days) by race, controlling for offense type and conviction history.

Table 16. Average Length of Jail Sentences in Days (Number in parens is N of cases for avg.)

Offense	No Prior Convictions		Prior Convictions	
	White	Minority	White	Minority
Assault	13.8 (480)	15.7 (456)	25.0 (146)	23.4 (320)
Prostitution	22.2 (17)	12.1 (40)	35.2 (41)	27.6 (43)
Theft	16.3 (306)	13.3 (356)	19.1 (129)	21.3 (243)

There are some differences that are evident in Table 16. Prostitution carries the longest average sentence in comparison to assault and theft, except for minorities with no prior convictions (where it carries the shortest sentence). Offenders with prior convictions receive

longer sentences that first-time offenders. There are some racial differences, but a consistent pattern is not present. Whites receive longer average sentences in four of the six comparison categories. Are any of these differences large enough to be statistically significant (i.e., not due to random chance)?

Several analysis of variance tests were conducted to determine which factors, if any, have a significant effect on the length of jail sentence imposed. The same analysis procedures that were described in the section on average bail amounts are used here. Analysis of variance can help determine if there are significant jail length differences between groups (i.e., do jail terms differ between offense types; do they differ between racial categories?), and also to determine if any of the factors (race, offense, conviction history) has a significant effect on the length of jail terms. We expect that offense type and conviction history influence the length of the jail terms imposed. Once these two factors are held constant, jail time should not differ by race.

Test results indicate that there is NOT a significant difference in average jail terms between whites and minorities. However, there are statistically significant differences in average jail terms between prostitution and the other two offense types, and there is a significant difference in jail terms between first-time offenders and repeat offenders.[8] A final analysis of variance test was conducted to determine if race has a significant effect on the length of jail terms while offense and conviction history are held constant. This test indicated that offense and conviction history have a significant effect on the length of jail sentence pronounced. However, race does NOT have a significant effect.

This finding coincides with the results of one of our previous studies. In our analysis of Sentencing Guidelines data, we examined the use of jail sanctions for Minnesota felons and found that race was not a significant factor in predicting the length of post disposition jail time served.[9] Offense severity and criminal history were the most important factors in predicting length of post disposition jail time in that study. We again find that those two factors are significant in affecting length of jail terms imposed.

However, this study differs from the jail sanctions study in its finding regarding the likelihood of receiving a jail term. Recall from Table 15 that minorities were significantly more likely than whites to receive a jail sentence (regardless of length). The jail sanctions study found that race was not significant in predicting the likelihood of serving post disposition jail time (race was only significant when pre-trial jail time was included).[10] It is difficult to explain this difference in findings. Perhaps the difference is due to the manner in which felonies are processed in comparison to misdemeanors (proceedings may be more formalized in felony cases thus allowing less variation in outcome).

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[8] The average jail term for whites is 17.5 days, for minorities it is 18 days. The average jail term for prostitution is 25 days, for assault 18 days, and for theft 17 days. The average jail term for first-time offenders is 15 days, and for repeat offenders it is 23 days.

[9] Non-Imprisonment Sentences: An Analysis of the Use of Jail Sanctions for Minnesota Offenders; Minnesota Supreme Court, Office of Research & Planning (Sept. 1992).

[10] ibid.

Conclusions

We have examined several case processing variables and legal factors, as well as case outcomes and sanctions. Some significant racial differences were found along with some marginal differences. Although the great majority of all defendants were charged by arrest/tab, white defendants were slightly more likely than minority defendants to receive a summons/ticket. White defendants were significantly more likely to be released with no bail required (NBR status), even when those who received a summons were excluded from the analysis. For those defendants who had bail set, there were no significant differences by race in the average amount of bail required (holding constant offense type and conviction history). This finding regarding the average amount of bail required is similar to that of the Hennepin County Pre-Trial Release study.

Very few defendants went to trial, thus making it difficult to do any meaningful comparisons by race. White defendants were significantly more likely than minorities to plead guilty in most of the comparison categories (when attorney representation was not held constant). After controlling for attorney representation, we found that whites were significantly more likely than minorities to plead guilty when they appeared pro se. Racial differences in guilty plea rates diminished when defendants had attorney representation, but white defendants still pled guilty at higher rates than minorities in most offense categories. There was also a distinct racial pattern in the type of attorney representation for the defendants. Whites were more likely than minorities to appear pro se or with private defense, while minorities were more likely to be represented by a public defender.

White defendants had higher conviction rates than minorities in all offense categories but one (prostitution with no priors). This is not surprising since whites pled guilty at higher rates. Although whites had higher conviction rates, the differences were statistically significant in only two categories (assault with no priors and theft with priors). White defendants were also slightly more likely than minorities to have their cases continued for dismissal, but differences were minimal.

Minorities were much more likely to have their cases dismissed in all offense categories (except prostitution with no prior convictions) when compared to white defendants. These differences in dismissal rates are large enough to achieve statistical significance in all assault and theft categories. One possible explanation as to why dismissal rates are higher for minorities may lie in the public hearing testimony presented to the Racial Bias Task Force in Minneapolis. Many minority residents reported that police stop and detain minority people without just cause. If arrests and charges result from such stops, the court may dismiss such cases for lack of evidence or failure to follow proper police procedures.

In the examination of sanctions, it was evident that many offenders received multiple sanctions. We looked for racial differences in the likelihood of receiving three specific sanctions: probation, fines, and jail sentences. No significant differences were found between whites and minorities in the likelihood of receiving probation. In fact, most offenders in all offense categories were placed on probation.

We did find some racial differences in the likelihood of receiving a fine. Whites were significantly more likely than minorities to receive a fine in five of the six comparison categories.

There were also racial differences in the likelihood of going to jail. Minorities were significantly more likely than whites to have a jail sentence imposed upon them in five of the six comparison categories. However, for those offenders who received jail sentences, there were no significant differences by race in the average length of pronounced jail terms (holding constant offense type and conviction history).

The finding regarding length of jail sentences coincides with the results of one of our previous studies. In our analysis of Sentencing Guidelines data, we examined the use of jail sanctions for Minnesota felons and found that race was not a significant factor in predicting the length of post disposition jail time.

Analysis of Sentencing Guidelines 1986-1990: Imprisonment Rates and Departure Data for Minnesota Felons

Task Force on Racial Bias in the Courts

Minnesota Supreme Court

February 10, 1993

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Introduction

The Criminal Process Committee of the Racial Bias Task Force requested an examination of imprisonment rates and sentencing guideline departure rates for felons in Minnesota. The Minnesota Sentencing Guidelines Commission (MSGC) collects data on a regular basis regarding convicted felons and their prison sentences. The most recent data available from MSGC regarding prison sentencing patterns is from the 1990 calendar year. In that year there were 8,844 felons sentenced, of which 19.5% were incarcerated in a state prison.[1]

Upon request, the MSGC research staff conducted a specific set of analyses to examine racial differences in dispositional and durational departures (both aggravated and mitigated), as well as imprisonment rates for a select group of offenses (aggravated robbery, criminal sexual conduct, weapons offenses, and second degree assault). Contingency table analysis is used to examine the racial differences in departure and imprisonment rates. In the analysis of imprisonment rates, offense type and criminal history are held constant.

Two samples are analyzed. First, the 1990 data is analyzed and examined. This is followed by an analysis of five years of consolidated data for felons sentenced in 1986 through 1990. This approach provides two views of sentencing patterns: a current view of what happened in 1990 (the most recent year available), as well as a long range view which displays trends in the sentencing patterns over a five year period.

The information displayed **in the tables** throughout this report was generated by the MSGC research staff. However, any statistical interpretations and conclusions regarding the data analyses in this report are the opinions of this author.

[1] "Summary of 1990 Sentencing Practices for Convicted Felons", Minnesota Sentencing Guidelines Commission (June, 1992).

Dispositional Departures

Judges may depart from the sentencing guidelines for "substantial and compelling" reasons. Aggravated dispositional departures occur when a judge pronounces and executes a prison sentence when the sentencing guidelines recommend a stayed sentence (no prison). Mitigated dispositional departures occur when a judge stays a sentence even though the guidelines call for an executed prison sentence. Since 1984, the mitigated dispositional departure rate has consistently been higher than the aggravated dispositional rate.[2]

Table 1 displays **mitigated dispositional departure rates** by race for all cases that were presumptive commits to prison **in 1990.** White offenders had the highest rate of mitigated departures at 35.1%, followed by blacks at 30.7%, American Indians at 28.1%, and Other (predominantly Hispanics and Asians) at 24.8%. A point worth noting is that approximately one-third of these mitigated dispositional departures were for Assault in the 2nd Degree.[3]

Table 1. Mitigated Dispositional Departures - Presumptive Commits 1990

Mitigated Departure?	White	African American	American Indian	Other
No	64.9%	69.3%	71.9%	75.2%
Yes	35.1%	30.7%	28.1%	24.8%
Total Cases	1395	564	139	113

Table 1B displays the five year overview of mitigated dispositional departure rates by race for all cases that were presumptive commits to prison **in 1986 through 1990.** The departure rates by race display a trend that is different from what we saw in the 1990 data. Table 1B indicates that Asians and Hispanics (Other category) had the highest rate of mitigated departures at 34.2%, followed by whites at 30.3%, American Indians at 28.7%, and blacks at 24.2%.

Table 1B. Mitigated Dispositional Departures: Presumptive Commits 1986-1990

Mitigated Departure?	White	African American	American Indian	Other
No	69.7%	75.8%	71.3%	65.8%
Yes	30.3%	24.2%	28.7%	34.2%
Total Cases	5923	2166	571	339

[2] ibid.

[3] ibid.

The most noticeable change between Table 1 and Table 1B is found in the "Other" category, where the five year departure rate is 34.2% as compared to 24.8% in 1990. Further comparisons between these two tables indicate that the departure rate for American Indians was quite similar in both time periods, while both whites and blacks had higher rates of departure in 1990 than they did in the five year time period.

Looking at the mitigated dispositional departure rate for 1986 through 1990 provides a more representative picture, as opposed to just looking at the 1990 data. The consolidation of five years of data tends to smooth over any isolated anomalies that may be present in only one year of data. It is difficult to explain the racial differences in the mitigated departure rates. Although all cases are presumptive prison commitments under sentencing guidelines, the likelihood of receiving a dispositional departure may be related to several factors such as type of offense, criminal history, and plea bargaining.

As noted previously, **aggravated dispositional departures** occur when the guidelines recommend a stayed sentence but the felon is sent to prison. The overall aggravated dispositional departure rate was at an all time low under the guidelines in 1990. The MSGC also noted that approximately 75% of these aggravated departures occurred when the offender requested a prison sentence. This generally occurs when the offender is going to be serving a prison sentence on another offense (perhaps revocation on a prior offense) and the offender wants to serve the sentences concurrently.[4]

Table 2 displays aggravated dispositional departure rates by race for all cases that were presumptive stays (no prison recommended) **in 1990**. The left side of Table 2 includes those offenders who requested prison; the right side of the table excludes those cases with requests for prison.

Table 2. Aggravated Dispositional Departures - Presumptive Stays 1990

	Includes requests for prison		Excludes requests for prison	
Aggravated Departure?	White	Minority	White	Minority
No	96.7%	94.5%	99.2%	98.5%
Yes	3.3%	5.5%	0.8%	1.5%
Total Cases	4915	1718	4785	1649

When requests for prison are included in the analysis, white offenders have an aggravated dispositional departure rate of 3.3%, while minorities are at 5.5%. If those who requested prison are excluded from the analysis, whites have an aggravated dispositional rate of only 0.8%, while minorities received aggravated departures in 1.5% of their cases where the guidelines indicated a presumptive stay in sentence. Overall, these aggravated

[4] ibid.

dispositional departure rates are much lower than the mitigated dispositional rates that were displayed in Table 1.

Table 2B displays aggravated dispositional departure rates by race for all cases that were presumptive stays **in 1986 through 1990.** The aggravated rate over the five year period does not differ very much from the 1990 rates (Table 2). There is again a 2% difference in the aggravated departure rate between whites and minorities when requests for prison are included. When offenders who requested prison are excluded from analysis, the departure rates are almost identical in both time frames.

Table 2B. Aggravated Dispositional Departures: Presumptive Stays 1986-1990

	Includes requests for prison		**Excludes requests for prison**	
Aggravated Departure?	White	Minority	White	Minority
No	95.6%	93.7%	99.1%	98.6%
Yes	4.4%	6.3%	0.9%	1.4%
Total Cases	21,337	6,760	20,588	6,420

In looking at the comparisons between whites and minorities in the previous tables, it appears that white offenders fared a little better in the pattern of the dispositional departures. A greater proportion of white offenders (as compared to all minorities together) received mitigated dispositional departures (Table 1B), while a slightly larger proportion of minority offenders received aggravated dispositional departures (Table 2B).[5] However, after conducting the appropriate statistical measures of association, it appears that there is not a strong measurable relationship between race and dispositional departures, either mitigated or aggravated.[6]

[5] For Table 1B, the mitigated dispositional departure rate for all minorities combined is 26.2%, compared to 30.3% for whites.

[6] The phi statistic was used to measure the association in the 2 x 2 tables and Cramer's V was used in the larger tables.

Durational Departures - Executed Sentences

This section examines durational departures for those offenders who received prison sentences. A durational departure occurs when a judge pronounces a sentence that is either shorter or longer than the presumptive duration and range recommended by the guidelines. As was the case for dispositional departures, there has been a pattern of judges mitigating sentence durations much more frequently than aggravating durations.[7]

Table 3 displays **mitigated durational departure rates** by race for all cases with executed prison sentences **in 1990.** The table displays minimal racial differences in that 19.5% of the white offenders and 21.7% of the minority offenders received mitigated durational departures.

Table 3. Mitigated Durational Departures - Executed Sentences 1990

Mitigated Departure?	White	Minority
No	80.5%	78.3%
Yes	19.5%	21.7%
Total Cases	1061	668

Table 3B displays the five year **(1986-1990)** trend in mitigated durational departure rates for offenders with executed prison sentences. The departure rate is 15.7% for whites and 17.1% for minorities. The five year departure rate is lower than the 1990 rate (Table 3) which was the highest rate ever for mitigated durational departures under sentencing guidelines.[8] Both tables (3 and 3B) indicate that racial differences in the mitigated durational departure rates are minimal. There is only a 2% difference between whites and minorities in both the 1990 data and the five year data spanning 1986 through 1990.

Table 3B. Mitigated Durational Departures: Executed Sentences 1986-1990

Mitigated Departure?	White	Minority
No	84.3%	82.9%
Yes	15.7%	17.1%
Total Cases	5,029	2,679

[7] "Summary of 1990 Sentencing Practices for Convicted Felons", Minnesota Sentencing Guidelines Commission (June, 1992).

[8] ibid.

Table 4 displays the information on **aggravated durational departure rates** by race for all cases with executed prison sentences **in 1990**. The aggravated durational rate was considerably lower than the mitigated rate (Table 3). Table 4 indicates that 7.8% of the white offenders and 10.2% of the minority offenders received aggravated durational departures.

Table 4. Aggravated Durational Departures - Executed Sentences 1990

Aggravated Departure?	White	Minority
No	92.2%	89.8%
Yes	7.8%	10.2%
Total Cases	1061	668

Table 4B displays the aggravated durational departure rates by race for the **1986-1990** time period. Once again, there is a minimal difference between the rates for whites and minorities. White offenders have an aggravated departure rate of 6.7%, while the rate for minority offenders is 8.1%. The overall aggravated durational departure rate for 1986-1990 is lower than the 1990 rate. The 1990 sentencing year posted one of the highest rates of aggravated durational departures for executed sentences under sentencing guidelines.[9]

Table 4B. Aggravated Durational Departures: Executed Sentences 1986-1990

Aggravated Departure?	White	Minority
No	93.3%	91.9%
Yes	6.7%	8.1%
Total Cases	5,029	2,679

In comparing durational departure rates for whites and minorities, it appears that minorities had a slightly higher rate for both aggravated and mitigated durational departures, regardless of which time period was examined. However, the statistical analysis tests indicated that there were no strong relationships or significant associations between race and durational departure rates.[10] It is also interesting to note that 1990 was a rather odd year for durational departures in that both the mitigated and aggravated rates for executed sentences were at all time highs.

[9] ibid.

[10] The phi statistic and chi-square test were used in this analysis.

Imprisonment Rates for Specific Person Offenses

This section of the report examines racial differences in the imprisonment rates for four specific offense categories: criminal sexual conduct, aggravated robbery, assault 2nd degree, and dangerous weapons. All criminal sexual conduct and aggravated robbery cases examined here are presumptive prison commitments under sentencing guidelines. The cases analyzed for second degree assault and dangerous weapons all carry mandatory minimum prison commitments (regardless of criminal history). Three tables are displayed for each offense category. The "A" tables display **1990** imprisonment rates without regard to the criminal history of the offender, while the "B" tables control for criminal history. Criminal history is operationalized as "no history" vs. "some history". The "C" tables display imprisonment rates for **1986 through 1990**, and also control for criminal history.

The first offense category to be examined is criminal sexual conduct. This category includes any degree of CSC that carried a presumptive prison commitment, except for intrafamilial cases and other cases falling under clauses (a) and (b). The MSGC usually refers to these offenses in their reports as "criminal sexual conduct (not a or b)".[11] Table 5A displays the 1990 imprisonment rates for these cases by race. Approximately 88% of these CSC cases were presumptive commits due solely to their offense severity level.

Table 5A. Criminal Sexual Conduct - Presumptive Prison Commits 1990

Prison Sentence?	White	Minority
No	37.1%	29.3%
Yes	62.9%	70.7%
Total Cases	70	58

Even though all cases in Table 5A carried presumptive prison commitments under sentencing guidelines, only 62.9% of white offenders and 70.7% of minority offenders were sent to prison. Although minorities had a higher imprisonment rate than whites, the difference was not great enough to register a significant association between race and imprisonment when measured by statistical tests.[12] However, it is important to note that the imprisonment rate in this offense category has consistently been higher for African Americans as compared to whites from 1981 through 1990.[13]

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[11] Clauses (a) and (b) of the criminal sexual conduct statutes deal with complainants under the age of 16 years, and the age of the actor relative to the complainant.

[12] The phi statistic measure of association and chi-square test of significance were the analysis techniques used in this section of the report to examine the relationship between race and imprisonment rates.

[13] See page 74 of "Summary of 1990 Sentencing Practices for Convicted Felons", MSGC, (June, 1992).

Table 5B displays the same criminal sexual conduct cases as Table 5A, but now controls for the criminal history score of the offender. For those offenders with no prior criminal history, 59.4% of the white offenders and 52.2% of the minority offenders were sent to prison. This difference is not great enough to be statistically significant. For those offenders with one or more points in their history score, there is a 17% difference in the imprisonment rate between whites and minorities. White offenders were imprisoned in 65.8% of their cases while minority offenders were imprisoned in 82.9% of their cases. Although the chi-square test did not find this difference significant (most likely due to the small number of cases), the phi statistic indicated a fairly strong relationship between race and imprisonment for those with a criminal history score of one or more points.

It is also interesting to note that criminal history didn't seem to matter much for white offenders (59.4% imprisonment rate if no history compared to 65.8% imprisonment rate with a history). However, criminal history made a big difference for minority offenders, with their imprisonment rate increasing from 52.2% (for no history) to 82.9% (with any history).

Table 5B. Criminal Sexual Conduct - Presumptive Prison Commits 1990

	Crim History Score = 0		Crim History Score >= 1	
Prison Sentence?	White	Minority	White	Minority
No	40.6%	47.8%	34.2%	17.1%
Yes	59.4%	52.2%	65.8%	82.9%
Total Cases	32	23	38	35

Table 5C displays the imprisonment rate for criminal sexual conduct cases over the five year period of 1986 through 1990. In both criminal history categories, minorities have a higher imprisonment rate than whites. For those offenders with no criminal history score, the white imprisonment rate is 60%, while the rate for minorities is 69.3% (this difference is not large enough to register a statistical significance). There is a large difference in the imprisonment rate between whites and minorities with a criminal history; 74.7% of the whites compared to 90.4% of the minorities are imprisoned. This difference is statistically significant.

Table 5C. Criminal Sexual Conduct - Presumptive Prison Commits 1986-1990

	Crim History Score = 0		Crim History Score >= 1	
Prison Sentence?	White	Minority	White	Minority
No	40.0%	30.7%	25.3%	9.6%
Yes	60.0%	69.3%	74.7%	90.4%
Total Cases	115	75	194	156

The next offense category to be examined is aggravated robbery. Aggravated robbery, by statutory definition, involves the possession of a weapon or the infliction of bodily harm while committing a robbery. All aggravated robbery cases, regardless of the offender's criminal history score, carry a presumptive prison sentence under the guidelines. Table 6A displays the imprisonment rate by race for these cases in 1990.

Table 6A. Aggravated Robbery - Presumptive Prison Commits 1990

Prison Sentence?	White	Minority
No	29.0%	8.3%
Yes	71.0%	91.7%
Total Cases	69	72

The data in Table 6A indicate quite a large difference in imprisonment rates for whites and minorities. Seventy-one percent of white offenders received a prison term in comparison to 91.7% of the minority offenders. The statistical test indicated that there was a significant relationship between race and imprisonment for aggravated robbery offenses. It should also be noted that the imprisonment rate for this offense category has consistently been higher for African Americans as compared to whites from 1981 through 1990, with the exception of two years (1982 and 1988).[14]

Table 6B. Aggravated Robbery - Presumptive Prison Commits 1990

	Crim History Score = 0		Crim History Score >= 1	
Prison Sentence?	White	Minority	White	Minority
No	44.4%	20.0%	19.0%	3.8%
Yes	55.6%	80.0%	81.0%	96.2%
Total Cases	27	20	42	52

Table 6B displays the same aggravated robbery cases as the previous table, but now controls for the criminal history score of the offender. For those offenders with no prior criminal history, 55.6% of the whites and 80% of the minorities were sent to prison in 1990. The phi statistic indicated a strong association between race and imprisonment for this group.[15] Looking at those offenders with a criminal history, 81% of the whites and 96.2% of

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[14] ibid.

[15] The chi-square test of significance did not find a statistically significant relationship between race and imprisonment, but this is again most likely due to the small number of cases (47) in the group.

the minorities were imprisoned. The chi-square test indicated a significant relationship ($p<.05$) between race and imprisonment for this group.

For these aggravated robbery offenders (in 1990), it appears that a lack of criminal history (no points) was much more beneficial for the white offenders than the minority offenders. The lowest imprisonment rate (55.6%) is found among the white offenders with no criminal history points. Minorities with no criminal history had an imprisonment rate (80%) that was only one percentage point lower than the white offenders with a criminal history (81%).

Table 6C examines the imprisonment rate for aggravated robbery over the five year period of 1986 through 1990. Although minorities still have a higher imprisonment rate than whites in both criminal history categories, the differences are not as large as they were in Table 6B (1990 only). However, there is still a statistically significant relationship between race and the likelihood of imprisonment for offenders with a criminal history in Table 6C.

Table 6C. Aggravated Robbery - Presumptive Prison Commits 1986-1990

	Crim History Score = 0		Crim History Score >= 1	
Prison Sentence?	White	Minority	White	Minority
No	42.0%	35.7%	11.3%	5.3%
Yes	58.0%	64.3%	88.7%	94.7%
Total Cases	119	112	213	225

Assault in the second degree is the next offense examined. By statutory definition, it involves an assault with a dangerous weapon. However, the type of weapon may vary, and there is no requirement that bodily injury occur. Therefore, there may be considerable variation between cases. Although the offense carries a mandatory minimum prison term, the mandatory minimum statute (MN 609.11) allows for a motion by the prosecutor to have the offender sentenced without regard to the mandatory minimum term. As noted previously, assault in the 2nd degree offenses accounted for a significant proportion of the mitigated dispositional departures in 1990. Table 7A displays the 1990 imprisonment rates for second degree assault by race of the offender.

Table 7A. Assault in the 2nd Degree - Mandatory Minimums 1990

Prison Sentence?	White	Minority
No	76.5%	63.6%
Yes	23.5%	36.4%
Total Cases	179	129

The data in Table 7A indicate a fairly large difference in imprisonment rates, with 23.5% of white offenders and 36.4% of minority offenders receiving prison terms. The statistical test found a significant relationship between race and imprisonment in this offense category. Also noteworthy is the fact that the imprisonment rate for this offense category has consistently been higher for African Americans than for whites from 1981 through 1990, with the exceptions of two years (1982 and 1985).[16]

Table 7B displays the same second degree assault cases as in the previous table, but controls for the criminal history of the offenders. For those offenders with no criminal history, the imprisonment rate is 7.4% for whites and 20% for minorities. The chi-square test indicated a statistically significant relationship between race and imprisonment ($p<.05$) in the "no history" group. For those offenders with a criminal history, the white imprisonment rate is 47.9% and the minority imprisonment rate is 53.1%. This is not a statistically significant relationship between race and imprisonment. It appears that the significant relationship between race and imprisonment in Table 7A is due to the differential treatment (between whites and minorities) for those offenders with no criminal history.

Table 7B. Assault in the 2nd Degree - Mandatory Minimums 1990

	Crim History Score = 0		Crim History Score >= 1	
Prison Sentence?	White	Minority	White	Minority
No	92.6%	80.0%	52.1%	46.9%
Yes	7.4%	20.0%	47.9%	53.1%
Total Cases	108	65	71	64

Table 7C displays the imprisonment rates for 2nd degree assault offenders over the five year period of 1986-1990. The rates are quite similar for both time frames (1990 vs. 1986-90), with the exception of a 5% difference in the prison rate for white offenders with no history. For the "no history" group, there is a significant relationship between race and imprisonment.

Table 7C. Assault in the 2nd Degree - Mandatory Minimums 1986-1990

	Crim History Score = 0		Crim History Score >= 1	
Prison Sentence?	White	Minority	White	Minority
No	87.5%	78.4%	51.4%	46.0%
Yes	12.5%	21.6%	48.6%	54.0%
Total Cases	480	250	321	226

[16] See page 74 of "Summary of 1990 Sentencing Practices for Convicted Felons", MSGC, (June, 1992).

The final crime category examined is dangerous weapon offenses. Offenses in this category include crimes involving dangerous weapons sentenced under MN statute 609.11 (minimum terms of imprisonment). All carry mandatory minimum prison terms. For analysis purposes, this crime category excludes 2nd degree assault cases. However, aggravated robbery cases are included and comprise a large proportion (47%) of this offense category in 1990. Other crimes that contributed a substantial number of cases to this offense category are homicide, manslaughter, first degree assault, and criminal sexual conduct. Table 8A displays the imprisonment rate by race for dangerous weapon offenses in 1990.

Table 8A. Dangerous Weapons Offenses - Mandatory Minimums 1990 (Excludes 2nd degree assault cases)

Prison Sentence?	White	Minority
No	33.3%	10.8%
Yes	66.7%	89.2%
Total Cases	93	93

The data in Table 8A indicate quite a large difference in imprisonment rates between whites and minorities. White offenders had an imprisonment rate of 66.7%, while the rate for minorities was 89.2%. The statistical tests found a significant association between race and imprisonment for these cases. As was the case for the previous offense categories, the weapons offense category also has a history of its imprisonment rate being higher for African American offenders as compared to white offenders. With the exception of one year (1987), the imprisonment rate has been higher for blacks than for whites from 1981 through 1990.[17]

Table 8B displays the same weapons offense cases as the previous table, but controls for the criminal history of the offenders. There is a very large difference in the imprisonment rates for those offenders with no criminal history; 81.3% of minorities are imprisoned as compared to only 48.8% of whites. There is a statistically significant relationship between race and imprisonment in this group ($p<.01$).

Table 8B. Dangerous Weapons Offenses - Mandatory Minimums 1990 (No Assault 2)

	Crim History Score = 0		Crim History Score >= 1	
Prison Sentence?	White	Minority	White	Minority
No	51.2%	18.8%	19.2%	6.6%
Yes	48.8%	81.3%	80.8%	93.4%
Total Cases	41	32	52	61

[17] ibid.

For those offenders with a criminal history, the imprisonment rate is 80.8% for whites and 93.4% for minorities. Although the chi-square did not find a statistically significant relationship between race and imprisonment for this group of offenders, the phi statistic did indicate a fairly strong association existed. It is also interesting to note that the imprisonment rate for white offenders with a history (80.8%) is slightly lower than the rate for minority offenders with no history (81.3%). It also seems that a lack of criminal history was much more beneficial for white offenders in avoiding prison than it was for minority offenders.

Table 8C displays the imprisonment rates for dangerous weapons offenses over the five year period of 1986 through 1990. In the "no history" group, the imprisonment rate for whites is 62.9% and 69.5% for minorities. For those offenders with a criminal history, 87.5% of the whites and 90.2% of the minorities are sent to prison. The relationship between race and imprisonment is not statistically significant in either history category. This finding for the 1986-90 data is quite different from the 1990 data (Table 8B) where minorities were significantly more likely than whites to receive a prison sentence. The large differences in imprisonment rates between whites and minorities in the 1990 data are not present in the five year sample. This probably indicates that the sentencing patterns for dangerous weapons offenses in 1990 were atypical.

Table 8C. Dangerous Weapons Offenses: Mandatory Minimums 1986-90 (No Assault 2)

	Crim History Score = 0		Crim History Score >= 1	
Prison Sentence?	White	Minority	White	Minority
No	37.1%	30.5%	12.5%	9.8%
Yes	62.9%	69.5%	87.5%	90.2%
Total Cases	186	167	272	287

Throughout the examination of 1990 imprisonment rates for specific person offenses, the results have indicated that minorities have consistently higher imprisonment rates in comparison to white offenders (except for the criminal sexual conduct offenders with no criminal history). In three out of the four offense categories examined, there was a statistically significant association (not due to random chance) between race of the offender and imprisonment without controlling for criminal history. Even after controls were set for criminal history, these relationships still existed in almost every group tested.

This may seem to contradict the results of the statistical analysis that was conducted in examining the 1990 mitigated dispositional departure data. You may recall that the statistical test did not find a strong relationship between race and mitigated dispositional departures, although white offenders had the highest rate of mitigation (recall Table 1). The overall mitigated dispositional departure data was analyzed in that situation, which may account for the difference in findings. In this current section of analyses, the examination focuses on specific offenses, looking at imprisonment rates for certain crimes. The racial differences in the imprisonment rates for these specific offenses were most likely diluted in the analysis of the overall mitigated departure rate.

Summary and Conclusions

The 1990 Sentencing Data

In the examination of mitigated dispositional departure rates by race for all cases that were presumptive commits to prison, white offenders had the highest rate of mitigated departures at 35.1%, followed by blacks at 30.7%, American Indians at 28.1%, and Other (predominantly Hispanics and Asians) at 24.8%. Although white offenders fared a little better than the other racial groups, the relationship between race and mitigated departures was not statistically significant.

The analysis of aggravated dispositional departure rates by race for all cases that were presumptive stays (no prison recommended) found white offenders had an aggravated dispositional departure rate of 3.3%, while minorities were at 5.5%. The relationship between race and aggravated departures was not statistically significant.

In comparing durational departure rates in executed sentences for whites and minorities, it appears that minorities had a slightly higher rate for both aggravated (10.2% of minorities, 7.8% of whites) and mitigated (21.7% of minorities, 19.5% of whites) durational departures. However, the statistical analysis tests indicated that there were no strong relationships or significant associations between race and durational departures.

The analyses of racial differences in the imprisonment rates for four specific offense categories, criminal sexual conduct, aggravated robbery, assault 2nd degree, and dangerous weapons (all crimes that carried presumptive prison commitments), found that minorities had consistently higher imprisonment rates in comparison to whites. In three out of the four offense categories examined, there was a statistically significant association (not due to random chance) between race of the offender and imprisonment, without controlling for the offender's criminal history score.

The argument can be made that the criminal history score of the offender should be irrelevant in the cases examined here since all were offenses against the person and were either presumptive prison commitments or mandatory minimums under the guidelines. However, in reality, an offender's record may influence a judge's decision to commit the felon to prison.

In order to further explain the racial differences that were found in the imprisonment rates, controls were set for criminal history, and the same person offense categories were examined again. The results were quite interesting. After setting controls for criminal history, there were still significant differences in the imprisonment rates between whites and minorities in aggravated robbery, second degree assault, and dangerous weapon offenses. Minority offenders consistently had higher imprisonment rates than white offenders in those offense categories. There also seemed to be a pattern that indicated a lack of criminal history was much more beneficial to white offenders than minority offenders. In other words, whites with no history were much more likely to avoid prison than minorities with no history.

In conclusion, while the overall mitigated dispositional departure rate did not vary by race at a statistically significant level, the examination of four specific offense types indicated there

were statistically significant differences by race in the imprisonment rates for aggravated robbery, second degree assault, and dangerous weapons offenses (minorities were more likely than whites to be imprisoned). The racial differences in the imprisonment rates for these specific offenses were most likely diluted in the analysis of the overall mitigated departure rate. It is difficult to explain these differential imprisonment rates. Since all of these offenders were supposed to be sent to prison, it appears that whites were getting more lenient treatment than minorities.

The 1986-1990 Sentencing Data

The analysis of mitigated dispositional departure rates by race for all cases that were presumptive prison commitments indicated that Asian and Hispanic offenders (the "other" race category) had the highest rate of mitigated departures at 34.2%, followed by whites at 30.3%, American Indians at 28.7%, and blacks at 24.2%. When all minority categories are combined, their departure rate is 26.2%, which is slightly lower than the white departure rate (30.3%). The relationship between race and mitigated dispositional departures is not significant.

In the examination of aggravated dispositional departure rates for all cases that were presumptive stays (no prison recommended), we found white offenders had a departure rate of 4.4%, while minorities were at 6.3%. The relationship between race and aggravated departures was not statistically significant.

In comparing durational departure rates in executed sentences for whites and minorities, it appears that minorities had a slightly higher rate for both aggravated (8.1% of minorities, 6.7% of whites) and mitigated (17.1% of minorities, 15.7% of whites) durational departures. However, the statistical analysis tests indicated that there were no strong relationships or significant associations between race and durational departures.

The analyses of racial differences in the imprisonment rates for four specific offense categories, criminal sexual conduct, aggravated robbery, assault 2nd degree, and dangerous weapons (all crimes that carried presumptive prison commitments), found that minorities had consistently higher imprisonment rates in comparison to whites. In three out of the four offense categories, there was a statistically significant association between race of the offender and imprisonment while holding criminal history constant. Minority offenders with a criminal history, who were sentenced for aggravated robbery or criminal sexual conduct, were significantly more likely to go to prison than white offenders in those same categories. For the offense of second degree assault, minority offenders with no criminal history were significantly more likely to go to prison than whites with no history.

In conclusion, the results of the 1986-1990 analysis are similar to the findings of the 1990 analysis. Although the overall mitigated and aggravated dispositional departure rates displayed minimal variance by race, there were distinct racial differences present in the imprisonment rates of three specific offense categories. We found that minorities had consistently higher imprisonment rates than whites in these "person offense" categories which carried presumptive prison commitments. Although sentencing guidelines recommends prison terms for all of these offenders, the judicial system appears to treat white offenders more leniently.

APPENDIX E

Model Pretrial Release Point Scale Form

7/30/92

Screening Date: _____

Hennepin County Pretrial Services Point Scale

Name: _____ Date of Birth: ____/____/____
Last First Middle Name

Address: _____

Charge: _____
(If more than one use most serious as defined by Sentencing Guidelines Commission)

Public Defender: ____ Eligible ____ Ineligible

II. Present Offense/Main Charge Requiring Judicial Review

____ A. See reverse side for list of offenses +9
____ B. Weapon used +9
(Pursuant to Minn. Statute 609.11 sub. 4 and 5)

III. Present Offense/Main Charge Not Requiring Judicial Review

____ Other felony offense not on judicial review list +3
____ Gross/misdemeanor/traffic offense 0

IV. Current Minnesota Residence

____ Three months or less +1
____ Over three months 0

V. Living Situation

____ Living alone +1
____ Living with relatives or any other unrelated person 0

VI. Employment/Income

Employed less than 20 hrs per week
Unemployed or not a student
____ Not receiving public assistance/other entitlements +3

Employed 20 hrs or more per week
Full time student
____ Receiving public assistance/other entitlements 0

VI. Age (as of date of booking)

____ Age 21 or under +3
____ Age 22 or over 0

VII. Failure to Appear (including present offense)

____ Failure to appear within last three years +6
(documented by bench warrant(s))
____ No prior failure to appear 0

VIII. Prior Criminal Record

____ A. Felony/gross misd. person convictions (violent, assaultive, C.S.C.) 9 points each
____ B. Misdemeanor person convictions 6 points each
____ C. 1 or more other felony convictions +3
____ D. 1 or more other gross/misd. convictions (excluding other non-alcohol related traffic) +1
____ E. No prior convictions 0

Recommendation:

NBR (0-8)	____
CR (9-17)	____
Review Required-Score (18 or above)	____
Review Required-List	____
Holds	____
Detainer	____

Verified: ____ *Yes* ____ *No* *Total Score:* _____

Comments/Rationale: _____

Probation Officer Override: ____ Yes ____ No

Probation Officer's Signature: _____ Date: _____

LIST OF OFFENSES REQUIRING JUDICIAL REVIEW FOR PRE-TRIAL RELEASE

SENTENCES

609.11	Minimum Terms of Imprisonment

HOMICIDE

609.185	Murder in the I Degree
609.19	Murder in the II Degree
609.195	Murder in the III Degree
609.20	Manslaughter in the I Degree
609.205	Manslaughter in the II Degree
609.21	Criminal Vehicular Operation

CRIMES AGAINST THE PERSON

609.221	Assault in the I Degree
609.222	Assault in the II Degree
609.223	Assault in the III Degree
609.2231	Assault in the IV Degree
609.224	Assault in the V Degree (Domestic Assault)
609.245	Aggravated Robbery
609.24	Simple Robbery
609.25	Kidnapping
609.251	Double Jeopardy, Kidnapping
609.255	False Imprisonment
518B.01 Subd14	Violation of Orders for Protection

CRIMES AGAINST UNBORN CHILDREN

609.2661	Murder of Unborn Child in the I Degree
609.2662	Murder of Unborn Child in the II Degree
609.2663	Murder of Unborn Child in the III Degree
609.2664	Manslaughter of an Unborn Child in the I Degree
609.2665	Manslaughter of an Unborn Child in the II Degree
609.267	Assault of an Unborn Child in the I Degree
609.2671	Assault of an Unborn Child in the II Degree
609.2672	Assault of an Unborn Child in the III Degree

SEX CRIMES

609.322	Solicitation, Inducement & Promotion of Prostitution
609.323	Receiving Profit Derived from Prostitution
609.342	Criminal Sexual Conduct in the I Degree
609.343	Criminal Sexual Conduct in the II Degree
609.344	Criminal Sexual Conduct in the III Degree
609.345	Criminal Sexual Conduct in the IV Degree
609.352	Solicitation of Children to Engage in Sexual Conduct

CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

609.485	Escape from Justice
	Fugitive from Justice

DAMAGE TO PROPERTY

609.561	Arson I Degree
609.562	Arson II Degree
609.582Subd 1&2	Burglary I & II

CRIMES AGAINST PUBLIC SAFETY & HEALTH

609.66	Dangerous Weapons
609.67	Machine Guns and Short Barreled Shotguns
609.713	Terroristic Threats
152.021	Controlled Substance Crime in I Degree
152.022	Controlled Substance Crime in II Degree
152.023	Controlled Substance Crime in III Degree