

2010

# Interim Report of the Commission to Study Racial and Ethnic Bias in the Courts

## A Report on Commission Activities and Preliminary Overview

This Interim Report discusses activities of the Commission to Study Racial and Ethnic Bias in the Courts that are in progress, completed, and planned. The Report also discusses some of the preliminary, broad-level data on potential areas of bias in North Dakota Courts, providing a rough overview of the areas being examined by the Commission.

12/16/2010



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## INTRODUCTION

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Many U.S. states have recognized the necessity of ensuring that state judicial systems operate in a manner free from racial or ethnic bias in order to ensure equal and effective court services to all citizens. Starting in the 1980's, a majority of states have researched and published reports regarding racial and ethnic bias in the courts in efforts to identify and remedy areas containing disparity.<sup>1</sup> Reports have dealt with subjects such as: perceived and actual bias in court procedures, statistical disparities throughout multiple levels of the system, hiring practices in the legal community and government, and treatment of minority citizens who have contact with the court system. Final recommendations from these reports were generally designed to ensure:

- A level of minority representation within the state bar, judiciary, law schools, court officials, and the rest of the judicial workforce comparable to the minority population of the state;
- Fair and unbiased treatment of minority individuals by representatives of the judicial system, including judges, attorneys, court staff, and others in court;
- The availability of court interpreters or other sufficient means of communication for those individuals with limited English proficiency; and
- Systemic improvements to reduce racial and ethnic disparities in criminal and civil cases, including improvements in the development of jury source lists, jury selection procedures, juvenile cases, and family law.
- A public perception that the courts are fair to racial and ethnic minorities

The North Dakota Commission to Study Racial and Ethnic Bias in the Courts ('Commission') began its study to ascertain whether the State court system successfully meets the needs of minority populations in late 2009, after the Legislature appropriated funds requested for the project.<sup>2</sup> The Commission was tasked with a similar charge as previous states, to examine actual and perceived racial and ethnic bias with the goal of recommending remedies for actual bias. The Commission held its first meeting on December 11, 2009.

Commission members include a multicultural group of academics, attorneys, administrators, judges and leaders from across the state, including many minority communities within North Dakota. Supreme Court Justice Carol Ronning Kapsner and District Judge Donovan Foughty serve as Co-Chairs for the Commission. Chief Justice Gerald W. VandeWalle approved the following resolution to create the Commission and outline its purpose.

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<sup>1</sup> A full list of published reports available at [http://www.ncsconline.org/Projects\\_Initiatives/REFI/SearchState.asp](http://www.ncsconline.org/Projects_Initiatives/REFI/SearchState.asp).

<sup>2</sup> North Dakota Court System, *2009 Annual Report*, 5, available at [www.ndcourts.gov/court/News/ndcourtsar2009.pdf](http://www.ndcourts.gov/court/News/ndcourtsar2009.pdf).

**RESOLUTION  
FOR A  
COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS**

**WHEREAS**, equal access to the judicial process and impartial resolution of disputes in accordance with governing law are critical components of securing and maintaining public trust and confidence in North Dakota's judicial system;

**WHEREAS**, North Dakota's judicial system must ensure that the rule of law is applied fairly and equally to all who seek redress in the courts and must ensure that the system and its procedures and processes are administered to ensure equality of treatment, free of any racial or ethnic bias, for all persons; and

**WHEREAS**, bias based on race or ethnicity strikes at the heart of a judicial system that promises fairness and impartiality.

**THEREFORE**, the North Dakota Commission to Study Racial and Ethnic Bias in the Courts is hereby established. The Commission consists of members appointed by the Chief Justice, with the concurrence of the other Justices of the Supreme Court. The Commission has the following responsibilities:

1. Identify areas in the judicial system in which there is a perception of unfairness based on race, ethnicity, or minority status;
2. If perceptions of unfairness are discovered, consider whether processes, procedures, or attitudes within the judicial system contribute to the creation and perpetuation of such perceptions;
3. Review judicial system processes, procedures, rules, and policies to determine whether their operation or application may contribute to an actual or perceived bias based on race, ethnicity, or minority status;
4. Gather and review information concerning the courtroom treatment of litigants, witnesses, and attorneys to determine whether there is disparate treatment based on race, ethnicity, or minority status;
5. To the extent possible, review various case types to determine whether race, ethnicity, or minority status was a factor in the disposition of cases;
6. Review hiring and general employment practices to determine whether the judicial system is viewed as a welcoming environment for minority applicants; and
7. Through public meetings, surveys, focus group discussions, and any other data collection efforts identified by the Commission, gather and analyze information related to the identified responsibilities.

Based on information gathered and assessed by the Commission, the Commission shall submit a report identifying any issues discovered regarding the fairness of the judicial system with respect to race, ethnicity, or minority status.

Based on its findings, the Commission shall make recommendations to the Chief Justice and Supreme Court regarding actions to be taken to ensure the North Dakota judicial system fulfills its institutional responsibility to provide the fair, equitable, and impartial resolution of disputes without regard to race, ethnicity, or minority status.

October 30, 2009

Date

/s/ Gerald W. VandeWalle

Gerald W. VandeWalle, Chief Justice

The Commission has run regular, bi-monthly meetings since December 11, 2009, and, after several months of preparation, discussion, and development, has begun to implement studies, some currently ongoing, to shed light on the question of whether racial and ethnic bias is perceived or exists within the State court system and how to remedy any bias found.

Realizing the broad and complex task before it, the Commission created several committees at the March 4, 2010 meeting to work in coordination while dividing a number of the Commission's study areas in a manageable manner. The Commission divided its wide study area and tasked some of the committees with overseeing data collection and analysis within each subject area. Such division was intended to facilitate easier data collection and development of analytical frameworks. Committees have since met on an ad hoc basis, depending on current and upcoming projects and priorities set within the regular meetings. Committees were divided as follows:

- Meetings
- Research
- Criminal Justice
- Civil Justice

The Commission contributed as a whole to study in areas lacking a specific committee, including access to courts, court employment, and minority representation within the North Dakota Bar. Members also reviewed more than 20 other state reports to gain useful information regarding successful study methods, general trends in bias found among states, and models for potential recommendations.

The majority of the Commission's data gathering and study design has been accomplished through the Research Committee. The Research Committee also worked in conjunction with other committees, providing study design, instrument design, and data analysis. The Commission created the Meetings Committee to oversee public meetings held throughout the state to gather perceptual data from members of minority groups and to help advertise upcoming meetings. The Criminal Justice and Civil Justice Committees have overseen data gathering in each respective area. Because of the wide availability of data in its study area, the Criminal Justice Committee has concentrated primarily on gathering and reporting data already available from multiple sources.

The following report provides initial, broad level data and potential areas of bias within the North Dakota court system, as well as ongoing and planned Commission activities in these areas. The report will first suggest general issues related to studying racial and ethnic bias in the courts. This discussion will also describe methods other states undertook that acted as models for the Commission's study and provided examples for the Commission's final goal of producing a report that includes both experiential and statistical data. The following section will outline the committees in more detail, describing activities and studies planned, in progress, and completed by each. The report will then describe the broader study areas the Commission is examining, and provide broad-level data to illustrate potential areas of bias. These sections will also describe future areas that the Commission may examine, goals and current study plans within each area, and work accomplished to date. Discussion included in this report does not contain firm conclusions of the Commission, but only indicates the initial direction of ongoing study.

## STUDYING RACIAL AND ETHNIC BIAS IN COURTS

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This section outlines issues related to studying racial and ethnic bias in the courts and describes some methods undertaken by other states that the Commission has used as models for its study. Other state activities also provided examples for the Commission's task of producing a report that includes both experiential and statistical data.

State and national studies have shown that members of the public, especially African Americans and members of other minority groups, tend to perceive that a racial bias exists in state courts to a greater degree than whites.<sup>3</sup> Many previous state reports and scholarly studies have acknowledged that racial and ethnic bias in courts tends to occur not overtly, but in a pervasive yet subtle manner.<sup>4</sup> Overt bias is generally noticeable, attributable and correctable, so strong incentives exist tending to dissuade individuals with that particular inclination from expressing it in a blatant manner, but other, more subtle forms of bias make it difficult to isolate and root out.<sup>5</sup>

One component contributing to difficulty in detecting bias lies with the phenomenon of widespread implicit bias.<sup>6</sup> Scholars have described this kind of bias as an inclination or preference for one race over another that is rooted in persistent cultural stereotypes learned in youth and usually continuing throughout the rest of life.<sup>7</sup> Having absorbed a cultural stereotype, individuals generally lack conscious awareness of the bias and of the intent to engage in biased behavior.<sup>8</sup> However, limited evidence suggests that implicit bias may be consciously addressed and mitigated with knowledge that a proclivity toward certain biased judgments exists.<sup>9</sup> Evidence also exists showing that altering environmental factors may lower implicit bias against members of minority groups.<sup>10</sup> According to this evidence, increasing diversity in the workplace provides employees with experiences that run contrary to prevalent racial stereotypes, allowing them a greater range of mental references and considerations than reliance on stereotypes.<sup>11</sup> In the interest of providing justice for members of every race, states have suggested that those working within the court systems must find and address any issues of bias, including implicit bias, to ensure fair treatment of all people having contact with those systems.

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<sup>3</sup> National Center for State Courts, *How the Public Views the State Courts, A 1999 National Survey*, 13, 29-30, 37-39, available at [www.flcourts.org/gen\\_public/family/diversity/bin/publiccop\\_natl.pdf](http://www.flcourts.org/gen_public/family/diversity/bin/publiccop_natl.pdf) (Showing substantial perceptual differences of State court treatment of minorities that varied according to respondents' own minority status); Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, 2003; Report of the Alaska Supreme Court Advisory Committee on Fairness and Access, 1997, 49; Minnesota Supreme Court Task Force On Racial Bias in the Judicial System, Final Report, 1993; but see Hinderaker, John H. & Scott W. Johnson, *Is Minnesota's Judicial System Really Guilty of Racism?*, *American Experiment Quarterly* (Fall, 2001) (Presenting an alternate view of the Minnesota study calling popular perceptions regarding racial bias into question).

<sup>4</sup> Final Report of the Penn. Sup. Ct., 2003, 14; Minn., Final Report, 1993, S-2-3, 1, 3; Greenwald, Anthony G. & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 Cal. Law Rev., 945, 965-67 (2006).

<sup>5</sup> Greenwald & Krieger, 94 Cal. L. Rev., 945, 961, 965-67 (Suggesting that implicit attitudinal biases influence non-deliberate or spontaneous discriminatory behaviors).

<sup>6</sup> Greenwald & Krieger, 94 Cal. Law Rev., 945; Levinson, Justin D., *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 Duke L. Journal, 346 (2007).

<sup>7</sup> Levinson, 57 Duke L. Journal, 346, 363; citing Page, Anthony, *Batson's Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U.L. Rev. 155, 193-98 (2005); Wilson, Timothy D., et al., *A Model of Dual Attitudes*, 107 Psychol. Rev. 101, 103-104 (2000).

<sup>8</sup> Levinson, 57 Duke L. Journal, 354-55.

<sup>9</sup> Rachlinski, Johnson & Guthrie Wistrich, *Does Unconscious Racial Bias Affect Trial Judges?*, 84 Notre Dame L. Rev., 1195, 1223-26 (2009).

<sup>10</sup> Jolls, Christine & Cass R. Sunstein, *The Law of Implicit Bias*, Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series, Discussion Paper 552, 18-20 (2006), available at [http://lsr.nellco.org/harvard\\_olin/552](http://lsr.nellco.org/harvard_olin/552).

<sup>11</sup> *Id.*, 18-20.

Previous Commissions in other States have faced difficulties studying racial bias in court systems, including inadequate systematic data collection or lack of public participation in listening sessions. States have sought to remedy such difficulties by approaching the subject from two ends, utilizing two different methods. The first end looks at statistical disparities in arrests, jury composition, incarceration, and other areas of the system while acknowledging that statistics do not necessarily prove the existence of racial and ethnic bias within state court systems to the exclusion of other possible causes of disparity that happen to correlate with race.<sup>12</sup> Most states have encountered at least some difficulty tracking statistical data at certain levels of the system, usually counties that either failed to keep racial and ethnic data or categorized it differently.<sup>13</sup> Many states have sought to remedy these blind areas by running original studies and data gathering projects and other original studies.

At the other end of analysis, states have attempted to collect and record public perceptions of bias within the system, especially minority perceptions, through methods that have included public meetings or listening sessions, surveys, focus groups and providing the public with contact information for the submission of anonymous, written testimony.<sup>14</sup> Though success in such efforts has varied from state to state, the detailed accounts from members of the public have proved instructive, providing the perspective of those individuals who have directly experienced bias and suggesting potential areas of study. But States have recognized that individual anecdotes and experiences, taken alone, are insufficient to prove systematic racial and ethnic bias in courts, especially in cases when few members of minority groups are willing to share experiences and perceptions with researchers.

To help overcome inherent obstacles in each of the two methods, most states have attempted to combine them to provide experiential evidence gathered from the public supported by statistical information from every level of the system. Taken together, these two ends may allow at least some conclusions regarding the existence and extent of racial and ethnic bias in the courts. The North Dakota Commission to Study Racial and Ethnic Bias in Courts is following this two-pronged approach, collecting both experiences from the public and statistical data to generate a fuller picture of potential areas of bias in the system.

On the statistical side, the Commission is gathering general population data from the 2000 Census, subsequent data estimates from the Census Bureau and the North Dakota State Data Center,<sup>15</sup> and data from North Dakota KidsCount<sup>16</sup> to provide a basis for finding and analyzing disparities within the system. The final report will utilize data from the 2010 Census, due to be released beginning in December, 2010.<sup>17</sup> Accurate population data provides an important baseline to compare representation of minority groups within various stages of the court process with each group's representation in North Dakota's general population.<sup>18</sup> This kind of comparison supplements the analysis of relative rates, which compares a particular group within a sub-population to other groups within the same sub-population to determine over or under representation.<sup>19</sup> Both of these methods

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<sup>12</sup> This is an especially important consideration for a state like North Dakota, which, though it has a substantial and growing minority population, still deals substantially in very small numbers of people, limiting the usefulness of statistical analysis. North Dakota State Data Center, *Population by Race and Hispanic Origin in North Dakota: Census 2000 and July 1, 2008 Estimates*, Population Bulletin, Vol. 25, No. 10 (2009).

<sup>13</sup> Final Report of the Penn. Sup. Ct., 2003, 169; The Nebraska Minority and Justice Task Force, Final Report, 2003, 35; Minn. Final Report, 1993, 10.

<sup>14</sup> Nebraska, Final Report, 2003, 1-10; Final Report of the Penn. Sup. Ct., 2003, 12-13; Report of the Alaska Sup. Ct., 1997, 11; Minn., Final Report, 1993, Appendix A.

<sup>15</sup> <http://www.ndsu.edu/sdc/>.

<sup>16</sup> <http://www.ndkidscount.org/>.

<sup>17</sup> <http://www.census.gov/population/www/cen2010/glance/index.html>.

<sup>18</sup> For example, if there are X number of Y race in the general population, one would also expect to find close to X number of Y race in the prison population, with all other factors being equal.

<sup>19</sup> In looking at the subgroup 'prisoners incarcerated in X prison,' for instance, the number of prisoners of each race would be compared to the total number of prisoners in X prison rather than the outside population.



complement each other to provide a statistical picture of racial and ethnic disparity within various areas of the system, though, as noted above, a statistical picture, without more, does not explain causes of disparity. Different groups of the population may show disparate rates because of complex social and individual factors manifesting themselves within the court system but originating elsewhere.

## COMMITTEE ACTIVITIES

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To address different Commission tasks and areas of study, the Commission created four committees. This section describes committee activities in detail and studies planned, in progress, and completed by each. All four committees have worked on various tasks simultaneously, some concentrating primarily on data gathering and others developing or implementing study instruments. Work accomplished by the four committees will continue to constitute the heart of the Commission's study and will ultimately facilitate the Commission's conclusions and recommendations in its final report.

- **MEETINGS COMMITTEE**

One important element of the final report will be experiential testimony gathered from individuals who have experienced or observed racial and ethnic bias in the North Dakota State Court System. Information from experiential testimony has already helped the Commission direct its efforts and determine how much focus to place on certain areas of study. If multiple individual experiences consistently point to certain problematic areas, those areas demand closer analysis. To help gather testimony, the Commission created the Meetings Committee to run a series of public listening sessions. These meetings were designed to gather input directly from members of minority communities. Members of the Meetings Committee include: Mike Swallow, El Marie Conklin, Scott Davis, Sinisa Milovanovic.

The first public meetings were held in Fargo on June 22<sup>nd</sup> and 23<sup>rd</sup>, 2010. Another public meeting was held Sept. 10<sup>th</sup> at the Bismarck Civic Center during the 2010 Annual Tribal Leaders Summit. In addition to these first two meetings, panels of Commission members also traveled to Tribal Colleges throughout the state to attempt to solicit opinions, experiences and recommendations regarding the North Dakota State Courts. The Commission held meetings at United Tribes Technical College in Bismarck, Fort Berthold Community College, Sitting Bull College at Fort Yates, Turtle Mountain Community College, and Cankdeska Cikana Community College at Spirit Lake.

Despite considerable advertising efforts for these listening sessions, public reluctance to testify remains an obstacle for the Commission, though willingness appears to have grown over time, the later meetings providing more testimony and a greater amount of data for examination. To compensate for the initial public reticence, the Commission modified its methods of information gathering to encourage more sharing of information by allowing panel members to take testimony on an individual basis and by expanding efforts to gather written testimony and recommendations through materials and contact information made available at the meeting locations. Several open-ended questions included on a survey distributed at meeting locations have been successful in supplementing data by gathering opinions of many individuals who were unwilling to share experiences with the Commission in person. These initial meetings have been a learning experience for the Commission, but have gathered a steady amount of useful information while helping inform the public about the Commission's activities.

The Commission intends to continue public meetings in the spring with appropriate changes in response to results and comments received thus far, hoping for greater public participation as contacts and public awareness grow within minority communities. The next round of meetings will take place at locations throughout the state, including: North Dakota State University in Fargo, University of North Dakota in Grand Forks, Minot State University and in the Williston/ Trenton Service Area. The Commission is also considering running additional meetings on the reservations to take advantage of the greater public awareness that has been generated from the first round of meetings at the Tribal Colleges.

- **RESEARCH COMMITTEE**

The primary tasks of the Research Committee are creating original instruments for data collection and analyzing data gathered through those instruments or collected through other means. Members of this Committee include Mike Nason, Keith Richotte, Rod Olson, Judge Sonna Anderson, and Sandi Tabor.

The Research Committee has already designed and implemented a survey project studying potential bias on juries and a second study on minority perceptions of the court system to supplement information from the Commission's public meetings. The two-part jury survey was designed to capture representation of minorities in jury pools and on jury panels, and also to gather experiential information from those individuals empanelled on juries. The Jury Qualification Survey was distributed along with the Jury Qualification Form and consisted of a single question asking for individuals to identify their race. The Commission distributed both parts of this survey state-wide. Further stages in the jury research project are discussed on pages 12-13.

Members of the Research Committee initially designed a perception survey to supplement general perception data with the intention of in-person distribution at the 2011 United Tribes Pow wow in Bismarck. Unfortunately, time constraints prevented implementation of a 2010 test. The survey was instead edited and expanded to supplement testimony at public meetings taking place at the Tribal Colleges with considerable success in drawing comments from individuals uncomfortable testifying and from others present near the meeting locations but not attending the meetings themselves. The survey asked a number of general questions regarding trust in public institutions and court perceptions using a scaled response, included demographic questions inquiring about race and ethnicity, and asked several open-ended questions to elicit perceptions and general experiences of the State court system. The results of this survey, directed specifically at Native Americans, North Dakota's largest minority group, and combined with perceptions gathered from public testimony, may be compared to past data from other studies, such as those run by the North Dakota Committee on Public Trust and Confidence in the Courts or the National Center for State Courts,<sup>20</sup> to suggest whether North Dakota Native American opinions differ significantly from the North Dakota majority or national trends, and whether such opinion should be further and more thoroughly studied.<sup>21</sup>

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<sup>20</sup> National Center for State Courts, 1999. The North Dakota Committee on Public Trust and Confidence in the Courts Survey results are available at <http://www.court.state.nd.us/court/committees/Trust/committee.asp>.

<sup>21</sup> One intention of this survey was to see how the opinions of members of Native American groups' might differ from the conclusions reached in the North Dakota Committee on Public Trust and Confidence in the Courts survey, which generally under represented minorities. Staff, with the assistance of Samantha Miller, distributed these surveys primarily to individuals not in attendance at the public meetings, so the sample went beyond those individuals who might have had a vested interest in showing bias within the system on the survey. Attendees who filled out the survey in addition to speaking were a minority in the sample.

The Research Committee is currently designing several surveys to assess general perceptions of bias in the courts to be distributed among the North Dakota Bar, court employees, and court users. The court personnel and attorney surveys are being designed to ascertain the participants' perceptions of bias in hiring, daily courtroom activities, and other areas. These instruments will collect data from people who deal within the system regularly and are situated to observe continuing patterns and practices that may result in racial and ethnic bias. Previous State reports have tended to rely heavily on court employee perceptions to generate information, since these individuals have a long-term view of processes that is unlikely to be captured by studying individuals without comparable experience.<sup>22</sup>

The court user study is being developed in conjunction with the Criminal Justice Committee with the intention of implementing the instrument in the spring of 2011 with the aid of the University of North Dakota Bureau of Government Affairs (UNDBGGA).<sup>23</sup> To date, UNDBGGA has reviewed several survey drafts and will provide further support using statistical tools for analysis of the results gathered from the survey. The user study will concentrate on gathering perceptions and other data from individual defendants that have gone through the system and have unique perspectives regarding real or potential points of racial and ethnic bias within the process. Similar user studies have been implemented to gather perception data in other states that have already issued reports.<sup>24</sup>

Future Research Committee activities will include focus on designing instruments to gather statistical data from the state system in areas that do not currently track data relevant to the Commission's study, such as detention rates within county jails or use of peremptory challenges. These instruments will allow the Commission to look for disparate treatment at many levels and within multiple processes.

- **CRIMINAL JUSTICE COMMITTEE**

The Commission grouped criminal and juvenile justice issues into one study area, overseen by the Criminal Justice Committee. This area covered all issues pertaining to criminal justice concerns within the state justice system, both adult and juvenile, and focused heavily on data gathering over multiple steps of the criminal process.

The Criminal Justice Committee took advantage of members' knowledge of the system to pinpoint potential areas for further study. Members possessed a great deal of knowledge regarding existing data collection, allowing for wide access to existing measures of statistics and trends. Members of the Criminal Justice Committee include: Judge William McLees, Leann Bertsch, Robin Huseby, Tom Trenbeath, Troy Morley, and Lisa Jahner. The Criminal Justice committee was designed to consider a wide variety of topics, such as:

- Racial disparity within the court system and as a function of initial disparities in arrests
- Racial disparity in incarceration, after having been through the system
- Disproportionate representation and program use throughout juvenile corrections
- Bond issues and reservations
- Jail issues, especially pre-sentence detention
- Disparate sentences by race for same crimes

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<sup>22</sup> National Center for State Courts, *Establishing and Operating a Task Force or Commission on Racial and Ethnic Bias*, 42 (1995) (Providing a table of surveys given by other states to various groups).

<sup>23</sup> <http://business.und.edu/bga/>.

<sup>24</sup> Report of the Alaska Sup. Ct., 1997, Appendix B-1; Minn., Final Report, 1993, Appendix C.

- Different likelihoods of guilty pleas depending on race

Useful data covering these and other topics within the criminal and juvenile study area is often available through previously implemented data programs which are extensive in reach, especially programs that track corrections and juvenile justice data. Because of this advantage, the Committee's primary activities have been in the area of detailed statistical data gathering. Incarceration data is being gathered using North Dakota Department of Corrections (DOCR) data tracking tools to obtain objective information on the proportions and rates of incarceration for several minority groups as compared to the white majority. Likewise, the North Dakota Association of Counties is gathering juvenile justice data, including relative rates by race, normally tracked pursuant to the federal Juvenile Justice and Delinquency Prevention (JJDP) Act.<sup>25</sup>

It is also important for the Commission to gain an understanding of disparities occurring at the arrest level, since these initial disparities may be carried through the rest of the criminal process. Arrest data for this report relies primarily on the Unified Crime Reports (UCR) for preliminary, general level data, but the Criminal Committee is currently investigating the possibility of gathering more detailed data from state level tracking systems such as the Criminal Justice Information System (CJIS). Looking at raw data on this level will allow for a greater range of comparisons than simply looking at national data that has already been broken down according to predefined categories.

The Committee will also participate in developing strategies and instruments to gather county-level data at various stages in the judicial process across the state. County level data, such as information on pretrial detention in jails, tends to be kept in an unsystematic manner, and may be tracked differently depending on each county. Members of the Criminal Committee have proposed developing a several month survey targeting this difficult area. Once developed, this survey would act as a model for future instruments developed to study other subjects in areas with unsystematic data collection.

The Criminal Justice Committee has already contributed in the development of the survey instrument designed in cooperation with the Research Committee and the UNDBGA to gather perception data among court system users. The Committee will consider sampling methods for the implementation of this survey throughout the prison population, and it will distribute the instrument accordingly.

To help gather perception data, the Criminal Committee has been working with the Domestic Violence Advocates from the North Dakota Council on Abused Women Services (NDCAWS)<sup>26</sup> to obtain information from a long-term court observer program the organization ran until 2006. NDCAWS has agreed to provide access to recorded observations and experiences from the Domestic Violence Advocates relating to racial and ethnic bias in the courtroom. This data is currently undergoing analysis through a Minot State University research project and will be sent to the Committee upon completion of that project. Future analysis of data from this program will supplement the Commission's experiential data gathering with input from individuals with firsthand experience as court observers.

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<sup>25</sup> <http://www.ndaco.org/?id=91>.

<sup>26</sup> <http://www.ndcaws.org/>.

- **CIVIL JUSTICE COMMITTEE**

The Commission created the Civil Justice Committee to study civil justice issues, such as minority under representation in use of the courts for civil cases, disproportionate minority use of Legal Services programs, and disparate results in similar cases between minority plaintiffs and defendants as opposed to non-minorities. Members of the Civil Justice Committee include: Jim Fitzsimmons, Judge Wickham Corwin, Ulysses Jones, and William Neumann. Judge Wickham Corwin chairs the Committee.

The Civil Justice Committee has considered a number of issues in discussion, but data gathering thus far has focused around disproportionate use of North Dakota Legal Services by members of minority groups, poverty issues as related to racial and ethnic bias in the courts,<sup>27</sup> the facilitation of self representation for certain legal areas, and possible effects of unbundling legal services to allow impoverished individuals greater access to courts. Problems inherent in tracking actual minority use of the civil system constitute a large part of the reason for such focus. Difficulty arises because the level of direct interaction between parties and the courts is substantially lower in civil cases than that between the court and defendants in the criminal system, with attorneys often acting as the only point of contact between civil clients and the courts. The Civil Committee considered implementing a user study to examine civil court use by race, but was forced to reject the idea because of difficulties tracking racial and ethnic data created by the multiple filing methods available. The lack of contact between courts and clients precludes most reliable statistical data gathering strategies focusing on minority use in this area.

Study of minority representation in Legal Services of North Dakota has focused on numbers of applications for legal services, locations from which applications are generally received, and levels of access to information regarding Legal Services programs for members of minority groups and Native Americans who live on reservations. The Committee looked for racial disparity among these applications and discussed the role of disproportionate poverty levels as a factor in such disparity. Preliminary data on Legal Service applications by race is included in the Civil Justice section later in this report.

Public comments have suggested substantial use of self-representation by members of minority groups, but have also pointed to a lack of resources available for individuals seeking to represent themselves. To address this, the Civil Justice Committee plans to review other state efforts to facilitate self-representation and efforts that have taken place within North Dakota, such as making forms and aids available online and with clerks. The Committee has also analyzed the unbundling of legal services as a component in addressing potential racial disparities in access to civil courts. The ability of court users to purchase a few separate attorney services rather than having to retain an attorney for an entire case would make the system more accessible to members of minority groups less able to afford full representation and to those engaged in self-representation but still requiring an attorney to perform specific functions.

Members of the Civil Committee facilitated the inclusion of a question asking members of the North Dakota Bar to self-identify their race or ethnicity on the State Bar of North Dakota (SBAND) Survey, an instrument distributed by the State Bar Association. The additional question was intended to allow study of minority

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<sup>27</sup> Of North Dakota residents living at less than 100% of the poverty level, 39.2% are American or Alaskan Natives, 22.8% are African American, while 10.1% are White. At less than 125% of the poverty level, the numbers jump to 45.3% for American or Alaskan Natives, 37.2% for African Americans, and 14.0% for Whites. U.S. Census Bureau, *Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months, 2006-2008 American Community Survey*.

representation within the Bar and analysis of other factors with reference to race, factors such as job level, area of practice, age, and similar variables captured in the rest of the survey. Results derived from this question are discussed in the 'Legal Profession' section of this report.

The Civil Justice Committee will continue its study of self-representation, Legal Services, and unbundling in North Dakota. Future study plans may include a focus on whether differences correlated with race and ethnicity exist in outcomes or awards when comparing similar civil cases, if the Committee finds such an analysis workable. The Committee has also already begun to examine issues of poverty as related to race and court use.

## **COMMISSION STUDY AREAS**

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Dividing a study of any subject as complex as racial and ethnic bias in the court system is difficult since there are numerous ways to categorize study areas and substantial overlap between different possible categories. The Commission has divided areas of investigation under the following categories: Access to Courts, Criminal Justice, Civil Justice, Court Personnel, Legal Profession, and Public Perceptions of the Courts. The Criminal Justice Committee and the Civil Justice Committee dealt specifically with information falling under the same subjects. Areas not fitting within a particular committee were instead covered by the Commission itself, with all members contributing, delegating suitable research and study design tasks to the Research Committee.

The following section will define and describe these study areas while presenting some general, broad-level information that has been examined thus far in the Commission's study. Sub-sections will also describe future goals and ongoing activities for each study area. The information found in this section is tentative and any final conclusions require further investigation, but the data provided does provide a starting snapshot of disproportion and potential areas of racial and ethnic bias.

### ***ACCESS TO COURTS***

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The Commission classified several topics, including: juror selection, racial representation in jury pools, the use of peremptory strikes, and court interpreters, as Access to Courts issues. Analysis in this area concentrates on disparities between minority and majority participation in the system and differences in ability to participate and understand court proceedings based on race or ethnicity. Racial disparities at process points such as the initial jury pool or the jury panel are determined by comparing a certain group's proportion at the particular process point to that group's representation in the general population. A second method used by the Commission for comparisons finds the relative rate of each racial group by comparing its proportion at each process point to other groups at the same point rather than to the general population. The relative rates analysis used by the Commission generally sets the majority (white) population as equal to 1 and expresses rates for other groups as fractions or multiples of that number, so a group that numbers twice the majority population would have a relative rate value of 2, and half, a value of .5. Disproportionate participation found with either method could result from direct systematic bias, such as bias in the use of peremptory strikes against minorities, or from indirect factors brought about by policies appearing facially neutral, such as minority under representation in jury pool lists because of fewer minority voters or driver's license holders.

Among the questions that the Commission is considering in the area of Access to Courts are:

- Do Minority members of the North Dakota general public have substantially less trust in the North Dakota court system than white members?
- Does a general lack of trust among minority groups in North Dakota contribute to less participation within the system and more of an effort on the part of minority individuals to avoid contact with the court system?
- Does lack of trust affect pleading in minority individuals when faced with charges in State courts?
- Is current policy for language interpreters effective at providing adequate services to non-English speaking minorities within the state?
- Is there a shortage of competent language interpreters in the state, especially given the increasing language diversity among the state's new immigrants?
- Is there evidence to suggest that North Dakota juries are not reflective of the racial and ethnic diversity found in the state's communities?
- If North Dakota juries are not reflective of the racial and ethnic diversity found in the state's communities, is lack of minority representation on jury panels caused by a skewed jury pool, bias in the jury selection process, or both?
- Is there experiential or hard evidence that peremptory strikes are used disproportionately against minorities?

The Commission has studied access to courts issues as a whole rather than delegating the task to a committee, since the subjects related to access to courts affect both the criminal and civil sides of the courts. The Research Committee has developed tools required for information gathering, the jury survey instruments, in consultation with the Commission as a whole and these have been implemented over the course of several months.

- **JURY SURVEYS**

One aspect of the Commission's work regarding access to courts has been an examination of minority representation within the jury pool and on jury panels. The Commission undertook a two-part survey targeting the jury pool and jury selection process during fall 2010. The Research Committee designed survey instruments to gather self-identified racial data, both at the qualification stage and at trials' end, in order to generate a racial and ethnic snapshot of the group of individuals selected randomly from the jury pool and of the jurors at the end of the process who actually served on a panel. Race data was self-identified so that court personnel or other jurors would not have to make judgments regarding the race of another juror.

The first survey, containing a single question asking respondents to identify their race, ran from August 20, 2010 to November 30, 2010 and was distributed with the standard juror qualification forms. This Jury Pool Survey was designed to gather a snapshot of racial composition within the North Dakota jury pool. The extended length helped ensure that the Jury Pool Survey would gather a large number of responses, minimizing variations in random selection that might occur over a shorter period of time, and ensuring inclusion of jury pools used for jury selection in the October 1 to November 30 period during which the second instrument, the Jury Panel Survey, was distributed.

The Jury Panel Survey, the second half of this study that was distributed at trial's end to those who served on a panel, gathered both self-identified race data and perceptions. These surveys reached any minorities that

served on the jury panels within the entire state for the 2 month period they were administered. One advantage of the Jury Panel Survey was its ability to gather perception data from jurors about the process from a point of view *within the process*. The instrument presented questions about the entire jury selection process and the trial, including: fairness of judges, behavior of attorneys, exclusion of minorities from the panel, levels of respect within the courtroom, and other areas. Since the survey instrument included both self-identified racial data as well as perceptions, the Commission could compare minority panel member perceptions to those of the majority gathered during the same study period.

The combined effect of these two surveys, in addition to providing a picture of the jury pool and juror panel perceptions viewed by race, was a rough picture of the jury selection process as a whole. In the event that data showed an unbiased pool at the qualification stage, but a numerical bias in the final jury panels, the Commission would have evidence of bias within the selection process itself and could seek to design further studies to reach the difficult areas between the pool and panel. In any case, depending on the outcome of the two surveys, the Commission would gain insight into future areas of study.

About 4079 Jury Pool Survey instruments were returned to the Commission, along with 213 Jury Panel Surveys. These instruments are currently in the process of being analyzed, but some initial demographic data is available. For the first component, the Jury Pool Survey, 69.4% of the survey instruments were returned from Cass and Burleigh Counties, with 24.2% for Cass and 45.2% for Burleigh, followed by Stark at 9.9% and Richland at 6.8%. Remaining counties were all under 5% of total returns.<sup>28</sup> In this sample, 94.4% of respondents identified themselves as white, 2.3% as Native American and 1.5% as multi-racial. Remaining categories: Asian, Black, Hispanic/Latino(a) and Other, each consisted of less than 1% of the total.<sup>29</sup> When compared to overall state population data from 2008-2009 estimates,<sup>30</sup> most numbers do not appear to adequately represent North Dakota minority populations, with the exception of the Asian population, which is in proportion at .8%, and multi-racial individuals, who are over their 1.1% proportion, consisting of 1.5% of the pool sample. The lack of representation in other groups could be caused by an unrepresentative sample or the length of the survey distribution time and the level of returns by county. If certain areas with considerable minority populations did not pull from the jury pool during the survey period, this fact would contribute to minority under representation in the survey data. Other factors potentially influencing the disparities include differences in self-identification for Census purposes and on the survey.

The Jury Panel Survey collected more complete demographic information than the Jury Pool Survey while measuring those who actually completed the jury selection process and sat on a panel.<sup>31</sup> Respondents to this survey were 7.2% Native American and 90.9% white, with the categories Black, Hispanic/Latino(a), Other, and

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<sup>28</sup> Only 12 counties were captured during the course of this survey: Cass, Burleigh, Eddy, Stutsman, Richland, Wells, Barnes, Traill, Stark, Logan, McKenzie, and Kidder.

<sup>29</sup> Asian: .8%, Black: .3%, Hispanic/Latino(a): .4%, Other: .3%. Only a single individual answered Native Hawaiian/Pacific Islander.

<sup>30</sup> U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009. See 'LS Chart 2' on page 22 for percentages of each race in the general population.

<sup>31</sup> Gender was 53.3% female and 43.9% male and Age was as follows:

18-25	7%
26-35	22%
36-45	19.6%
46-55	21.5%
56-65	15.9%
Over 65	19.7%
No Answer	2.8%



Multiple each at .5% of the total respondents.<sup>32</sup> No one returned surveys indicating Asian or Native Hawaiian/Pacific Islander as their race. Returns came from eleven North Dakota Counties.<sup>33</sup> The numbers for this survey appear to over represent Native Americans when comparing to 2008-2009 population data estimates,<sup>34</sup> though use of these estimates does not consider demographic changes occurring since they were produced. A more accurate comparison, using currently unreleased 2010 Census data, will be included in the final report. In contrast to the considerable percentage of Native Americans serving on juries in the counties responding to the survey, the remaining minority populations are all under represented by at least half when compared to the 2008-2009 estimates.<sup>35</sup> Again, the numbers within each minority groups have most likely grown since the estimate period, further increasing the disparity.<sup>36</sup> Analysis of Jury Survey Data regarding both jury pools and panels is ongoing and will be considered at greater length in the Commission's final report. The final report will also include discussion of perception data collected on the Jury Panel Survey.

- **INTERPRETERS**

Another Access to Courts issue involves interpreter availability for individuals, especially defendants, with limited English proficiency. Testimony received by the Commission during public meetings has pointed out that lack of ability to communicate with individuals involved in court processes is an obstacle to providing a fair trial. The North Dakota Courts have also recognized this need.<sup>37</sup> North Dakota, especially Cass County, has investigated the need, use, effectiveness and procedures regarding the use of foreign language interpreters in the court system.<sup>38</sup> North Dakota has developed a Court Interpreter's Handbook as a reference guide for implementing Supreme Court Administrative Rule 50,<sup>39</sup> dealing with interpreter qualifications and procedures. The handbook includes a Model Code of Professional Responsibility for interpreters, qualification questions and a judges' checklist for management, as well as some guidelines on methods of interpreting for persons who speak a foreign language, including instructions for proper interpreting technique.<sup>40</sup>

In February, 2010, the Court Administrator recommended adoption of a rule to provide for court-appointed interpreters paid for by the courts in proceedings where an inability to speak English may interfere with either a

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<sup>32</sup> Those returning the Jury Panel Survey without a response to the race identification question totaled .5% of all returns.

<sup>33</sup> The percentage breakdown for the responding counties is as follows:

Cass	20.1%
Burleigh	42.5%
Barnes	2.8%
Ward	11.7%
Bowman	2.3%
Stark	.5%
Mountrail	4.2%
Grand Forks	2.8%
Morton	5.1%
Divide	4.7%
Nelson	2.3%

<sup>34</sup> Assuming the Native American population is at 5.5% of the total North Dakota Population. U.S. Census Bureau Population Division, Table 3. Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009, 2010. See 'LS Chart 2' on page 22 for percentages of each race in the general population.

<sup>35</sup> With Asian at .8%, Black at 1.1%, Hispanic at 2.2-2.3%, and Two or More Races at 1.1-1.2%. U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009. See 'LS Chart 2' on page 23 for percentages of each race in the general population.

<sup>36</sup> North Dakota State Data Center, *Population by Race and Hispanic Origin in North Dakota: Census 2000 and July 1, 2008 Estimates*, Population Bulletin, Vol. 25, No. 10 (2009).

<sup>37</sup> Trial Court Administration, *Limited English Proficiency Plan*, Policy 522, June 11, 2010.

<sup>38</sup> Olson, Rodney, *An Analysis of Foreign Language Interpreter Services Provided for the District Court in Cass County, North Dakota and Improvement Recommendations*, Institute for Court Management Court Executive Development Program Phase III Project (2009). Previous North Dakota studies on this subject will be discussed in more detail in the Commission's Final Report.

<sup>39</sup> N.D. Sup. Ct. Admin. R. 50, Effective March 1, 2005, available at <http://www.ndcourts.com/rules/Administrative/frameset.htm>.

<sup>40</sup> Available at <http://www.ndcourts.com/court/interpreter.htm>.

litigant or witness's full participation in a case.<sup>41</sup> As of June 11, 2010, this plan was implemented as Policy 522, Limited English Proficiency Plan (LEPP),<sup>42</sup> setting out guidelines and including a list of cases for which interpreters would be available at government expense.<sup>43</sup> The North Dakota court system does not have a specific state qualification process but instead will accept certain certifications through programs in other jurisdictions and presence on a statewide roster of interpreters, if one exists, as qualifying.<sup>44</sup> If a non-certified interpreter is used, the judge should inquire into that individual's skill level, or, may utilize telephone translation or other electronic means.<sup>45</sup> The Limited English Proficiency Plan references a limited number of available translated documents as well as a short overview on training for court employees<sup>46</sup>. Resources available outside of court primarily include hotlines and "I need an Interpreter" cards available for non-English speakers.

Written testimony received by the Commission suggests that courts do not always follow the policy to ensure interpreter services. For example, one experience, related by an employee familiar with court processes, involved a judge relying on a defendant's girlfriend for translation in a case that judge later stated was not important or big enough to warrant calling an AT&T language line or finding a proper interpreter.<sup>47</sup> Testimony received during the Commission's Fargo meetings also suggested that some law firms may not be properly equipped to handle limited-English speakers to ensure effective communication, an important factor, especially at early stages of a case.<sup>48</sup> Because of such indications, the Commission will continue gathering testimony and other information regarding the use of interpreters.

## **CRIMINAL JUSTICE**

National and other state data have pointed to several consistent, disproportionate racial statistics as evidence of potential bias in state and federal systems, especially within the areas of arrest, incarceration, and juvenile justice.<sup>49</sup> Many national and state studies concentrate on analysis of African American and Hispanic populations to the exclusion of other minority groups because these groups have larger national populations and tend to be the largest minority populations in most states.<sup>50</sup> The State of North Dakota falls into an atypical category since its largest minority group consists of Native Americans.<sup>51</sup> Studies do exist, however, analyzing Native Americans as a specific minority group.<sup>52</sup>

In 1999, the Bureau of Justice Statistics generated a study on American Indians and Crime from a compilation of statistics that included data from the National Victimization Survey, Uniform Crime Reports, the National Incident-Based Reporting System, and other data collection programs.<sup>53</sup> Among other findings, the report

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<sup>41</sup> Holewa, Sally, Limited English Proficiency Plan Memorandum, February 8, 2010.

<sup>42</sup> Trial Court Administration, *Limited English Proficiency Plan (LEPP)*, Policy 522, June 11, 2010.

<sup>43</sup> LEPP, Policy 522, 3. The plan includes some guidelines for determining the need for an interpreter. Id., 4.

<sup>44</sup> LEPP, Policy 522, 4; N.D. Sup. Ct. Admin. R. 50, available at <http://www.ndcourts.com/rules/Administrative/frameset.htm>.

<sup>45</sup> LEPP, Policy 522, 5-6.

<sup>46</sup> Id., 6-7.

<sup>47</sup> North Dakota Commission to Study Racial and Ethnic Bias in the Courts, Written Testimony Received 9/29/2010.

<sup>48</sup> Transcript of Hearing, Fargo Public Library, June 22, 2010, 9.

<sup>49</sup> Mauer, Marc & Ryan S. King, *Uneven Justice: State Rates of Incarceration By Race and Ethnicity*, 1-2 (2007); Bureau of Justice Statistics, *Prison Inmates at Midyear 2009 – Statistical Tables*, 2, 21-2 (2010) (Showing statistics from 2000-2009 and by race in state and federal prisons and local jails).

<sup>50</sup> Mauer & King, 2007 (Including information only on African American and Hispanic populations); Bureau of Justice Statistics, *Prison Inmates at Midyear 2009 – Statistical Tables*, 2, 21-2 (2010) (Failing to include information on Native Americans).

<sup>51</sup> North Dakota State Data Center, Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009; Ogunwole, Stella U., *The American Indian and Alaska Native Population: 2000*, Census 2000 Brief (2002).

<sup>52</sup> Greenfeld, Lawrence A., & Stephen K. Smith, *American Indians and Crime*, Bureau of Justice Statistics (1999); Report of the Alaska Sup. Ct., 1997.

<sup>53</sup> Greenfeld & Smith, 1999, 35-37.

identified unique Native American issues from both the victimization and arrest perspectives.<sup>54</sup> Among the disturbing findings in this report was that the Native Americans victimization rate for violent crimes was more than twice the national average and Native Americans were more likely than other groups to be victimized by a member of another race.<sup>55</sup> Arrests of Native Americans were more than double the national rate in the area of alcohol violations, though the rates were comparable to the national average for violent offenses.<sup>56</sup> These national-level factors illustrate the importance of recognizing the distinct nature of Native Americans as a minority group and the particular problems facing the group.

- **ARREST DATA**

Though not directly controlled by the courts, the area of arrests act as a gateway to the criminal system, and any disparities within this stage of the process may have a substantial effect on subsequent stages of the process. Because of this gateway function, the Commission has begun to examine arrests throughout North Dakota, considering race and other relevant variables. Testimony has reinforced the need to study the area of arrests as a gateway to the court system. One individual testified:

“I think that if you’re really studying, if you really want to study whether or not there’s racial bias in the state and in our justice system, you have to look at what the root of that is, and again I think that the police and unchecked authority at that level leads to a lot of problems that once it gets into court you can no longer correct, because the person has already been wronged. They’ve already been scared. They’ve already been terrorized by the situation that they’ve been in.”<sup>57</sup>

Preliminary arrest data is general in nature, derived primarily from North Dakota’s reporting to the Unified Crime Reports (UCR) program, which provides data on race compared to offense classification.<sup>58</sup> The data is replicated on the table below, but neither the table nor UCR data includes figures for reservations in North Dakota since they do not participate in the state UCR program.<sup>59</sup> The Commission is currently in the process of gathering more detailed information for analysis using data reported by law enforcement agencies rather than relying solely on data reported in national publications. Collecting data directly from state sources should allow a greater range of comparisons between variables than simply looking at data locked into UCR data categories. UCR data does, however, allow for initial comparisons. The following table, Arrest Chart 1, includes the raw UCR data count from 2008. Race categories used in the UCR data are not the same as census data, and the UCR does not show ‘Hispanic/Latino(a)’ as an additional group in its charts.

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<sup>54</sup> Id., v-viii.

<sup>55</sup> Id., iii., 7.

<sup>56</sup> Id., vii, 25.

<sup>57</sup> Transcript of Hearing, Fargo Public Library, June 22, 2010, 16.

<sup>58</sup> Stenehjem, Wayne & Colleen Weltz, *Crime in North Dakota 2008: A Summary of Uniform Crime Report Data*, 42 (2009). More than 79% of total arrests for 2008 were white and over 16% were Native American. Id., 37.

<sup>59</sup> Id., 37.

Offense Classification	White	Black	Native American	Asian	Total
Murder/Non-Negligent Manslaughter	1	-	3	-	4
Negligent Manslaughter	5	-	1	-	6
Forcible Rape	38	3	4	-	45
Robbery	13	5	5	-	23
Aggravated Assault	210	33	77	-	320
Burglary	206	14	44	-	264
Larceny/Theft	1,676	132	549	9	2,366
Motor Vehicle Theft	127	7	47	1	182
Other Assaults	1,406	172	360	9	1,947
Arson	18	2	2	-	22
Forgery and Counterfeiting	54	6	11	-	71
Fraud	568	25	52	1	646
Embezzlement	27	1	2	-	30
Stolen Property Offenses	88	10	37	-	135
Vandalism	439	29	88	1	557
Weapons Offenses	187	12	24	-	223
Prostitution	2	-	1	-	3
Other Sex Offenses	64	5	12	1	82
Drug Abuse Violations	1,723	108	317	10	2,158
Gambling	-	1	-	-	1
Offenses Against Family and Children	123	9	31	-	163
Driving Under the Influence	5,038	96	672	9	5,815
Liquor Law Violations	4,656	107	812	17	5,592
Disorderly Conduct	1,349	116	367	3	1,835
Vagrancy	-	-	-	-	-
All Other Offenses	4,563	313	1,103	7	5,986
Suspicion	-	-	-	-	-
Curfew and Loitering	204	6	38	-	248
Runaways	453	38	116	3	610
<b>Arrest Total</b>	<b>23,238</b>	<b>1,250</b>	<b>4,775</b>	<b>71</b>	<b>29,334</b>

Arrest Chart 1 UCR Raw Numbers

Arrest Chart 2, provided below, compares percentages of arrests by race within each offense category according to the 2008 UCR data. The number of arrests for each racial category was divided by the total arrests for the same category, rendering the percentage. Offense categories with small numbers of total arrests were omitted based upon the misleading nature of such percentages.<sup>60</sup> This view provides a better sense of representation than raw numbers.

<sup>60</sup> For instance, 3 out of a total of 4 individuals arrested for Murders/Non-negligent manslaughters were Native Americans with the remaining Murders/Non-negligent manslaughter being white. This would render a 75% v. 25% ratio of Native Americans arrested for Murders/Non-negligent manslaughter compared to Whites arrested for the same out of only four total arrests. Stenehjem & Weltz, 2009, 37.

Offense Classification	White	Black	Native American	Asian
Forcible Rape	84.4%	6.7%	8.9%	0%
Aggravated Assault	65.6%	10.3%	24%	0%
Burglary	78%	5.3%	16.6%	0%
Larceny/Theft	70.8%	5.6%	23.2%	.38%
Motor Vehicle Theft	69.8%	3.8%	25.8%	.5%
Other Assaults	72.2%	8.8%	18.5%	.46%
Forgery and Counterfeiting	76%	8.5%	15.5%	0%
Fraud	87.9%	3.9%	8%	.15%
Stolen Property Offenses	65.2%	7.4%	27.4%	0%
Vandalism	78.8%	5.2%	15.8%	.17%
Weapons Offenses	83.9%	5.4%	10.8%	0%
Other Sex Offenses	78%	6.1%	14.6%	1.2%
Drug Abuse Violations	79.8%	5%	14.7%	.46%
Offenses Against Family and Children	75.5%	5.5%	19%	0%
Driving Under the Influence	86.6%	1.7%	11.6%	.15%
Liquor Law Violations	83.3%	1.9%	14.5%	.3%
Disorderly Conduct	73.5%	6.3%	20%	.16%
All Other Offenses	76.2%	5.2%	18.4%	.11%
Curfew and Loitering	82.3%	2.4%	15.3%	0%
Runaways	74.3%	6.2%	19%	.49%
<b>Arrest Total</b>	<b>79.2%</b>	<b>4.3%</b>	<b>16.3%</b>	<b>.2%</b>

Arrest Chart 2 Selected UCR Percentages

This data suggests that, though whites make up the vast majority of arrests within the state of North Dakota, African Americans and American Natives do appear to be arrested across most categories at a higher proportion when compared with each groups' proportion within the general population.<sup>61</sup>

Public comments reinforce this data, suggesting disproportionate arrest rates for minorities, especially Native Americans, even, at times, suggesting violations of tribal sovereignty through disrespect of tribal jurisdiction by the State Highway Patrol or courts. Some testimony suggested that police stops are more common in areas of North Dakota if vehicle occupants are visibly Native American, a phenomenon many referred to as 'DWI' or 'Driving While Indian.' Some comments suggested greater bias exists in courts that border reservations and even suggested that racial profiling is actively used in these areas.

Preliminary evidence, both statistical and testimonial, suggests disparity in patterns of arrest. The Commission will further investigate this important area, the 'front end' of the criminal process, gathering and analyzing detailed state-level data. The Commission will also attempt to find rates of arrest for Hispanic/Latino(a) individuals in addition to the categories present in the Unified Crime Reports data.

<sup>61</sup> U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009.

- **CORRECTIONS DATA**

Turning from the gateway to an end point of the court system, the Commission is in the process of gathering detailed data from the North Dakota Department of Corrections (DOCR). Like the arrest data, preliminary incarceration data gathered during the Commission’s first few months of study has been general in nature, but the Commission expects far greater detail as it works with the Department of Corrections officials to gather and analyze additional raw data. The following basic data is intended to give a snapshot of DOCR representation.

<b>DOCR One day count for January 2009 - Inmate Demographics<sup>62</sup></b>		
Total Inmates	1,453	
Male	1,298	89.3%
Female	155	10.7%
White	966	66.5%
Black	81	5.6%
American/ Alaskan Native	317	21.8%
Hispanic/ Latino(a)	79	5.4%
Asian	5	.3%
Other Race/Ethnicity	5	.3%
Non- Citizens <sup>63</sup>	9	.6%

The DOCR publishes a one day count of all Department of Corrections inmates in North Dakota. The table at the left presents the count for January, 2009.<sup>64</sup> The counts are for the last day of the month.<sup>65</sup> This data consists of a demographic snapshot of all inmates and can provide a sense of the racial proportions of incarcerated individuals. Since individuals enter and exit DOCR at various times, the data may vary slightly over time and thus is tracked by month, but the numbers are relatively stable.<sup>66</sup>

The majority of the inmate population, 66.5%, are listed as White, 21.8% are listed as Native American, 5.6% as Black, and 5.4% as Hispanic/Latino(a). These minority populations are all over-represented when compared to each group’s numbers in the general population.<sup>67</sup> The .3% value for Asians incarcerated appears to under represent Asians by more than half compared to that group’s percentage, .8%, in the 2009 general population estimate.<sup>68</sup>

Public comments regarding incarceration have almost unanimously voiced the perception that minorities, especially Native Americans, constitute a disproportionately large number of those incarcerated and that court decisions to incarcerate are more likely when the

defendant is minority. A perception exists that courts tend to require members of minority groups to serve longer sentences than non-minorities. For example, when asked whether the state courts were fair or unfair, one individual answered:

<sup>62</sup> Data for the categories “Native Hawaiian or Pacific Islander” and “Inmates with Unknown/Missing Race/Ethnicity” has been left out since the values for both were zero for the entire span of one day counts from March 2008 to January 2009. North Dakota Department of Corrections, *DOCR One Day Count for January, 2009*, The Insider, April 2009, 4.

<sup>63</sup> Non-citizens on this chart may be of any race.

<sup>64</sup> The Insider, April 2009, 4.

<sup>65</sup> Id., 4.

<sup>66</sup> Data indicates, for instance, that from the month of March 2008 to January 2009, the population of American/ Alaskan Natives varied between a low of 317 inmates and a high of 332, the black population varied between 80 and 86 inmates, and the white prison population varied between 921 and 972. The Insider, April 2009, 4.

<sup>67</sup> Individuals self-identifying as Native Americans are estimated to account for 5.5% of the general population, African Americans at 1.1%, Hispanic/Latino(a) at 2.3%. These totals do not include the Census Category “Two or More Races,” which accounts for 1.2%. U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009.

<sup>68</sup> Percentage derived from U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009.

“Generally fair to a point. We do get a court appointed attorney and timely manner of court dates. But unfair when sentencing gets handed down. Between a person who is Native and a white person the Native like myself would get harsher and longer sentences than a white person who would get more lenient sentence for the same charges. I feel same charges should get same sentences but it doesn’t go like that.”<sup>69</sup>

Department of Corrections employees involved in statistical gathering and tracking are in the process of compiling further, more detailed, data regarding multiple levels of the DOCR system, including the areas of parole and probation. The final report will include a more extensive analysis of any racial disparities found within the corrections process and how the court system interacts with the corrections system. For example, the Commission hopes to learn whether disparities exist within the revocation of probation process. To complement these numbers, the Commission will also be gathering experiential information from individuals within the corrections system in its Court User Survey, run in cooperation with the UNDBGGA.

- **JUVENILE JUSTICE DATA**

Another aspect of the Criminal Justice Committee’s study includes examining juvenile justice issues. During public meetings, the Commission heard a considerable amount of testimony noting the importance of reaching juveniles early and the dangers of failing to establish a pattern of consequences for delinquent behavior taking place before adulthood.<sup>70</sup> The public, especially members of minority groups, appears to harbor substantial concerns regarding juvenile justice. Fortunately, North Dakota tracks statistics related to juvenile justice programs quite extensively, calculating relative rates of representation in various stages of the juvenile process by race, though a number of tracking categories consistently involve such low numbers for certain races that statistical analysis is not possible. The relative rates at various points in the juvenile process for 2008 are represented on Juvenile Chart 1 and are broken down by race. These figures are for the entire state of North Dakota. The rates are compared with whites juveniles equal to 1, so a rate of 2.00 on the chart below would indicate a rate twice that of white juveniles for the same processing point while a rate of .5 would be half that of white juveniles.

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<sup>69</sup> North Dakota Commission to Study Racial and Ethnic Bias in the Courts, Public Survey Comments.

<sup>70</sup> Transcript of Hearing, Bismarck Civic Center Exhibition Hall, September 10, 2010, 71-75.

**Summary: Relative Rate Index Compared with White Juveniles**  
**Statewide Reporting Period: 1/1/2008-12/31/2008<sup>71</sup>**

	Black or African American	Hispanic or Latino(a)	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaskan Native	Other/ Mixed	All Minorities
Juvenile Arrests	<b>2.91</b>	<b>.70</b>	<b>.15</b>	*	<b>2.04</b>	*	<b>1.75</b>
Refer to Juvenile Court	<b>.94</b>	<b>1.51</b>	**	*	<b>1.08</b>	*	<b>1.11</b>
Cases Diverted	<b>.76</b>	<b>.77</b>	**	*	<b>.90</b>	*	<b>.86</b>
Cases Involving Secure Detention	<b>1.58</b>	<b>2.38</b>	**	*	<b>1.77</b>	*	<b>1.79</b>
Cases Petitioned	<b>1.44</b>	<b>1.42</b>	**	*	<b>1.18</b>	*	<b>1.25</b>
Cases Resulting in Delinquent Findings	.98	.95	**	*	1.03	*	<b>.52</b>
Cases Resulting in Probation Placement	1.15	1.17	**	*	.93	*	1.98
Cases Resulting in Commitment to the Division of Juvenile Services	.70	1.14	**	*	<b>1.32</b>	*	<b>2.20</b>
Cases Transferred to Adult Court	**	**	**	*	1.25	*	.91
Group meets 1% Threshold for separate analysis	Yes	Yes	Yes	No	Yes	No	

**Juvenile Chart 1**

As can be determined from this chart, the most statistically significant disparate minority rates statewide are in the areas of arrests and detention, with minority youth at almost double the rate for whites. Commitment data shows a rate for minorities more than twice that of whites. Juvenile arrests were twice the rate for Native Americans as whites, and almost three times the rate for African Americans. Cases for Native Americans, Hispanics/ Latino(a), and African Americans were all at least one and a half times more likely to involve secure detention, and all three groups were also slightly to significantly less likely to have their cases diverted. More recent and detailed county-level data for Burleigh, Cass, and Grand Forks counties, the three areas with the largest minority youth populations, will be included in the Commission’s final report, though it must be noted that within the statewide data replicated above, Burleigh and Cass counties are the only counties with statistically significant rates for processing points other than arrest and detention, and this will most likely remain the case for future data.<sup>72</sup> The greatest amount of activity for Native American juveniles is in Burleigh County and the greatest amount for both Black and Hispanic juveniles are in Cass.<sup>73</sup> Burleigh County completed a detailed assessment of Native American Youth in 2002, studying over representation of the county’s Native American juvenile population.<sup>74</sup> A similar study for Cass County is currently underway and discussion of both will be included in the Commission’s final report.

<sup>71</sup> Chart Key: **Bold** (Statistically significant results); \*(Group is less than 1% of the youth population); \*\* (Insufficient number of cases for analysis); --- (Missing data for some element of calculation). North Dakota Association of Counties, *2008 Relative Rate Index* (2010).

<sup>72</sup> *Plan for Compliance with the Disproportionate Minority Contact (DMC) Core Requirement of the JJDP Act* (FY2010 Update), 4.

<sup>73</sup> *Id.*, 5.

<sup>74</sup> Martin, Mark, *Assessment of Over-Representation of Native American Youth in the North Dakota Juvenile Justice System*, 2002.



## CIVIL JUSTICE

Study of issues in Civil Justice has concentrated substantially on minority use of the civil court system and so have much in common with the Access to Courts study area, but have related more closely to financial and geographic factors as well as legal services availability. Previous perception surveys, implemented in North Dakota and nationally, show that most of the public perceives a link between ability to pay and ability to receive justice in the legal system.<sup>75</sup> If members of minority groups fall disproportionately in poorer demographic categories, then use of legal services by minorities is also likely to be disproportionate. Census data indicates that members of minority groups do make up a significant, disproportionate percentage of those falling within 100% or 125% of the poverty level.<sup>76</sup> The Civil Committee looked at Legal Services of North Dakota data to confirm that minorities disproportionately rely on legal services programs.

- **LEGAL SERVICES APPLICATIONS**

Legal Services of North Dakota provides legal advice, education, and legal representation to low-income residents of North Dakota and to disadvantaged elderly in the State.<sup>77</sup> The organization focuses on areas of civil law, and, in 2009 closed cases primarily in the areas of family law, employment law, consumer and housing law.<sup>78</sup> Legal Services generally provides assistance with roughly two-thirds of received applications.<sup>79</sup>

LS Chart 1

Use and Number of Minority group in General Population		
Race	2008 Legal Services Use <sup>80</sup>	2008 Population Data (One Race) <sup>81</sup>
Asian/Native Hawaiian or Pacific Islander <sup>82</sup>	53	5286
Black	224	6,803
Hispanic	184	13,950
Native American	1,924	34,716
White	4,966	573,360
Other	511	7,306 (two or more races)
<b>Totals</b>	<b>7,862</b>	<b>641, 421</b>

Sufficient data exists to compare Legal Services Applications and population estimates for 2008. The following tables compare use of legal services by race against the overall proportion of the population each racial category represents. The first table, LS Chart 1, presents raw numbers for 2008 legal services use and 2008 populations. This chart also includes 2008 population data from the 'One Race' Census category. It is worthwhile to keep in mind that the

trend from the year 2000 to 2008, minority populations showed a 21.4% increase with the white population decreasing by 1.8%.<sup>83</sup>

<sup>75</sup> Available at <http://www.ndcourts.com/court/committees/trust/Survey.htm>.

<sup>76</sup> As discussed, minorities in North Dakota do appear to be disproportionately represented among those in poverty. Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months, 2006-2008 American Community Survey 3-Year estimates, North Dakota.

<sup>77</sup> Legal Services of North Dakota (LSND), *2009 Annual Report*, 1.

<sup>78</sup> *Id.*, 1, 14.

<sup>79</sup> *Id.*, 1.

<sup>80</sup> *Id.*, 15.

<sup>81</sup> U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009.

<sup>82</sup> 2008 Population Data reflects the sum of the categories 'Asian' and 'Native Hawaiian or Pacific Islander' from Census Table 3, cited in note 79.

<sup>83</sup> North Dakota State Data Center, *Population Bulletin*, Vol. 25, No. 10 (2009).

LS Chart 2

The next table, LS Chart 2, shows percentage of legal services use by racial category as derived from the recorded number of each category in the Legal Services 2009 Annual Report and the total number of applications for the year examined.

Race	% 2008 Legal Services Use	% 2008 Population Data (One Race Only)	% of Legal Services Clients v. % of General Population
Asian/ Pacific Islander	.7%	.8%	- .1 (.875)
Black	2.8%	1.1%	+ 1.7 (2.55)
Hispanic	2.3%	2.2%	+ .1 (1.05)
Native American	24.5%	5.4%	+ 19.1 (4.54)
White	63.2%	89.4%	- 26.2 (.71)
Other	6.5%	1.1%	- 5.4 (5.91)

Population percentages were calculated from Census estimates for the year 2008.<sup>85</sup> The column, “% of Legal Services Clients v. % of General Population,” shows the difference between each racial category’s percent as users of Legal Services and the group’s percent within the general population, with the rate, as compared to 2008 population data, in parentheses.<sup>86</sup>

LS Chart 3

Race	Totals	Percentage
Asian/ Pacific Islander	226	.5%
Black	913	2%
Hispanic	868	2%
Native American	12,611	27%
White	29,568	63.3%
Other	2,467	5.2%
<b>Totals</b>	<b>46,653</b>	<b>100%</b>

Total applications for legal services during the period from 2004 to 2009, found in LS Chart 3, show a similar percentage breakdown for the combined years, with minorities accounting for approximately 31.5% of total applications for legal services.<sup>88</sup> The largest single group, Native Americans, accounted for 27% of all applications, while Blacks and Hispanics each constituted about 2% of the total applications over this time period.<sup>89</sup> Asian-Pacific Islanders accounted for the smallest percentage, at .5%, and whites accounted for 63.3% of the total.<sup>90</sup> A strict, statistical comparison between total applications for Legal Services and percentage of minorities in the population cannot be derived from the 2004-2009 total applications data since that data is not disaggregated by year.

This analysis does not suggest that overt racial bias within the legal system is the reason for disproportionate minority use of legal services, but the correlation between minority status and number of legal services applications indicates a substantial, disproportionate use of these services intended to benefit those unable to afford to take other legal avenues. In addition to the disproportionate use of legal services, the vast majority of

<sup>84</sup> Percents may not total 100% because of rounding.

<sup>85</sup> U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009.

<sup>86</sup> The rate was calculated by dividing the percentage of Legal Services Use by the 2008 population for each racial category.

<sup>87</sup> Legal Services of North Dakota, *Total Applications for Legal Services Report 2004-2009* (2010). Around 65% to 70% of applications receive some form of assistance. LSND, *2009 Annual Report*, 3 (2010); Legal Services of North Dakota (LSND), *2008 Annual Report*, 1 (2009).

<sup>88</sup> LSND, *Total Applications for Legal Services Report 2004-2009* (2010).

<sup>89</sup> Id.

<sup>90</sup> Id.

applications for legal services come from 5 counties: Cass Burleigh, Ward, Montrail, and Rolette.<sup>91</sup> No common denominator exists for differences in application numbers across counties except that a Legal Services Office is located physically within each of the five counties that account for the majority. Such disparity in applications suggests that members of minority groups residing in counties without a legal services office may be unaware or logistically unable to attempt to take advantage of services provided.

- **UNBUNDLING AND SELF-REPRESENTATION**

In addition to analyzing access to Legal Services of North Dakota, the Civil Justice Committee has discussed unbundling of legal services in relation to minority groups throughout the state. The Pro Bono Task Force of the State Bar Association of North Dakota has been engaged in continuing work with unbundled legal services, or allowing a lawyer to perform a limited number of tasks for a client, such as ‘ghostwriting’ documents for certain cases, rather than acting as an attorney for the entire case.<sup>92</sup> Obstacles to unbundled legal services exist in the form of certain procedural rules, especially regarding ghostwriting, but the Pro Bono Task Force has asked the Joint Procedures Committee to propose changes to those rules. The Civil Committee will continue to study the issue of unbundling with an eye toward ensuring that relevant information will be accessible by members of minority groups and that minorities will be aware of existence of the unbundled services and are able to take advantage of the processes required for its use.

In a similar vein, the Committee has studied issues surrounding self-representation, including minority use and court facilitation of this option. The Commission has received a number of comments and written statements indicating minority use of self-representation, but the area requires further study. The Civil Committee will also continue to study the potential expansion of online forms, instructions, and other resources to facilitate minority self-representation in certain appropriate areas if it finds that minorities engage in self-representation at a substantial or disproportionate rate, or if it is found that minorities are hampered in self-representation by lack of awareness of these resources.

## ***COURT PERSONNEL***

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The Commission did not establish a specific committee to analyze Court Personnel issues, but instead has been gathering data through the work of Commission members, the Research Committee, and the Court Administrator’s Office. Court Personnel issues include disparities between minority and majority representation within the state workforce, hiring practices, and minority advancement within the court system compared to the majority. Methods of study have concentrated on gathering both perception data and objective statistical data in these areas. Among the questions that the Commission has been considering in the area of Court Personnel are:

- Are North Dakota’s racial and ethnic minorities substantially under represented in the state’s court system?
- Are North Dakota’s racial and ethnic minorities substantially under represented at management and senior levels of the state’s court system?

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<sup>91</sup> LSND, *2009 Annual Report*, 16; North Dakota Commission to Study Racial and Ethnic Bias, 17 September Minutes, 2010, available at [http://www.ndcourts.gov/court/committees/bias\\_commission/MinutesSept2010.htm](http://www.ndcourts.gov/court/committees/bias_commission/MinutesSept2010.htm).

<sup>92</sup> For additional resources on the subject of unbundling of legal services, see <http://www.abanet.org/legalservices/delivery/delunbundhistory.html>.

- Have minority and white court personnel, lawyers and members of the public witnessed or been made aware of inappropriate comments or jokes of a racial or ethnic nature, racial or ethnic slurs, and disrespectful and discourteous treatment of minorities?

The Commission is currently gathering data regarding behavior of court personnel from jury surveys and will be gathering perception data from other general surveys directed at the Bar and at court employees. The Court Administrator’s Office was able to provide hard data regarding numbers and rates of under representation of minorities within the state system.

- **EMPLOYEE DATA**

The following table, Employee Chart 1, contains data on court system employees as of June, 2010.<sup>93</sup> Data received was broken down by areas of employment: Non-Elected Regular Employees, Administrative Support, Technicians, Professionals, and Officials and Administrators, but was not broken down with regards to levels of seniority within each area. Employee data was taken from PeopleSoft, the information system used by the courts to track human resource and payroll data.

Employee Chart 1

	Non-Elected Regular Employees		Administrative Support		Technicians		Professionals		Officials and Administrators	
Full Time Employees	294		174		10		80		30	
Race/Ethnicity	Count	%	Count	%	Count	%	Count	%	Count	%
White	290	99%	172	99%	10	100%	78	98%	30	100%
Black	0	0%	0	0%	0	0%	0	0%	0	0%
Hispanic	1	0%	0	0%	0	0%	1	1%	0	0%
Asian/PI	0	0%	0	0%	0	0%	0	0%	0	0%
AI/AN	3	1%	2	1%	0	0%	1	1%	0	0%
Other	0	0%	0	0%	0	0%	0	0%	0	0%

As can be easily ascertained from the data, the North Dakota State Court System appears overwhelmingly white, with the lowest percentage of whites in any employment category at 98%. Even comparing this level of minority representation to Census estimates from 2008<sup>94</sup> without consideration of growth of minority groups during the intervening years, 0% to 2% total minority representation comes up drastically short when measured against the 9.5% (10.6% counting the ‘Other’ category) proportion of minorities within North Dakota’s 2008 general population.<sup>95</sup>

Existing racial disparity does not prove overt bias on the part of the court system in hiring because that task must be viewed relative to the qualified individuals who apply for positions. The North Dakota court system relies on North Dakota Job Service for the majority of its recruitments.<sup>96</sup> This service includes America’s Job

<sup>93</sup> Klein, Amy, *Memorandum on Requested Workforce Data*, 7/12/2010, 5.

<sup>94</sup> U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009, 2010. See ‘LS Chart 2’ on page 22 for percentages of each race in the general population.

<sup>95</sup> U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009, 2010. Minority percentage increases even from 2008 to the 2009 estimates. The 2010 Census will likely show a more substantial increase yet.

<sup>96</sup> Klein, Workforce Memo, 2010, 1.

Exchange, general circulation newspapers, and the state and court system websites. The court system also uses university and other associations representing required fields of study depending on the position to be filled. Hiring processes do not include gathering data on race or any other protected characteristic.<sup>97</sup> A shortage of interested or aware applicants may also contribute to the under representation, but, since the court system cannot gather race data for applicants, there is no way to measure how many minorities actually do apply.

Court system data provided by the Court Administrator's Office included a utilization analysis that compared percent of individuals within the workforce population by race to community labor statistics from the 2000 U.S. Census report on North Dakota.<sup>98</sup> This analysis showed very little under representation of minority groups within each job area compared to the community workforce statistics,<sup>99</sup> but, since the comparison took place between court workforce data from 2010 and Census data from a decade before, the chart may provide a misleading picture and so has not been replicated here. Forthcoming 2010 Census data will provide a basis for completion of an updated utilization analysis for minority state court employees, to be included in the Commission's final report.

Further study in the area of Court Employees will attempt to focus more closely on hiring, retention, and promotion within the court system. Additional study will most likely rely primarily on data from multiple surveys and information on public perceptions of diversity in the court system. A number of written comments have already pointed to the need for diversity within the court system to ensure that those interacting with it are able to identify representatives of similar racial background working within the system, and others pointed to the need for outreach to tribal areas in hiring.<sup>100</sup> The Commission's final report will likely contain recommendations for expanding diversity within the court system.

## **LEGAL PROFESSION**

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The Commission is investigating minority representation in the North Dakota Bar and legal profession and perceptions of Bar members regarding racial and ethnic bias. Once again, the Commission did not establish a specific committee analyze issues in the legal profession, but is gathering information through the work of Commission members, especially the Civil Justice Committee, and through original surveys designed by the Research Committee. In a manner similar to the subject of Court Personnel, analysis of the Bar and legal profession includes examination of disparities between minority and majority representation throughout all levels as well as hiring and advancement issues. Some of the questions that the Commission is considering in the area of the Bar and Legal Profession are:

- Is North Dakota's legal profession reflective of the state's racial and ethnic diversity?
- Do too few North Dakota minorities and minorities from other states apply to and matriculate at North Dakota's law schools?
- Do minority and white lawyers have noticeably different perceptions of career opportunities in the state, including those related to mentoring, retention, and promotion?
- Do Judges treat minority attorneys differently from white attorneys?
- Are racial and ethnic minorities underrepresented in North Dakota as judges?

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<sup>97</sup> Klein, Workforce Memo, 2010, 1.

<sup>98</sup> Klein, Workforce Memo, 2010, 10.

<sup>99</sup> The difference was less than 2% for all categories. Klein, Workforce Memo, 2010, 9-10.

<sup>100</sup> North Dakota Commission to Study Racial and Ethnic Bias in Courts, Written Testimony received 11/2/10.

The Commission has only begun to address the area of the legal profession by analyzing the judiciary and the North Dakota State Bar through statistical and survey instruments. Despite the limited nature of information accumulated thus far, the Commission has already run into some incongruities in data. According to North Dakota State employment data received from the Court Administrator, for instance, not a single judge employed full time by the State self-identifies as a member of a minority group.<sup>101</sup> Data from the State Bar Association of North Dakota Membership (SBAND) Survey, however, does indicate one self-identified “Other” response for individuals also identifying themselves as Judges.<sup>102</sup> Partially because of such irregularities, the Commission is developing an attorney perception survey to gather more accurate information on minority representation in the profession, including information on career opportunities for minorities, judge and attorney treatment of minorities, and hiring, retention, and promotion issues. Perception questions touching on judges and other members of the Bar were included on Jury Panel Survey, and these questions asked for information on treatment of racial minorities by both judges and attorneys, but the Commission hopes for a broader sampling of opinions in this regard through both the attorney and court employee surveys in the interest of generating information from a wide sample.

- **SBAND SURVEY**

Members of the Commission hoped that the survey conducted in 2010 by the State Bar Association of North Dakota (SBAND) would allow an accurate glimpse of the racial composition of the North Dakota. The question asking for self-identification of race, included on the survey at the Commission’s request, received 523<sup>103</sup> responses out of a state bar of roughly 2100 members, or from around a quarter of the total state bar members at the time of the survey.<sup>104</sup> Of these respondents, 0.8% identified themselves as Asian, 0.2% as Hispanic/Latino(a), and 0.8% as American/Alaskan Native. The remainder of respondents, 97%, indicated they were White. No one identified himself or herself as Black or Native Hawaiian or Pacific Islander, and 1.3% of respondents identified themselves as “Other.”

Given the proportion of minorities in North Dakota’s general population, about 10.6-10.9%,<sup>105</sup> and the number of total responses to the race question included on the SBAND Survey, 523, one would expect the number of minorities answering the question to be in the neighborhood of 50 respondents for a level of proportionality to the general population. The actual number identified in the survey was 16 respondents.<sup>106</sup> Of these, only eleven indicated that they were actively practicing within the state.<sup>107</sup> Minority respondents make up such a small proportion of the response total that attempting to look for patterns in minority answers to the other questions from the survey becomes problematic. Since data may be skewed by only a single response, percentages obtained cannot be taken as indicative of group attitudes and opinions regarding those questions. Because of this effect, the Commission did not rely on correlations between race and answers to additional questions given in the survey. It is possible that the survey did manage to capture either a representative proportion or even the entire population of minorities practicing within the state if the actual population of minority members of the North Dakota Bar is minuscule. Perception data from public meetings and surveys

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<sup>101</sup> Klein, Workforce Memo, 2010, 6. The data excludes one seat that was not filled at the time of data collection.

<sup>102</sup> State Bar of North Dakota (SBAND) Membership Survey 2010, Summary Data, 6.

<sup>103</sup> SBAND Membership Survey 2010, Detailed Findings, 10.

<sup>104</sup> The total number of Bar members and their proportions are rough estimates since the true number of members is constantly in flux.

<sup>105</sup> See U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009. The 10.6% figure is from 2008 Estimates, 10.9% is for 2009.

<sup>106</sup> SBAND Membership Survey 2010, Summary Data, 3.

<sup>107</sup> *Id.*, 3.

supports the argument that the low numbers of minorities answering the survey may be attributable not to a low response rate, but instead to a low actual number of minorities in the North Dakota State Bar. Even if this theory had merit, uncertainty still precludes generalizations based on minority opinions given in the survey.

Though non-generalized information is of limited value, the SBAND data does provide characteristics for the specific minority respondents. For those minorities responding, the survey showed a slightly greater proportion of females to males than the white majority, a tendency to be slightly younger than the majority and a shorter time admitted to the ND bar, though generally still longer than 5-15 years. Minorities who answered the survey were not as likely to be actively practicing in ND, while white respondents were unanimous in answering that they were actively practicing in North Dakota.

Employment positions for the minorities answering the survey were scattered throughout all available categories rather than concentrated in any one area, the categories spanning from sole practitioner, partner in firm or PC shareholder, to government attorney, though more than half of survey respondents indicated they were government attorneys or sole practitioners.<sup>108</sup> The minority respondents also indicated participation in every survey category measuring different activities performed in the court system within the previous year.<sup>109</sup> Participation was comparable to non-minorities in most categories, with the exception of fewer trials and Supreme Court Appeals, though minority respondents indicated greater participation in mediations and the 'Other' category than whites. In short, despite some differences in numbers, there was no glaring data showing a complete lack of minorities in any single job category, and no data showing that the minorities who responded are uniformly channeled toward or away from certain jobs. The most significant element in the SBAND survey was the small number of minority respondents itself.

The Commission hopes to gain complementary data to create a more complete picture of the North Dakota Bar through additional research methods, such as an attorney perceptions survey and through the use of focus groups. Future study will attempt to examine perceptions of minority attorneys, measures and perceptions of access to senior level jobs for qualified minorities, and additional related data.

- **LAW SCHOOL**

Another aspect of analysis regarding the North Dakota legal profession is measuring the effectiveness of North Dakota's only law school in attracting, graduating, and placing members of minority groups throughout the state. Effectiveness in all of these areas would establish a strong entry point for members of minority groups to the legal profession in North Dakota. Self-reported law school data<sup>110</sup> reveals a roughly proportional percentage of minority law students overall to minority proportions in the general population. Race classifications in the table UND Law Chart 1 are as they appear within reported data rather than in the Census classifications.

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<sup>108</sup> Categories included: Sole Practitioner, Partner in firm or shareholder in PC, Salaried Associate or contract Atty, Judge, Sole practitioner, Full-time Gov. Atty, Corporate Counsel, Retired or inactive, Referee or Law clerk, and Other. SBAND Membership Survey 2010, Summary Data, 6.

<sup>109</sup> Categories included Jury Trial, Court Trial, Administrative Trial, Arbitration, Supreme Court Appeal, Mediation, and Other. SBAND Membership Survey 2010, Summary Data, 32.

<sup>110</sup> Data was compiled from 2000-2010 eds., American Bar Association, *ABA - LSAC Official Guide to ABA-Approved Law Schools*.

UND Law Chart 1

Percent JD Enrollment and Race/Ethnicity by Year <sup>111</sup>							
Year	African American	Amer. Indian	Asian American	Mex. American	Puerto Rican	Hispanic	Total Minority
2010	.8%	3.7%	2.1%	0	0	2.9%	9.5%
2009	1.2%	4.4%	3.6%	.4%	0	2.8%	12.4%
2008	.8%	2.5%	3.8%	0	0	3%	10.2%
2007	1.8%	2.7%	3.6%	1.3%	0	.4%	9.8%
2006	1.5%	2.0%	.5%	2.0%	0	0	5.9%
2005	1.0%	7.0%	1.0%	2.0%	0	0	11.0%

Comparisons between this data and Census numbers are difficult because of different methods of racial classification, but some information

does stand out. The percentage of total minorities appears to hover close to 10% for all years except 2006. The percentage within each minority group seems to fluctuate substantially from year to year, most likely because the low actual numbers cause percentage calculations to be affected by only one or two individuals graduating or entering. Asians appear over represented in most years when compared to population of Asians in the general North Dakota population.<sup>112</sup> The number of students identifying as Hispanic, though defined differently from Census data, appears at least near to the proportion of Hispanics within the North Dakota population, if not above, especially during the years since 2008.<sup>113</sup> If the Mexican American, Puerto Rican, and Hispanic categories above were combined and compared to the ‘Hispanic’ category in Census data, then the number of Hispanics falls closer to the proportion in North Dakota’s population in most years. Native American proportions seem to fluctuate substantially, with the highest percentage in 2005 falling off dramatically in 2006, but appearing to rebound closer to a proportional representation in more recent years.

Unfortunately, this data does not capture in state and out of state differences and so sheds no light on whether minority University of North Dakota Law students are actually native to the state. Nor does this data capture the number of students intending to practice in North Dakota courts. The low percentage of minority attorneys who appear to be members of the North Dakota Bar<sup>114</sup> compared to the more proportional presence of minorities at UND Law School would seem to indicate that either minorities are not joining the North Dakota Bar, that the law school pulls minority students from other states and, on graduating, these students return to their homes, that graduating minorities, native or not, tend move out of North Dakota and practice elsewhere, or some combination of these factors. The Commission will seek to further study this issue for inclusion in its final report, in part by studying Bar exam participation and passage rates for North Dakota by race.

## **PUBLIC PERCEPTION**

Commission Members undertook an extensive literature review, relying on the results of previous North Dakota surveys and other national and state surveys studying perceptions of courts for general information on the subject of bias and to guide design and execution of original studies. Previous survey results included an instrument designed by the Committee on Public Trust and Confidence in the Courts and administered in

<sup>111</sup> See id.

<sup>112</sup> U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009.

<sup>113</sup> 2.3% as of July 1, 2009. U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009.

<sup>114</sup> SBAND Membership Survey 2010, Summary Data, 3.



October 1999<sup>115</sup> as well as the 1999 National Center for State Courts “How the Public Views The State Courts”<sup>116</sup> national survey, among others. The Commission relied on the state and national surveys as a kind of baseline from which to begin analyzing community perceptions of North Dakota court processes in greater detail. National and state reports also provided potential methods and general results or trends for comparison. For instance, data from previous surveys indicates that members of minority groups tend to perceive that courts treat minorities worse than other groups where the majority was substantially less inclined to such a view.<sup>117</sup> The previous North Dakota survey provided an example for instrument development in addition to previous data for comparison.

Comparison of the racial breakdown of respondents from the previous Committee on Public Trust and Confidence in the Courts survey with data from the 2000 Census<sup>118</sup> reveals that the survey may have under represented certain minority groups in its sample set.<sup>119</sup> For instance, .3% of the respondents to the survey identified themselves as Hispanic/Latino, but the proportion of Hispanics within North Dakota’s population in 2000 was four times that amount, at 1.2%. Likewise, African Americans, with a 2000 census percentage of .65%, were not represented at all within the sample. Most obviously, however, Native Americans, consisting of 4.9% of the population in the Census data, accounted for only 2% of the sample taken in the survey. Overall, the 1999 Survey identified roughly 4% of its respondents as belonging to minority groups, including the “other” category as minorities, while the 2000 Census identified around 7% of North Dakotans as members of minority groups at that time.<sup>120</sup>

Despite the relatively low number of minority respondents to the Public Trust and Confidence in the Courts survey,<sup>121</sup> a considerable number of respondents nevertheless answered that North Dakota courts treat minorities either worse or far worse, including 26.2% believing African Americans are treated worse, 27% for Hispanics, 31.3% for Native Americans, and 24.8% for Non-English speaking peoples. Judging from consistent patterns over a wide number of state and other reports on bias, a greater number of minority respondents in the Public Trust and Confidence survey would most likely have decreased the proportion of “Same” responses while increasing the proportion of “Worse” to “Far Worse” responses for the minority categories, with regard to treatment by the courts. Considering the growth of minority populations relative to the white majority since 2000<sup>122</sup> and the demonstrated tendency of minorities to rate court treatment of their own and other minority groups significantly lower than whites,<sup>123</sup> a similar survey to the Public Trust and Confidence instrument would likely generate different results, especially if it managed to include accurate proportions of each minority group.

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<sup>115</sup> Available at <http://www.ndcourts.com/court/committees/trust/survey.htm>.

<sup>116</sup> Available at [www.flcourts.org/gen\\_public/family/diversity/bin/publicop\\_natl.pdf](http://www.flcourts.org/gen_public/family/diversity/bin/publicop_natl.pdf).

<sup>117</sup> National Center for State Courts, 1999, available at [www.flcourts.org/gen\\_public/family/diversity/bin/publicop\\_natl.pdf](http://www.flcourts.org/gen_public/family/diversity/bin/publicop_natl.pdf).

<sup>118</sup> North Dakota State Data Center, Population Bulletin, V. 25, No. 10, October 2009.

<sup>119</sup> This comparison is not wholly certain, since the ND data included an “other” option, where the census did not. This “other” section could contain multi-racial individuals who felt uncomfortable assigning themselves a single race from the selection of choices. Also, the “Hispanic” option could have been subsumed within other category choices within the survey, since individuals may identify themselves as fitting one of the other racial categories, but having a Hispanic ethnicity. The 2000 Census data allowed selection of the “Hispanic” ethnicity separately from their race identification where the survey did not.

<sup>120</sup> <http://www.ndcourts.com/court/committees/trust/survey.htm>. Even counting the ‘Other’ group as entirely minority, which is by no means certain, the sample under represents minority opinion by almost half.

<sup>121</sup> Respondents answered the question “[w]hat do you consider to be your racial or ethnic identity[...]" as follows: Hispanic/Latino (.3); White/Caucasian (93.5); African American (0); Native American (2.0); Asian or Pacific Islander (.5); Other (1.3); NA/Ref (2.3).

<sup>122</sup> U.S. Census Bureau Population Division, Table 3. 2010 Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for North Dakota: April 1, 2000 to July 1, 2009.

<sup>123</sup> National Center for State Courts, 1999, available at [www.flcourts.org/gen\\_public/family/diversity/bin/publicop\\_natl.pdf](http://www.flcourts.org/gen_public/family/diversity/bin/publicop_natl.pdf).

- **PUBLIC MEETING PERCEPTION SURVEY DATA**

Results from perception surveys distributed in conjunction with the Commission's public meetings indicate a substantial opinion on the part of at least some Native Americans that is consistent with the national trend. Many who answered the survey's open ended questions, including many indicating positive personal perceptions, acknowledged that the prevailing opinion of the State court system among their communities was negative, one of suspicion and mistrust. Unfortunately, because of the nature of this survey, designed primarily to supplement individual perceptions, and its execution, the results are not scientific and numbers and percentages should not be generalized according to sociological methods to represent all Native American populations in North Dakota, or even a sub-group of that population. However, combined with the feedback given in the public meetings and written in the survey's open-ended comments section regarding a pervasive sense of mistrust for the courts, this survey supports the notion that a representative inclusion of members of Native and minority populations in an instrument similar to the Committee on Public Trust and Confidence in the Courts Survey could have a significant effect on the data, especially on perceptions of minority treatment.

Though surveys were distributed at the same time as the public listening sessions, they were distributed around the meeting locations in addition to the meetings themselves, reaching many individuals who did not attend or did not plan to do so.<sup>124</sup> Still, the survey response could have been skewed if those with a specific interest in indicating bias felt more incentive to complete and return the surveys than those who did not recognize a problem. Since the surveys were distributed around Tribal College campuses, the level of education for respondents was skewed toward higher education, respondents generally having some college, an Associate's Degree or above. Women also outnumbered men in the sample, consisting of about 61% of total responses, with men at about 39%. The age range, however, was more balanced, with at least 20% within each of the first three age ranges, 18-25, 25-35, 35-45, gradually decreasing from 16.25% in the 45-55 category to 12.5% in the 55-65 category, to 3.75 in the 'Over 65' category. Over 50% of respondents were employed either full time or part time, and over one third were full-time students. About 12.5% of those answering the survey indicated that they were unemployed and were not students. Court use statistics for this sample show that 35% of respondents claimed involvement in the North Dakota State Court System, 22.5% in the North Dakota Juvenile system, 23.75% involvement in family issues, and 3.75% and 11.25% in mental health or probate issues in the State court system, respectively.

Survey respondents were asked three questions regarding their perceptions of the courts. These questions were the same as some of those appearing on the Public Trust and Confidence in the Courts survey.<sup>125</sup> The charts below include the percentage breakdown for the sample of 80 respondents for each of the questions. As can be ascertained from the first chart, most of the sample 71.25% of those responding indicated 'a little' or 'None' when asked to share the level of trust in 'the courts in your area.'<sup>126</sup> It should be noted that answers within this category could have been influenced by opinions of tribal and federal courts rather than only state courts, though the survey instrument and the survey distributors specifically indicated to all potential respondents that answers should refer to the state courts. Those answering the survey had a comparable level of mistrust for local law enforcement, with 62.5% answering only 'a little, or less.

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<sup>124</sup> 80 surveys were returned from the five Tribal Colleges.

<sup>125</sup> The North Dakota Public Trust and Confidence Survey itself followed the National Center for State Courts Survey in constructing at least some of its questions. National Center for State Courts, 1999, available at [www.flcourts.org/gen\\_public/family/diversity/bin/publicop\\_natl.pdf](http://www.flcourts.org/gen_public/family/diversity/bin/publicop_natl.pdf).

<sup>126</sup> The rate for the Public Perception of the Courts Survey was 79.2% for the same. <http://www.ndcourts.com/court/committees/trust/survey.htm>.

As far as people running the following institutions, how much trust do you have in each institution: a great deal, some, little, or no trust?

	A great deal	Some	A Little	None	Don't Know	NA/Ref	No Answer
a. The public schools	25%	37.5%	25%	6.25%	3.75%	2.5%	0
b. The office of Governor	17.5%	31.25%	18.75%	16.25%	12.5%	1.25	2.5%
c. Local law enforcement <sup>127</sup>	11.25%	17.5%	27.5%	35%	3.75%	0	2.5%
d. The media <sup>128</sup>	6.25%	22.5%	37.5%	16.25%	11.25%	1.25%	2.5%
e. North Dakota Supreme Court	18.75%	22.5%	16.25%	15%	23.75%	2.5%	1.25%
f. Medical profession	17.5%	38.75%	23.75%	10%	8.75%	0	1.25%
g. State legislature	8.75%	30%	22.5%	16.25%	18.75%	1.25%	2.5%
h. U.S. Supreme Court	18.75%	27.5%	17.5%	10%	21.25%	2.5%	2.5%
i. The courts in your area <sup>129</sup>	6.25%	15%	27.5%	43.75%	6.25%	0	0

Perception Chart 1

The North Dakota Supreme Court saw 41.25% of survey respondents with at least some trust, as opposed to 31.25% with 'a little' or less, a measure of mistrust less than the office of the Governor, the media, the medical profession, and comparable to trust in public schools.<sup>130</sup> However, almost a quarter of the respondents answered that they did not know how much trust they had in the North Dakota Supreme Court. Respondents also indicated a substantial level of trust for the U.S. Supreme Court, with a similar rate answering 'don't know'.

Perception chart 2 includes percentages from a survey question focusing on court treatment of different groups.

Some people say that the courts treat everyone equally, while others say that district courts favor certain people over others. How do you think the following groups are treated: better, somewhat better, the same, somewhat worse, or far worse?

	Better	Somewhat Better	Same	Somewhat Worse	Far Worse	Don't Know	NA/ Ref	No Answer
a. People like you	5%	11.25%	17.5%	27.5%	18.75%	17.5%	1.25%	1.25%
b. Men <sup>131</sup>	2.5%	15%	25%	26.25%	13.75	12.5%	2.5%	1.25%
c. Women <sup>132</sup>	5%	17.5%	32.5%	16.25%	6.25%	15%	5%	1.25%
d. African-Americans	1.25%	3.75%	16.25%	35%	16.25%	21.25%	5%	1.25%
e. Hispanics	1.25%	5%	11.25%	37.5%	18.75%	21.25%	3.75%	1.25%
f. Native-Americans <sup>133</sup>	2.5%	3.75%	11.25%	26.25%	43.75%	7.5%	1.25%	2.5%
g. Non-English speaking people	1.25%	8.75%	13.75%	20%	27.5%	22.5%	5%	1.25%
h. Middle class people	13.75%	28.75%	26.25%	7.5%	8.75%	10%	2.5%	1.25%
i. Working class people <sup>134</sup>	15%	28.75%	26.25%	8.75%	6.25%	10%	2.5%	1.25%
j. Wealthy people <sup>135</sup>	63.75%	15%	2.5%	1.25%	2.5%	8.75%	2.5%	2.5%

Perception Chart 2

<sup>127</sup> 1 answer indicated both 'A Little' and 'None'; 1 answer indicated 'Same' and 'A Little'.

<sup>128</sup> 1 answer indicated both 'None' and 'Don't Know'; 1 answer indicated 'A Little' and 'None'.

<sup>129</sup> 1 answer indicated both 'A Little' and 'None'.

<sup>130</sup> The rates for the North Dakota Public Trust and Confidence Survey were 74% with 'Some' or 'A Great Deal' of trust for the 'ND Supreme Court' and over 85% for public schools, the governor's office, and the medical profession. Answers indicating more than 'Some' trust consisted of 57.2% of the sample. <http://www.ndcourts.com/court/committees/trust/survey.htm>.

<sup>131</sup> 1 answer indicated both 'Same' and 'Don't Know'.

<sup>132</sup> 1 answer indicated both 'Better' and 'Same'.

<sup>133</sup> 1 answer indicated both 'Same' and 'Somewhat Worse'.

<sup>134</sup> 1 answer indicated both 'Same' and 'Don't Know'.

<sup>135</sup> 1 answer indicated both 'Better' and 'Somewhat Better'.

Most respondents indicated a perception that members of minority groups tend to be treated either ‘Somewhat Worse’ or ‘Far Worse,’ generally. It is useful to keep in mind while reading the chart that nearly all respondents to this survey, 97.5%, identified themselves as members of minority groups. This high minority perception of mistreatment of members of minority groups is expected based on previous studies as well as national and state trends. The rate is generally double that of the same questions asked in the Public Trust and Confidence in the Courts survey, which hovered between 20% and 30%, depending on the racial category.<sup>136</sup> A high proportion of respondents suggested that wealthy people are better treated in courts than those with less wealth. This trend appears to be strong in both surveys, regardless of race.<sup>137</sup>

Perception chart 3 includes three questions, asking individuals to indicate how strongly they agree or disagree with a given statement.

*How strongly do you agree or disagree with the following statement?*

	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	Don't Know	NA	No Answer
a. Most juries are not representative of the community <sup>138</sup>	10%	40%	11.25%	10%	25%	1.25%	1.25%
b. Judges are generally honest and fair in deciding cases	6.25%	33.75%	26.25%	20%	11.25%	1.25%	1.25%
c. I would prefer that a judge ignore the law to ensure that a person who committed a crime is convicted	3.75%	16.25%	16.25%	47.5%	12.5%	2.5%	1.25%

**Perception Chart 3**

50% of respondents agreed that juries are not representative of the community, though a high proportion, 25%, indicated they did not know.<sup>139</sup> Slightly fewer respondents, 40%, indicated that judges are honest and fair with cases. Slightly more, 46.25%, disagreed that judges are generally honest and fair.<sup>140</sup> All of these percentages are significantly lower than those in the previous state survey.

Though not scientific, these responses, combined with widespread testimony regarding a general mistrust of State Courts, suggest that substantial differences exist in minority and majority opinion, and it is necessary to capture representative samples of minority opinions on these subjects for an accurate assessment of North Dakota public opinion.

<sup>136</sup> Answering ‘Worse,’ or ‘Far Worse’: African Americans: 26.2, Hispanics: 27, Native Americans: 31.3, Non-English speaking people: 24.8.

<sup>137</sup> Rates for the North Dakota Public Trust and Confidence Survey were at a comparable 59% answering ‘Better’ or ‘Somewhat Better’ for this question, though 30.2% indicated ‘Somewhat Better’ rather than ‘Better’. <http://www.ndcourts.com/court/committees/trust/survey.htm>.

<sup>138</sup> 1 answer indicated both ‘Strongly Agree’ and ‘Don’t Know’.

<sup>139</sup> The North Dakota Public Trust and Confidence Survey showed 51.1% of respondents disagreeing. <http://www.ndcourts.com/court/committees/trust/survey.htm>.

<sup>140</sup> The North Dakota Public Trust and Confidence Survey showed 82% respondents indicating ‘fair’. <http://www.ndcourts.com/court/committees/trust/survey.htm>.

- **PUBLIC COMMENTS**

Testimony from public hearings and from the survey instrument was similar in content to that found in many previous state reports.<sup>141</sup> Some of most common perceptions, both written and spoken, included:

- A sense of disparate treatment when compared to majority white population; disparate sentencing and verdicts in instances where the only clear difference between cases is race
- Inability to deal fairly within the system because of poverty and unaffordability of counsel and other financial factors
- Non-cooperation or careless handling by some court personnel in cases involving recent immigrants
- Recognition of ‘ingrained bias’ that may not actually be consciously carried out
- Court personnel treating minorities differently by ignoring them or by treating them in an unfriendly manner
- Lack of a diverse court staff to make minority individuals feel adequately represented in the system in which they participate

Some public comments have been cited in this report to support various statistical data and provide specific examples. Since a large portion of the perception data gathered thus far is still being transcribed, the subject of public perceptions will be presented in a far more complete and exhaustive manner in the final report.

## CONCLUSIONS

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The timing for a Commission to Study Racial and Ethnic Bias in the Courts is appropriate given current circumstances in North Dakota, where a strong economic position relative to the rest of the country is attracting many people from various racial and ethnic backgrounds, and where the minority population has been quickly growing relative to the majority population over the last several years. The Commission seeks to find and address racial and ethnic bias in the face of such changes rather than continuing business as usual without knowledge of its extent, and rather than having to face the consequences of such ignorance once damage has already been done.

For Native Americans, who continue to make up the State’s largest minority group, a comprehensive study of racial and ethnic bias in the Courts is long overdue. Despite this fact, the Commission has received a great deal of positive feedback regarding its efforts from Native Americans attending public hearings, from open ended comments on surveys, and from other members of the general public.

As can be gleaned from the foregoing description of each Committee and subject area, the Commission is well underway studying a wide variety of processes simultaneously, and many studies are in progress. The Commission intends to continue its overall study, working to a greater level of detail in every subject area in order to generate a complete and substantial final report with its findings and recommendations for change.

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<sup>141</sup> Final Report of the Penn. Sup. Ct., 2003; Nebraska, Final Report, 2003; Report of the Alaska Sup. Ct, 1997, Appendix B-1; Minn., Final Report, 1993. Apart from Alaska, which included a specific appendix covering testimony, states integrated testimony throughout their reports.