

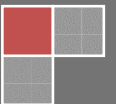
2010

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

Report Summary

This Summary contains an outline of the Interim Report of the Commission to Study Racial and Ethnic Bias in the Courts with page references to the full Interim Report explaining Commission activities.

12/16/2010



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OUTLINE

Introduction1

- Since the 1980's most states have created bodies to study the issue of racial and ethnic bias in state courts.
- The Commission was formed in late 2009 following the Chief Justice's approval of a Resolution on October 10, 2009 and has held bi-monthly meetings since 4 March, 2010.
- The Commission created Committees to address certain tasks: Meetings, Research, Criminal Justice, and Civil Justice.
- Discussion included in this report does not contain conclusions of the Commission, but only indicates the initial direction of ongoing study.

Studying Racial and Ethnic Bias in Courts4

- Many state and national studies have shown that members of the public perceive that racial bias exists in state courts, with greater proportions of minorities tending to perceive bias more strongly.
- Bias tends to be subtle, yet pervasive, and implicit bias may play a large role, but evidence exists that courts can take steps to mitigate the effects of implicit bias.
- The subtle nature of racial and ethnic bias makes it naturally difficult to study. Other states have encountered problems in systematic data collection and difficulty gathering public testimony about experiences with bias.
- The Commission is following previous states by combining statistical analysis with individual testimony regarding experiences in the court system, approaching the problem from multiple angles with the intention of generating an overview despite inherent difficulties.

Committee Activities6

Meetings Committee6

- The Meetings Committee concentrated on planning and executing public listening sessions designed to allow public testimony regarding racial and ethnic bias in the courts.
- Meetings have been held in Fargo, in Bismarck during the 2010 Annual Tribal Leaders Summit, and at all of the Tribal Colleges, including: 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.
- Public attendance has grown as more people have been informed of the Commission's activities and additional methods for sharing testimony, such as one-on-one interviews and means for giving written testimony have been provided.
- Meetings have produced useful experiential data similar to that found in other state reports.
- Future meetings are planned for Spring 2011 at North Dakota State University in Fargo, University of North Dakota in Grand Forks, Minot State and in the Williston/ Trenton Service Area.

Research Committee7

- The Research Committee was created to design original instruments for data collection and analyze data gathered through those instruments and other data collection methods.

- The Committee has designed and implemented a two-part jury survey looking at jury pools and jury panels.
- The Committee has designed and implemented a perceptions survey that supplemented testimony from public meetings.
- An attorney survey and court employee survey, measuring demographics and perceptions, are currently being developed for implementation in 2011.
- Following other state studies, the Research Committee is currently working with the University of North Dakota Bureau of Government Affairs to create and implement a ‘court user survey’ to gather perceptions and other data from defendants that have gone through the system.
- Future activities will include study design for areas of the court system lacking systematic data tracking.

***Criminal Justice Committee*8**

- The Criminal Justice Committee has concentrated on gathering available statistics from the Department of Corrections and the North Dakota Association of Counties.
- Analysis of arrests thus far has utilized Unified Crime Reports data, but the Committee plans to get more detailed state-level data in order to facilitate a greater range of comparisons.
- Members of the Criminal Justice Committee have contributed to development of the ‘court user survey’ in association with the University of North Dakota and the Research Committee and will further aid in sampling and implementing for the project.
- The Committee will work with the Research Committee to design strategies and instruments to gather county-level data within its subject area where such data is absent or incomplete.
- The Committee is awaiting information from a court watch program run by Domestic Violence Advocates from the North Dakota Council on Abused Women, providing observations and experiences relating to racial and ethnic bias in the courtroom.

***Civil Justice Committee*.....10**

- The subject of minority use of the civil courts is particularly difficult to reach in studies because of limited contact between courts and parties.
- The Civil Committee has focused on studying disproportionate minority use of Legal Services of North Dakota, including applications, geographic trends, and related factors.
- Members of the Civil Committee facilitated the inclusion of a race question on the State Bar of North Dakota (SBAND) Survey to ascertain minority representation within the Bar and to allow analysis of job level, area of practice, age, and any other trends in the Bar, by race.
- The Civil Committee will continue to study issues such as disproportionate use of self-representation, unbundling of legal services, differences in civil court outcomes, and poverty issues related to court use.

Commission Study Areas.....11

***Access to Courts*11**

- Analysis in this area concentrates on potential disparities between minority and majority participation in the court system, including differences in ability to participate and understand court proceedings.
- Disproportion could be caused by direct systematic bias or indirectly, through policies that appear facially neutral.
- The two-part North Dakota Jury Survey has been completed, but is still undergoing analysis. The survey has returned 4079 Jury Pool Surveys and 213 Jury Panel Surveys, each from about a dozen North Dakota Counties. (12)

- Preliminary data from jury samples shows under representation of some minority groups at the jury pool stage, though Asians appear proportional and Multi-racial individuals are slightly higher when compared to numbers in the general population.
- The Jury Panel Survey found greater representation of Native Americans (7.2%) on jury panels than the group's proportion in the general population (about 5.5%), but other minority groups appeared under represented. (12)
- Analysis will continue for data from both parts of this survey.
- North Dakota has an interpreter policy in place and provides guidelines and some resources, but experiential evidence suggests that courts do not always follow the policy to ensure interpreter services. Testimony also suggests that some law firms may not be properly equipped to handle limited-English speakers. (14)
- Because of such evidence, the Commission will continue to study the areas of interpreters and juries.

Criminal Justice15

- Vastly disproportionate arrest and incarceration statistics have been perceived as evidence of bias against minorities on the part of law enforcement and courts on both a national and state levels.
- North Dakota is somewhat rare in that its largest minority population consists of Native Americans. National studies regarding Native American populations show certain distinct issues may be present with Native American groups that are not present in other minority groups. (15)
- Preliminary Unified Crime Reports Arrest Data shows that minorities are vastly over represented in arrests compared to their proportion in North Dakota's general population. (16)
- Public testimony has shown a perception of disproportionate police stops and arrest rates for minorities.
- Preliminary corrections data shows a general over representation of incarceration rates for minority groups, with Asians being the only group under represented, and public comments have voiced a similar perception. (19)
- The Committee is currently working with the Department of Corrections to gather more detailed data.
- Statistical data will be complemented with experiential information from the 'court user survey'.
- Preliminary 2008 figures in the area of juvenile justice show considerable disparities by race in the areas of arrests and detention, as well as disparities in commitment for certain minority groups. (20)
- Most activity for minority groups in the juvenile system comes from Burleigh, Cass and Grand Forks counties, and of these Burleigh has completed a study concentrating on Native American Youth. A similar study is in progress for Cass County and will be available for the Commission's final report.

Civil Justice22

- There appears to be a substantial correlation between minority status and poverty in North Dakota.
- The rate of minority use of Legal Services of North Dakota shows a substantially disproportionate use of these services by members of minority groups, and total minority application over an extended period of time also appears disproportionate. (22)
- The majority of applications come from five counties where Legal Services of North Dakota offices are physically located. (23)
- The Civil Justice Committee has studied unbundling of legal services as it relates to its impact on minorities using the judicial system and will continue to study the issue. (24)
- The Committee has received a number of comments and written statements regarding minority use of self-representation, but the area requires further study and will be described in the final report.

<i>Court Personnel</i>	24
<ul style="list-style-type: none"> • The Commission studied Court Personnel data as a whole - no committee was created to cover it. • Employee data was provided by the Court Administrator’s office. (25) • Data shows every employment category at least 98% white. • Testimony has pointed to the need for diversity in courtrooms, especially with regards to court employees. • Further study in this area will concentrate on hiring, retention, and promotion within the court system and will also incorporate perceptual data from the Court Employees survey. 	
<i>Legal Profession</i>	26
<ul style="list-style-type: none"> • Perception questions regarding lawyers were included on previous surveys and a forthcoming attorney survey will also attempt to gather more detailed perceptions from the Bar. • Addition of a race question on the SBAND Survey was intended to provide data to analyze trends within the rest of the survey by race, but there were so few minority responses that data cannot be generalized. (27) • At least a few minorities are active in every professional category indicated on the survey. • General public perception, including the perceptions of some within the legal community who shared testimony, combined with the low survey response rate, might indicate a very low number of minority attorneys practicing in North Dakota. • The law school appears to graduate minorities in numbers somewhat proportional to minority numbers in the general population. (28) • If initial perceptions and information are accurate, minority law students appear to choose not to join the North Dakota Bar. • The Commission will include a more thorough examination of this area in its final report, including analysis of Bar exam participation and Bar passage rates for North Dakota by race. 	
<i>Public Perception</i>	29
<ul style="list-style-type: none"> • Previous surveys on perceptions of the court system appear to have under represented minorities. • The Commission’s perceptions survey, though not scientific, appears at least to indicate that minority opinion differs substantially from previous survey results. (31) • Public testimony indicates negative minority opinions are more widespread than in the general population. (34) 	
<i>Conclusions</i>	34
<ul style="list-style-type: none"> • Minority population in North Dakota is growing quickly and substantially. • There has been considerable positive feedback from members of minority groups for the Commission’s efforts. • The Commission intends to continue studying multiple levels of the court system, working to a greater level of detail in all areas, in order to complete a final report containing its findings and recommendations. 	