



**NORTH DAKOTA
COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS**

FINAL REPORT
and RECOMMENDATIONS

JUNE 2012

MISSION STATEMENT

“To provide the people, through an independent judiciary, equal access to fair and timely resolution of disputes under law.”



TABLE OF CONTENTS

<i>iv</i>	COMMISSION MEMBERS	
<i>v</i>	ACKNOWLEDGEMENTS	
<i>vii</i>	REPORT TERMINOLOGY	
<i>ix</i>	EXECUTIVE SUMMARY	
<i>X</i>	GENERAL RECOMMENDATIONS	
<i>1</i>	INTRODUCTION	
<i>15</i>	CHAPTER 1	Access to Justice <i>Juries</i> <i>Interpreters</i>
<i>61</i>	CHAPTER 2	Criminal & Juvenile Justice <i>Arrests</i> <i>Corrections</i> <i>Juvenile Justice</i>
<i>111</i>	CHAPTER 3	Civil Justice <i>Legal Services of North Dakota</i> <i>Unbundling</i> <i>Self-Representation</i>
<i>125</i>	CHAPTER 4	Court Personnel & Legal Profession <i>Attorneys</i> <i>Court Employees</i>
<i>159</i>	CHAPTER 5	Conclusions <i>Findings</i> <i>Recommendations</i>
<i>173</i>	APPENDICES	<i>APPENDIX A-D</i>

COMMISSION MEMBERS

Hon. Donovan Foughty, Co-Chair
Presiding Judge, Northeast Judicial District

Justice Carol Ronning Kapsner, Co-Chair
Justice, North Dakota Supreme Court

Hon. Sonna Anderson
Judge, South Central Judicial District

Ulysses Jones
Attorney, Jones Law Office

Griselt Coral Andrade
Legal Associate, Integreon Managed Solutions

Dr. Erich Longie
President, Spirit Lake Consulting, Inc.

Leann Bertsch
*Director, North Dakota Department
of Corrections and Rehabilitation*

Justice Mary Muehlen Maring
Justice, North Dakota Supreme Court

El Marie Conklin
*Tribal Judge, Sisseton, Spirit Lake
and Turtle Mountain*

Hon. William McLees
Presiding Judge, Northwest Judicial District

Hon. Wickham Corwin
Judge, East Central Judicial District

Sinisa Milovanovic
*Director of New American Services,
Lutheran Social Services of North Dakota*

Scott Davis
*Executive Director, North Dakota
Indian Affairs Commission*

Troy Morley
Attorney, Reichert Armstrong Law Office

Tom Disselhorst
Legal Counsel, United Tribes

Michael Nason
*Administrative Captain, Ward County
Sheriff's Department*

Jim Fitzsimmons
*Executive Director, Legal Services
of North Dakota*

William A. Neumann
*Executive Director, State Bar Association
of North Dakota*

Robin Huseby
*Director, Commission on Legal
Counsel for Indigents*

Rodney Olson
Trial Court Administrator, Unit 2

James Grijalva
*Friedman Professor of Law
Director, Tribal Environmental Law Project*

Keith Richotte
*Assistant Professor of Law, UND School of Law
Associate Justice, Turtle Mountain Band of Chippewa
Court of Appeals*

Lisa Jahner
*Juvenile Justice Program Manager,
North Dakota Association of Counties*

Hon. Michael T. Swallow
*Associate Chief Judge, Standing Rock Court
Chief Justice, Oglala Sioux Nation Supreme Court
Associate Judge, Sisseton Wahpeton
Appellate Justice, Turtle Mountain*

Thomas L. Trenbeath
Chief Deputy North Dakota Attorney General

Andrew Frank, Commission Staff
Samantha Miller, Advisor/Editorial Assistant

ACKNOWLEDGEMENTS

The North Dakota Commission to Study Racial and Ethnic Bias in the Courts is grateful to all persons who contributed to completion of its study. The Commission extends special thanks the North Dakota Supreme Court and Sally Holewa, State Court Administrator, for their support of the study. The Commission also extends special thanks to Elizabeth Neeley Ph.D., and the Nebraska Minority and Justice Task Force for information and guidance in creating and running a bias task force, as well as the National Consortium on Racial and Ethnic Fairness in the Courts for making its resources available.

A number of institutions provided venues for the Commission to hold public meetings: the Fargo Public Library; Cankdeska Cikana Community College; Turtle Mountain Community College; Fort Berthold Community College; United Tribes Technical College; Sitting Bull College; Minot State University; North Dakota State University; Williston State College; and the University of North Dakota School of Law. The 2010 Annual Tribal Leaders Summit also provided a venue for testimony during its schedule of events at the Bismarck Civic Center.

Many individuals provided services that helped facilitate public meetings, including Feryal Ali, Hal Sillers, Yusuf Abdi, Tri Phan, Kawa Hawari, and Amar Hussein, who attended meetings in Fargo as interpreters. CATS Court Reporting Service, Inc. and Emineth & Associates provided reporting for the meetings. Court reporters included Nancy M. Utke, Carolyn Taylor Pekas, Linda L. Gingery, Britta Kling, and Lori L. Hauge. North Dakota Indian Affairs Commission Research Analyst Chadwick Kramer assisted at several public meetings and provided aid to the Commission Staff.

The University of North Dakota Bureau of Governmental Affairs cooperated in the development and analysis related to the Commission's Court User Survey. The North Dakota Department of Corrections and Rehabilitation, especially Charles Placek, Amy Vorachek, and Joshua Scotto worked with the Commission to collect and analyze corrections data. Charles Placek and Robyn Schmalenberger were instrumental in the implementation of the Court User Survey.

The State Bar Association of North Dakota allowed the inclusion of a question allowing the collection of race data on its annual survey. Prairie Rose Seminole and the Change That Works organization in Fargo aided in distributing Commission Perception Surveys. Amy Klein, the Director of Human Resources for North Dakota Courts, provided court employee data.

Karen Olson and the North Dakota State Data Center provided data regarding state populations and voting.

The North Dakota Council on Abused Women's Services allowed Commission access to its courtroom observation study for demographic analysis. Legal Services of North Dakota provided data on minority legal services use, and Linda Catalano provided information on materials used to introduce New Americans to courts.

The Commission gratefully acknowledges the efforts of staff Andrew Frank, without whom none of the Commission study would have been accomplished, and Samantha Miller for her skillful editorial assistance.

Finally, the Commission thanks Focus Group Participants and all those who took time to respond to Commission surveys.

REPORT TERMINOLOGY

Racial and Ethnic Bias

Racial and ethnic bias is discriminatory behavior toward individuals on the basis of racial or ethnic characteristics. Discriminatory behavior may be conscious or unconscious. Racial and ethnic bias exists when: 1) people of certain ethnic groups or races are treated differently solely because of their race or ethnicity when no reasonable distinction can be found between those favored and those not favored; 2) people are conferred or denied rights or are burdened or benefited with responsibilities solely on the basis of their ethnicity or race; or 3) stereotypes about the proper behavior of members of certain ethnic groups or races are applied to people regardless of their individual situations.

Race

Race classifications used throughout this report are based on the United States Census, including: African American, White, Native Hawaiian or Pacific Islander, American Indian/Alaskan Native, Hispanic/Latino(a), Asian, and Other. The purpose of defining race is to facilitate comparison and analysis to the greatest degree possible. The Commission chose to include “Hispanic” within race categories to avoid overlapping data. Many sources the Commission relied on used different methods of describing race and ethnicity. These differences are noted where applicable.

Minority

A minority is an individual of a race or ethnicity that comprises less than 50 percent of the total population. For purposes of this study, persons identifying themselves as non-White were considered minorities.

Over-representation

Over-representation occurs when the proportion of persons in a specific group is larger in comparison with the proportion of the same group found in the general population.

Under-representation

Under-representation occurs when the proportion of persons in a specific group is smaller in comparison with the proportion of the same group found in the general population.

Parole

Parole refers to the release of a prisoner from imprisonment before that prisoner's full sentence has been served.

Probation

Probation refers to a court-imposed criminal sentence that, on certain stated conditions, releases a convicted person into the community instead of incarcerating that person to jail or prison.

Judicial Districts

North Dakota counties are grouped into seven judicial districts: Northwest Judicial District (NWJD); Northeast Judicial District (NEJD); Northeast Central Judicial District (NECJD); East Central Judicial District (ECJD); Southeast Judicial District (SEJD); South Central Judicial District (SCJD); and Southwest Judicial District (SWJD). These organizational districts each contain a number of counties located in the general geographic area indicated.

EXECUTIVE SUMMARY

The North Dakota Commission to Study Racial and Ethnic Bias in the Courts (the Commission) examined multiple levels of the justice system to determine whether racial or ethnic bias exists and its extent, if found. The examination relied on testimony from the general public, court employees, attorneys, and other individuals associated with the courts. It also included statistics on actual minority involvement at various points in the system. The Commission relied on this data to identify concerns and develop appropriate recommendations to address them.

Results indicate a perception, especially among minorities, that bias exists in the North Dakota court system. Shared perceptions often mirrored findings from other state and national studies. The Commission emphasizes that, because of limited study duration and data, its work must be considered as a starting point to address racial and ethnic issues rather than a complete analysis. The Commission concludes that:

- Evidence from the Commission surveys suggests a need for further study of jury composition and minority representation in jury pools. The Commission Jury Study provides a workable model.
- An expanding need exists for interpreter services across North Dakota with the greatest need in the eastern part of the state, which has already developed a number of resources for interpreting.
- In the criminal system, minorities are over-represented in the areas of arrests and incarceration.
- Minorities are disproportionately represented at some points in the juvenile system, with under-representation in diversion programs and over-representation in secured detention.
- Minorities are not proportionally represented in North Dakota's legal profession or as state court employees.
- Minorities are disproportionately represented at or near the poverty level and constitute a large proportion of those depending on Legal Services of North Dakota to meet their legal needs. Minorities are represented among Legal Services clients in greater proportions than their representation in the general population.

GENERAL RECOMMENDATIONS

1. The Commission study and other relevant materials from the study should be placed online and made accessible to the public.
2. The Supreme Court should establish an implementation committee or another appropriate group to ensure implementation of Commission recommendations.
3. The courts should publicize existing methods of reporting perceived bias, such as the Informal Complaint Panel, internal complaints, and methods for providing feedback on judges.
4. The Commission on Judicial Branch Education should provide diversity and cultural training, including training on the history of minority groups in North Dakota, for all judges and court employees, both at the time of their hiring and at regular periods. Comparable training should also be made available for law enforcement and correctional officers.
5. The implementation committee should partner with State Bar Association of North Dakota, the University of North Dakota School of Law, law enforcement, tribal, state, and county governments, and community groups to develop community outreach initiatives to broaden access to and improve public understanding of legal issues and the legal system, especially for Native Americans and other minorities in the state.
6. The implementation committee should develop court- and bar-sponsored programs to make courts more accessible to citizens from all cultures and should concentrate on using technology to improve public understanding and participation in the court system.
7. The Implementation Committee should study ways to advance the protection and recognition of human rights, including the establishment of an independent human rights commission in North Dakota.
8. During the implementation of recommendations in this report, demographic changes in North Dakota should be monitored to ensure effective efforts to eliminate racial and ethnic bias in all areas of the state.

INTRODUCTION

Studying Racial and Ethnic Bias in Courts

Though discussion of racial and ethnic bias may generate discomfort or controversy, courts seeking to ensure fair treatment must investigate possible bias rather than assuming it does not exist. In addition to the potential for direct bias from court officials, processes, or policies, indirect factors may affect minority participation in the system. Indirect factors would include disparities rooted in shared group characteristics such as poverty, lack of English-speaking skills, and residence on reservations.¹ Seemingly neutral court policies and procedures that fail to consider such factors could contribute to disparities in minority participation in the court system. Courts have an obligation to ensure that neither indirect factors nor explicit bias affect fundamental fairness and lead to disparate treatment based on race or ethnicity.

Many states have taken steps to investigate bias and have created task forces specifically for that purpose.² These task forces have investigated whether state court systems create, continue, or contribute to bias and whether minorities are adequately represented among court employees, attorneys, judges, defendants, witnesses, jurors, or in other legal system roles. In 1988, the first national meeting of several state racial and ethnic bias task forces led to the development of the National Consortium on Racial and Ethnic Fairness in the Courts, an organization created to help guide future state studies.³ Long-range areas of interest for this organization included public perception of race and bias in courts, education and cultural awareness training for court personnel, and representation of minorities throughout state justice systems.⁴ Since its creation, membership in the Consortium has expanded as more states have begun efforts to study and propose remedies for existing racial and ethnic bias.⁵

State task forces recognized common difficulties facing new bias studies, including the development of appropriate study methods to overcome unsystematic race data collection.⁶ Many task forces attempted to address difficulties by initiating original studies and data collection projects.⁷ The most common study strategy approached bias from two ends. The first end examined statistical disparities in areas appropriate for quantitative analysis, such as arrests, jury composition, and incarceration. The second end attempted to

collect and record public perceptions of racial and ethnic bias in courts through public input meetings, written comments, interviews, and focus groups.⁸

While a combination of these two sets of data provides better evidence than either alone, this approach still faces significant limitations. Perceptions gathered through public meetings and similar methods may not accurately capture public experience, especially if the public participates on a limited basis. Likewise, statistics based on incomplete or unrepresentative samples can lead to unreliable conclusions. Determining actual causes of disparities can be difficult even with reliable data. Causes of disparity from outside of courts may correlate with race to create an appearance of bias on the part of the court system.⁹ In addition, conflicting data from statistics and experiences may lead to inconclusiveness, though it may highlight areas requiring further study.

Recognizing these limitations, the North Dakota Commission to Study Racial and Ethnic Bias in the Courts followed the two-pronged approach, relying on statistical data collection and original surveys, as well as public meetings, interviews, and focus groups for data collection. The Commission hoped that, taken together, each end of this complementary approach would lead to firmer conclusions about existing racial and ethnic bias than either taken alone. However, the Commission's study represents only a starting point for further investigation of the complex issues surrounding the role of racial and ethnic bias in the courts. Designed as an initial study effort, the Commission was limited by funding, staffing, and duration, especially considering the broad scope of the subject and the lack of collected state data in many relevant areas.

Like a number of other states, the Commission encountered public reluctance to share experiences relating to racial and ethnic bias. Though members foresaw the possibility of limited public participation, the Commission nevertheless held public meetings and offered opportunities for written and individual comments. Public participation provided useful information and guidance.

Most of the Commission's early work outlined the scope of its research, determining the relative importance of study areas and the likelihood of gaining useful data. Each study area required the collection and examination of as much data as possible to ensure reliable conclusions. The Commission determined that certain study areas would provide better data than others, but included certain subjects likely to provide limited data, such as

minority use of civil courts, in an attempt to generate a more complete picture of the system.

Overt and Implicit Bias

Research has identified two kinds of bias: overt and implicit. Overt bias is noticeable and attributable, and these characteristics usually dissuade individual expression.¹⁰ When individuals do express overt bias, it can usually be identified and corrected.¹¹ More subtle forms of bias are more difficult to isolate and remedy.¹² Most racial and ethnic bias occurs in a pervasive yet subtle manner, referred to as implicit bias.¹³ Implicit bias has been described as a preference for one race or group over another that develops from cultural stereotypes generally learned in youth and continued into adulthood, in which the biased inclination often remains unexamined and unaddressed.¹⁴ Having absorbed certain cultural stereotypes, individuals lack conscious awareness of their bias and do not have a conscious intention to engage in biased behavior.¹⁵ Data shows that implicit bias has an “automatic character” that bears on individual behavior, and can produce effects in the legal process.¹⁶

A primary source of evidence for implicit bias is the Implicit Associations Test (IAT), an examination measuring positive and negative associations with pictures of white and non-white faces.¹⁷ In addition to individuals who have taken the test as part of formal studies, millions of subjects have also taken it online, creating a massive sample set from which researchers have derived a number of broad findings.¹⁸ Results show widespread racial bias favorable to Whites throughout all races, though the African American population shows more complicated patterns of responses than other races.¹⁹ Researchers understand these patterns as reflecting the influence of implicit bias based on broader cultural stereotypes.²⁰ Supplemental studies have provided evidence that bias revealed in the association test may predict bias in actual behavior.²¹ Other studies have indicated that judges are not immune to the effects of implicit bias.²²

A substantial body of social cognition research provides evidence that implicit attitudes and stereotypes about race not only occur automatically, but in a “variety of cognitive domains,” meaning that biased stereotypes influence many mental processes.²³ For instance, implicit bias appears to have a substantial effect on memory.²⁴ Data has demonstrated that forgotten information and distorted recollections do not occur

randomly, but can show the influence of implicit bias.²⁵ Memory-bias studies, in which participants answered a series of questions based on stories with racial variables, produced results showing that consistent errors aligned with racial stereotypes.²⁶ Stories used in the study presented a complex series of events culminating in a fight.²⁷ Subjects tended to more easily remember violence on the part of characters identified as minorities.²⁸ Judges who participated also exhibited memory bias.²⁹

Evidence also suggests that individuals who know they have proclivity toward certain biased judgments can consciously address and mitigate its effects.³⁰ Studies examining judges found that knowledge of personal bias combined with careful and deliberate consideration reduced biased outcomes.³¹ However, these studies did not examine judges in actual courtroom settings, where decisions often demand quick responses that prevent the kind of slow, reflective consideration necessary to compensate for biased tendencies.³² Some evidence suggests that altering environmental factors can lower implicit bias.³³ Increasing diversity in the workplace provides employees with experiences that run contrary to prevalent stereotypes, allowing a greater range of non-stereotypical mental references.³⁴

In the interest of providing justice for all, state task forces have repeatedly suggested that courts must find and address bias, both overt and implicit. The Commission considered both subjects and incorporated them into the present study, taking advantage of the large volume of existing literature on the subject for guidance.

Commission, Committees and Activities

The Commission held its first meeting in December 2009.³⁵ Its members included academics, attorneys, administrators, judges, and leaders from across the state, including minority communities. Supreme Court Justice Carol Ronning Kapsner and District Judge Donovan Foughty served as Co-Chairs. The Commission held regular meetings through June 2012. After several months of preparation, discussion, and development, members began designing and implementing studies. Work proceeded through four committees created at the March 4, 2010, meeting.³⁶ These committees allowed division of the study into manageable segments. Members also reviewed previous state reports to find study methods, discernible trends between states, and model recommendations.

MEETINGS COMMITTEE

The Commission created a Meetings Committee to gather testimony from individuals who may have experienced or observed racial and ethnic bias in the courts. The Meetings Committee ran a series of public meetings to provide opportunities for the public to share experiences.³⁷ Members designed the meetings to gather input directly from minority communities, but they were open to all willing to attend, including court employees, attorneys, and social services workers who might have contact with the courts. Because state and national studies show that members of minority groups are more likely to perceive that a racial bias exists in state courts,³⁸ the Commission focused its efforts on providing opportunities for minorities to share perceptions. Previous North Dakota surveys captured general perceptions from White populations but did not receive proportional rates of response from minorities throughout the state.³⁹ The public meetings were held as follows:

Fargo Public Library, Fargo, N.D.	June 22 and 23, 2010
2010 Annual Tribal Leaders Summit, Civic Center, Bismarck, N.D.	September, 10, 2010
Cankdeska Cikana Community College, Fort Totten, N.D.	September 27, 2010
Turtle Mountain Community College, Turtle Mountain, N.D.....	September 28, 2010
Fort Berthold Community College, Fort Berthold, N.D.	October 8, 2010
United Tribes Technical College, Bismarck, N.D.	October 25, 2010
Sitting Bull College, Fort Yates, N.D.....	October 28, 2010
Minot State University, Minot, N.D.....	February 22, 2011
North Dakota State University, Fargo, N.D.....	February 24, 2011
Williston State College, Williston, N.D.....	March 1, 2011
University of North Dakota, Grand Forks, N.D.....	April 6 and 13, 2011

Despite notice provided through press releases, mass emails, posters, and institutional contacts in each meeting location, and despite feedback confirming that notice reached intended populations, the meetings faced a general public reluctance to attend. After the Fargo meetings in June 2010, the Commission expanded its efforts to gather written testimony. Members created and distributed written perception surveys at meeting locations. These surveys invited comments from those unwilling to share oral testimony at the meetings. Public testimony suggested that a general mistrust of government contributed to lack of participation.⁴⁰ Testimony also pointed to the skepticism of minority groups, especially Native Americans, about the seriousness of the court effort to investigate

bias issues.⁴¹ On the other hand, a number of comments expressed gratitude for the Commission's efforts, viewing its work as a welcome first step to address larger problems.⁴²

Subsequent efforts to gather public perceptions included the development of focus groups of attorneys in Bismarck and Fargo, as well as New American community leaders in Fargo. These focus groups gathered comments from people with long-term experience with the court system. This also allowed participants to share perceptions of trends over time in addition to isolated incidents. Commission members presented questions designed to cover certain subjects that did not arise in previous testimony, such as the use of peremptory strikes in jury selection and interpreter use by attorneys outside of courts.

Written, focus group, and testimony data ultimately provided useful information that was largely similar to expectations derived from analyzing previous state and national reports. Some information helped members direct study efforts and determine how much scrutiny to place on certain court processes. Most of the comments were useful, but some covered issues related to federal or tribal courts. Members took these instances to be instructive, because they showed uncertainties attributable to the complexity of relationships between different government bodies, especially for Native Americans on Indian reservations. In addition, the public meetings and focus groups also served to inform the public about the Commission's activities and the subject matter under study. Comments from meetings and other efforts appear throughout this report.

RESEARCH COMMITTEE

The Research Committee provided guidance for data collection and analysis. Guidance included cooperation with the Criminal and Juvenile Justice and Civil Justice Committees for analysis. It also included study areas that the Commission analyzed as a whole, including juries, interpreters, attorneys, and court employees. In order to overcome data limitations, the Research Committee developed original instruments for data collection and facilitated analysis of the results. The Committee implemented survey projects studying potential bias in jury master lists and on jury panels, minority perceptions of the court system,⁴³ as well as attorneys, court employees, and court users.

The Commission Perceptions Survey supplemented testimony from public meetings. The survey presented questions on trust in public institutions and general perceptions of courts. It included demographic questions on race and ethnicity and several open-ended

questions to allow the collection of general comments. Some of the questions regarding trust in the court system duplicated those asked in a previous survey of public trust carried out in 1999.⁴⁴ The 1999 survey, conducted by phone calls to a randomly-selected sample of the state population, attempted to record general perceptions of the court system, but did not capture a large proportion of minority opinions. The Commission's Perceptions Survey allowed minorities to contribute opinions to a greater level of detail. Resource and time limitations prevented systematic distribution of the survey, but the results did provide qualitative data. Collected comments provided data suggesting considerable minority mistrust in the system, a result consistent with national trends.⁴⁵

The Research Committee created surveys to collect demographic and perception information from attorneys and court employees. This effort followed previous state task forces, which relied on attorney and court employee perceptions to take advantage of long-term observations unlikely to be captured from individuals without comparable experience.⁴⁶ The Commission Attorney Survey included both demographic and perception questions while the Employee Survey included a series of perception questions.⁴⁷ In addition to gathering demographic data through the Attorney Survey, the Committee included a demographic question on the State Bar Association of North Dakota Annual Survey. Members hoped that the two surveys would generate an accurate picture of the demographic composition of the state bar.

The Committee developed a Court User Survey administered at the North Dakota State Penitentiary to reach inmates who went through the entire criminal process and could comment on potential bias throughout the process. The Research Committee and the Criminal and Juvenile Justice Committee developed the Court User Survey in cooperation with the University of North Dakota Bureau of Governmental Affairs (UNDBGGA), implementing the survey during May and June of 2011.⁴⁸ UNDBGGA reviewed survey drafts and provided analysis of the results.

The Research Committee developed a two-part survey of the jury selection process and distributed it from August 20, 2010 to November 30, 2010. The survey provided self-identified racial data, both at the qualification stage and at trials' end, in order to generate a racial and ethnic snapshot of individuals selected randomly from the jury master lists and of jurors who actually served on a panel. Both parts of the survey provided demographic data, but the latter also contained a series of perception questions. Demographic data was

intended to provide some insight into the racial and ethnic composition of both jury source lists and jury panels. Data indicating representative initial lists but unrepresentative jury panels could point to bias in the intermediate selection process.

CRIMINAL AND JUVENILE JUSTICE COMMITTEE

The Criminal and Juvenile Justice Committee cooperated with the Research Committee to organize research and data collection in relevant subject areas. Analysis benefited from the existence of many regularly collected data sources. Areas of concentration for the Committee included: arrests, bonds, and incarceration, as well as disproportionate representation and program use in adult and juvenile corrections.

The Committee collected arrest statistics from state-level data reported to the Unified Crime Reports project.⁴⁹ This data allowed some demographic comparisons between entry into the courts and subsequent steps in the system. The Committee investigated the possibility of gathering county level data on arrests and pretrial detention in jails and discovered that inconsistent data collection throughout the state prevented such analysis.

The North Dakota Department of Corrections (NDDOCR) provided access to accumulated corrections data. The Research and Criminal Committees compiled a series of research questions that provided guidance on subjects relevant to the Commission's study. NDDOCR organized and presented results from the years 2007 to 2009, using existing data tracking tools to obtain information on the proportions of minority groups. The two Committees created a similar series of questions to help guide study of the juvenile process. Examination of the juvenile justice system benefited from the existence of relevant data sets, including relative rates by race, which are regularly compiled under the federal Juvenile Justice and Delinquency Prevention Act.⁵⁰

CIVIL JUSTICE COMMITTEE

The Commission created the Civil Justice Committee to study issues including minority use of civil courts and Legal Services of North Dakota, as well as issues such as unbundling of legal services, poverty, and self-representation.

The Committee faced difficulties tracking actual minority use of the civil system. Attorneys are often the only points of contact between civil clients and the courts. This

characteristic made a study of minority use of civil courts impractical. Multiple filing methods available to attorneys also hinder collection of demographic data.

Past North Dakota surveys have indicated that the general public perceives a link between ability to pay and ability to use and receive justice in the legal system.⁵¹ Census data indicates that members of minority groups make up a disproportionate percentage of those falling within 100 percent or 125 percent of the poverty level.⁵² Because of this information, the Committee examined data from Legal Services of North Dakota to confirm that minorities make up a disproportionate number of those relying on legal services programs. Study of legal services included data collection on numbers of applications, effects of geographic location, and levels of access for members of minority groups, especially Native Americans on reservations.⁵³

The Committee received little information regarding self-representation in North Dakota and whether minorities constitute a significant proportion of individuals who choose to self-represent in court. Members reviewed relevant research and current North Dakota efforts to facilitate self-representation, such as online forms and aids available in the offices of the clerks of court.

The Civil Committee discussed the issue of unbundling legal services – the ability of court users to purchase limited attorney services rather than having to retain an attorney for an entire case – as a means of facilitating minority access to justice, because minorities are disproportionately represented in poverty and less able to afford full representation.

State Demographics

The Commission relied on population data from the Census⁵⁴ and other population estimates from the North Dakota State Data Center,⁵⁵ as well as data from the North Dakota Kids Count project⁵⁶ to provide a basis for analyzing disparities in all areas of study. Accurate population data provided the baseline for examining minority group representation in various stages of the court process with each group's actual proportion of North Dakota's general population.⁵⁷ This broad comparison supplemented the analysis of relative rates, which compares a particular group within a sub-population (such as individuals arrested) to other groups within the same sub-population to determine over- or under-representation.⁵⁸ Both of these measures allowed some quantitative picture of racial and ethnic disparity within various areas of the system.

The minority population of North Dakota in 2010 was approximately 10 percent of the state total of 672,591,⁵⁹ and following a historical trend of growth relative to the majority White population.⁶⁰ Particular characteristics of the state population created some complications in carrying out this study. Patterns of minority population concentration created a need for long-term data collection to generate numbers sufficient to support statistical conclusions for original studies, a task beyond the capacity of the Commission's short-term effort.

Notes

- ¹ Poverty might affect use of civil courts and attorney affordability, while jury participation may be affected by differing patterns in source lists used to select jurors.
- ² A list of states participating in the National Consortium on Racial and Ethnic Fairness in the Courts, an organization focusing specifically on studying and addressing bias in courts, is available at http://www.ncsconline.org/D_Research/ref/.
- ³ <http://www.consortiumonline.net/history.html>; see also FINAL REPORT OF THE CALIFORNIA JUDICIAL COUNCIL ADVISORY COMMITTEE ON RACIAL AND ETHNIC BIAS IN THE COURTS 22 (1997) [hereinafter CALIFORNIA FINAL REPORT] (describing general background of the Consortium with reference to activities of the California courts).
- ⁴ CALIFORNIA FINAL REPORT, *supra* note 3, at 23-26; see generally National Consortium on Racial and Ethnic Fairness in the Courts, <http://www.consortiumonline.net/> (last visited Feb. 21. 2012).
- ⁵ A list of existing state reports and summaries are available at http://www.ncsconline.org/Projects_Initiatives/REFI/SearchState.asp.
- ⁶ FINAL REPORT OF THE PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM 169 (2003) [hereinafter PENN. REPORT]; NEBRASKA MINORITY AND JUSTICE TASK FORCE, FINAL REPORT, 35 (2003) [hereinafter NEB. TASK FORCE REPORT]; MINNESOTA SUPREME COURT TASK FORCE ON RACIAL BIAS IN THE JUDICIAL SYSTEM, FINAL REPORT 10 (1993) [hereinafter MINN. REPORT].
- ⁷ NEB. TASK FORCE REPORT., *supra* note 6 at 139-45; PENN. REPORT, *supra* note 6 at 12-13; THE REPORT OF THE OHIO COMMISSION ON RACIAL FAIRNESS 14-16, 31 (1999); FINAL REPORT OF THE TENNESSEE SUPREME COURT COMMISSION ON RACIAL AND ETHNIC FAIRNESS 31-35 (1997); REPORT OF THE OREGON SUPREME COURT TASK FORCE ON RACIAL/ETHNIC ISSUES IN THE JUDICIAL SYSTEM 5-7 (1994).
- ⁸ NEB. TASK FORCE REPORT, *supra* note 6 at 1-10; PENN. REPORT, *supra* note 6 at 12-13; REPORT OF THE ALASKA SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS 11 (1997) [hereinafter ALASKA REPORT]; MINN. REPORT, *supra* note 6, at Appendix A.
- ⁹ This is an especially important consideration for a state like North Dakota, which, though it has a substantial and growing minority population, still deals 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*, 25 POPULATION BULLETIN (2009).
- ¹⁰ Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV., 945, 961, 965-67 (2006).
- ¹¹ *Id.*
- ¹² *Id.* (suggesting that implicit attitudinal biases influence non-deliberate or spontaneous discriminatory behaviors).
- ¹³ PENN. REPORT, *supra* note 6 at 14; MINN. REPORT, *supra* note 6, at S-2-3, 1, 3; Greenwald & Krieger, *supra* note 10 at 965-67 (2006).
- ¹⁴ Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L. J. 346, 363 (2007) (citing Anthony Page, *Batson's Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U.L. REV. 155, 193-98 (2005); Timothy D. Wilson et al., *A Model of Dual Attitudes*, 107 PSYCHOL. REV. 101, 103-104 (2000).
- ¹⁵ Levinson, *supra* note 14, at 354-55.
- ¹⁶ Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, Harvard Law School John M. Olin Center for Law, ECONOMICS AND BUSINESS DISCUSSION PAPER SERIES 7 (2006), available at http://lsr.nelco.org/harvard_olin/552.
- ¹⁷ Anthony G. Greenwald, Debbie E. McGhee, & Jordan L. K. Schwartz, *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. OF PERSONALITY & SOC. PSYCH. 1464, 1464-1466

(1998). The IAT process flashes a display of diverse faces and positive or negative words on the computer screen, requiring the test-subject to identify the word as positive or negative, with the assumption that different lengths in response times demonstrate each subject's relative difficulty separating the positive and negative meanings of the words with personal positive or negative associations of faces. The computer program measures response time and number of errors relative to race, usually finding shorter response times and fewer errors for positive/White and negative/non-White associations, and significantly longer times for the opposite association. Researchers understand this difference to show difficulty processing non-stereotypical associations. See Jeffrey J. Rachlinski, Sheri Lynn Johnson, Andrew J. Wistrich, & Chris Guthrie, *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1198-99 (2009); Andrew Karpinski & James L. Hilton, *Attitudes and the Implicit Association Test*, 81 J. OF PERSONALITY & SOC. PSYCHOL. 774, 775-76 (2001) (describing test process in both racial and non-racial contexts).

¹⁸ See Project Implicit, General Information, <http://www.projectimplicit.net/generalinfo.php> (last visited Feb. 20, 2012) (indicating 4.5 million tests since 1998); Rachlinski, et. al., *supra* note 17, at 1200-01.

¹⁹ African Americans appear divided in perceptions, with half showing a preference for African Americans and the other half showing a preference for Whites. Jolls & Sunstein, *supra* note 16, at 5; Rachlinski, et. al., *supra* note 17 at 1199-1200.

²⁰ Rachlinski, et. al., *supra* note 17, at 1200-1202 see also Levinson, *supra* note 14 at 362-363.

²¹ This evidence involves correlating IAT results with third party observations of behavior. Jolls & Sunstein, *supra* note 16 at 5, 6. Evidence also exists suggesting that implicit bias may diverge from an individual's explicit attitudes. Levinson, *supra* note 14, at 360-61.

²² See generally Rachlinski et. al., *supra* note 17, at 1195. The IAT has been made available to North Dakota district judges and supreme court justices to assist them in understanding their own implicit biases. North Dakota Courts also made this test available online.

²³ See Levinson, *supra* note 14, at 360.

²⁴ See *id.* at 398-404 (finding memory effects resulting from an implicit bias experiment).

²⁵ *Id.* at 375.

²⁶ See generally *id.*

²⁷ *Id.* at 391-95.

²⁸ *Id.* at 398-404.

²⁹ *Id.* at 353, 380.

³⁰ Rachlinski et. al., *supra* note 17, at 1223-26.

³¹ These studies found that judges tended to take more time to complete the IAT than the general population in answering each question, possibly indicating a natural inclination toward remedial thinking processes, though the samples still showed bias similar to the general public. Rachlinski, et. al., *supra* note 17 at 1195.

³² Studies often involved use of the IAT or similar assessments, but at least one relied on stories varying only with respect to the race of certain characters. Levinson, *supra* note 14, at 391-404; Greenwald & Krieger, *supra* note 10, at 952-55.

³³ Jolls & Sunstein, *supra* note 16, at 18-20.

³⁴ *Id.*

³⁵ NORTH DAKOTA STATE COURTS, 2009 ANNUAL REPORT 5 (2009), available at www.ndcourts.gov/court/News/ndcourtsar2009.pdf.

³⁶ North Dakota Commission to Study Racial & Ethnic Bias in the Courts, Minutes (March 4, 2010), available at http://www.ndcourts.gov/court/committees/bias_commission/MinutesMarch2010.htm.

³⁷ This public meeting model followed efforts of several other states. NEB. TASK FORCE REPORT, *supra* note 6, at xxi; PENN. REPORT, *supra* note 6, at 12-13; COLORADO SUPREME COURT MULTICULTURAL COMMISSION FINAL REPORT TO THE CHIEF JUSTICE 14-15 (1998).

³⁸ 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/publicop_natl.pdf (showing substantial perceptual differences of state court treatment of minorities that varied according to respondents' own minority status); PENN. REPORT, *supra* note 6 at 306; ALASKA REPORT, *supra* note 8 at 49; MINN. REPORT, *supra* note 6 at S-27 (1993); *but see* John H. Hinderaker & 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 its conclusions about racial bias into question).

³⁹ NORTH DAKOTA COMMITTEE ON PUBLIC TRUST AND CONFIDENCE IN THE COURTS, NORTH DAKOTA PUBLIC TRUST AND CONFIDENCE IN THE COURTS SURVEY RESULTS (1999) [hereinafter N.D. COMMITTEE ON PUBLIC TRUST & CONFIDENCE], *available at* <http://www.ndcourts.gov/court/committees/Trust/committee.asp>.

⁴⁰ Public Testimony, Fargo Transcript, p. 51 (June 22, 2010) [hereinafter Fargo Tr. I] (mentioning that poor communication from courts leads to mistrust); Public Testimony, North Dakota State University Alumni Center Transcript, pp. 29, 32 (Feb. 24, 2011).

⁴¹ Public Testimony, United Tribes Technical College Transcript, pp. 74, 78 (Oct. 25, 2010) [hereinafter UTTC Tr.].

⁴² Public Testimony, Sitting Bull College Transcript, pp. 114-15, 128, 134 (Oct. 28, 2010) [hereinafter Sitting Bull College Tr.].

⁴³ This survey was designed to supplement the public meetings.

⁴⁴ N.D. COMMITTEE ON PUBLIC TRUST & CONFIDENCE, *supra* note 39.

⁴⁵ According to broad national findings, minorities are more likely to perceive bias in court systems than Whites, leading to mistrust. NATIONAL CENTER FOR STATE COURTS, *supra* note 38, at 13, 29-30, 37-39. One intention of the Commission's survey was to understand 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 suffered from a low minority response rate. Clerks, staff, and several independent groups distributed these surveys to individuals not in attendance at the public meetings.

⁴⁶ 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 states to various groups).

⁴⁷ The Commission gained accurate data on state court employees directly through the Office of the Supreme Court Administrator, but no accurate data existed regarding the demographics of the State Bar Association of North Dakota.

⁴⁸ University of North Dakota Business & Public Administration, Bureau of Governmental Affairs, <http://business.und.edu/bga/> (last visited Feb. 10, 2012).

⁴⁹ COLLEEN WELTZ, CRIME IN NORTH DAKOTA 2009: A SUMMARY OF UNIFORM CRIME REPORT DATA (2010).

⁵⁰ Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 (amended 1988).

⁵¹ N.D. COMMITTEE ON PUBLIC TRUST & CONFIDENCE, *supra* note 39.

⁵² As discussed, minorities in North Dakota do appear to be disproportionately represented among those in poverty. See U.S. Census Bureau, Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months, 2007-2009 American Community Survey 3-Year estimates: North Dakota (2009).

⁵³ Part of the focus on legal services owed to the fact that larger proportions of minority groups in the state fall within or near the poverty level. *Id.*

⁵⁴ U.S. Census Bureau, American FactFinder, <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Feb. 10, 2012).

⁵⁵ North Dakota State Data Center, <http://www.ndsu.edu/sdc/> (last visited Feb. 10, 2012).

⁵⁶ North Dakota Kids Count, <http://www.ndkidscount.org/> (last visited Feb. 10, 2012).

⁵⁷ 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.

⁵⁸ 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.

⁵⁹ Data was collected using tools allowing search, analysis, and organization of Census data. U.S. Census Bureau American Fact Finder, Profile of General Population and Housing Characteristics: 2010, North Dakota, *available at* <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁶⁰ N.D. State Data Center, Population by Race and Hispanic Origin in North Dakota, Census 2000 and July 1, 2008 Estimate (2009) (recognizing non-White population growth relative to the White majority).

*chapter***1**

Access to Justice

Juries

Interpreters

Access to justice refers to ensuring just outcomes for all individuals coming into contact with courts, including the elimination of barriers preventing people from understanding and exercising their rights and preventing access to court services for those facing financial or other disadvantages.¹ As its definition implies, access to justice encompasses many distinct subject areas. The Commission chose to concentrate substantial effort on an analysis of juries and interpreters. A number of other access to justice issues, such as self-representation and unbundled legal services, were subjects of study for the Civil Justice Committee. Jury service can occur in both criminal and civil cases, but has arisen as a concern more often in criminal cases.

JURIES IN THE NORTH DAKOTA COURT SYSTEM

The Sixth Amendment of the Constitution guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.” State and federal courts have continued to define the term “impartial jury.” The definition has expanded to cover issues of exclusion from jury participation based on race or gender.² Many state racial and ethnic bias task forces have studied race-based exclusion from jury service because discrimination both weakens the goal of an impartial jury and undermines public trust in the courts.³ Failure to create representative juries injures the parties involved in each case by excluding individuals who may have alternate points of view.⁴ It also injures members of the general public by denying equal opportunity for jury service.⁵

Discrimination can occur at many stages of the selection process, including the initial jury lists, the standards applied for qualification and excusal, peremptory strikes, and through social factors beyond court control.⁶ Exclusion may result from: conscious bias from court officials against a particular group; indirect bias in policies that leads to a disparate racial impact; or unconscious bias from court decision makers.⁷ Consideration of these potential negative influences is a necessary initial step to ensure adequate jury representation.⁸ Efforts directed toward achieving fairness in jury selection also help secure a positive reputation for the judiciary and improve its legitimacy in the eyes of the public.⁹

North Dakota state policy requires random selection of jurors “from a fair cross section of the population of the area served by the court, [so] that all qualified citizens have

the opportunity ... to be considered for jury service.”¹⁰ State law also prohibits discrimination in jury selection because of race, color, religion, sex, national origin, physical disability, or economic status.¹¹ However, the existence of such requirements may not prevent disparities in the actual selection process. Courts must monitor the jury selection process to ensure both randomness and adequate reflection of state demographics.

With its expanding populations of Native Americans, New Americans, and other minority groups, North Dakota faces challenges in ensuring and maintaining representative juries.¹² Minority under-representation on North Dakota juries is a continuing concern for state courts.¹³ The Commission found that state courts generally do not gather data related to racial representation on juries, though many courts provide some kind of survey following trial. Because of this, the Commission implemented an exploratory jury survey to attempt to provide a rough picture of minority representation in both jury master lists and panels, and to collect perceptions and demographic information from jurors after service.

The Jury Selection Process: Traditionally and in North Dakota

Jury selection processes traditionally have three steps: first, a clerk of court summons a group of citizens from a master list compiled specifically for jury selection, and those individuals appear and become the “jury pool.” The second step takes place when court officials randomly select a number of members from the jury pool,¹⁴ the “venire,” who proceed to a courtroom to complete the process of selecting a jury panel for a particular case.¹⁵ Most counties in North Dakota combine these two steps and require all those summoned from master lists to appear.¹⁶ In the third step, called “voir dire,” opposing attorneys question potential jurors. Courts may dismiss potential jurors when attorneys show sufficient cause,¹⁷ but court rules give attorneys the right to move for a dismissal of a certain number of potential jurors without having to provide a reason to the court.¹⁸ Potential jurors who complete voir dire without dismissal constitute the jury panel that will sit for trial.

The traditional steps provide a general context for discussing standards applying to bias in jury selection. Courts established the standard of “fair cross section,” to address representation within jury master lists in an attempt to address potential bias in initial jury pools and master lists.¹⁹ Because the “fair cross section” standard deals with the composition of jury master lists, the same considerations apply in the condensed North

Dakota process as in more traditional processes. Additional safeguards exist to prevent the biased race-based removal of jurors during later steps, including a legal mechanism called a “Batson Challenge,” which provides attorneys a means of challenging juror dismissals they believe are based solely on race.²⁰

North Dakota jury selection procedures are governed by North Dakota Supreme Court Administrative Rule 9 and the Standards Relating to Juror Use and Management.²¹ The courts developed these standards in accordance with state law requiring random jury selection.²² North Dakota selects jurors using a random process from a source list compiled from one or more regularly maintained lists of persons residing in the court's jurisdiction.²³ Rules found in the Standards Relating to Juror Use and Management provide more specific guidelines for random selection procedures, defining “randomness” as “any method of random selection that guarantees an equal probability of selection.”²⁴ Random selection is required for summoning and assigning jury panels and calling prospective jurors for cases, except in instances of juror ineligibility, excusal or deferment, peremptory challenges,²⁵ or to “provide all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel.”²⁶ State law also provides a method for challenging compliance with jury selection procedures.²⁷

The Commission concentrated on examining potential disparities in jury lists and jury panels while assuming that the court system’s reliance on computerized mathematical selection for many of the intermediate steps, such as assignment of jurors to individual cases, fulfills the requirements of random selection. The Commission assumed that disparities most likely enter into the selection process because of human intervention, such as discriminatory dismissal of jurors during the voir dire process, or through non-representative composition of the master list, the source from which the computerized process makes its random selections.

Jury Source Lists and Composition Challenges

The North Dakota jury master list must be as representative and inclusive of the adult population in each county as feasible.²⁸ The main source used to generate the lists consists of all actual voters in the last general election. The North Dakota Supreme Court may supplement this source with names from other regularly maintained lists of citizens, such as lists of utility customers, property taxpayers, motor vehicle registrations, and lists of licensed drivers.²⁹ Lists of licensed drivers and individuals holding state identification cards have traditionally supplemented the voter list.³⁰

The requirement of a “fair cross section” mandates that master lists must be representative of all qualified citizens living within the county to ensure an opportunity for service.³¹ Legal challenges alleging an unfair cross-section are referred to as “composition challenges.”³² North Dakota courts apply the three-part test established by the Supreme Court in Duren v. Missouri for composition challenges.³³ Under the Duren test, the defendant must first show that the allegedly excluded group is distinctive in the relevant community (cognizable); second, that its representation is not fair or reasonable in relation to its numbers in the community; and third, that misrepresentation is a result of systematic exclusion of the group in the jury selection process.³⁴ Courts have found no constitutional right to a fair cross section for a particular case and have instead focused on whether deliberate or systematic exclusion exists in the process.³⁵ This emphasis recognizes that instances may occur in which a randomly selected jury for a particular case is unrepresentative based only on probability.

North Dakota cases presenting racial composition challenges have generally failed to show unfairness in relation to numbers in the community.³⁶ Challenges have also failed to demonstrate a systematic exclusion of minority groups or a need to expand the master list.³⁷ The North Dakota Supreme Court has found no evidence showing that supplemental sources would produce a fairer cross section of the community,³⁸ and that composition challenges provided only assertions of unfairness.³⁹

However, gathering sufficient data to determine systematic exclusion requires analysis of jury selection from master lists over an extended period. The limited number of jury trials held in North Dakota suggests a required study period of months or years, depending on the county examined.⁴⁰ The fact that North Dakota’s substantially

homogenous populations could exclude minority groups through probability alone also supports a need for long-term data collection.⁴¹

Issues Surrounding Expansion of the Jury Lists

In State v. Fredericks, the North Dakota Supreme Court recognized the difficulties in providing evidence for composition challenges.⁴² The Court referred the question of supplementing the existing master list to the Jury Standards Committee with instructions to examine composition of the master list to find potential disparities between it and any distinct racial, ethnic, and gender groups within the populations served.⁴³ The Standards Committee considered several options to expand the master list, but noted that available studies suggested that expansion could unintentionally create bias by importing disproportionate numbers.⁴⁴ Court Administrators indicated that expansion could increase costs because, at the time, removing duplicates was a labor-intensive process.⁴⁵ Discussions cited a lack of data about the existence of under-representation as well as difficulties collecting tribal enrollment or tribal voter lists for supplemental purposes.⁴⁶ The Jury Standards Committee indicated a need for further study.⁴⁷

The Commission considered supplementing the master list with tribal enrollment, housing, or voter lists.⁴⁸ Members noted that certain issues surrounding expansion, such as prohibitive costs and the labor-intensive nature of finding duplicates, had diminished with the growth of computerized processes. Discussions suggested inclusion of tribal voter lists could increase Native American representation if disparities appeared in the existing master list.

North Dakota election data, the primary source for the master list, indicates that Native American voting rates for general state elections show considerable similarity to those of Whites, depending on the year examined.⁴⁹ Voter Tables 1 and 2 show the breakdown of percentage of voters in the general November elections by year. Data was compiled from the Census Current Population Survey.⁵⁰ This survey collects data on reported voting by various demographic and socioeconomic characteristics for states in each Congressional and Presidential election year.⁵¹ Both Voter Tables contain data covering the entire state, and do not convey variations that may occur at the county level.

Eligible North Dakotans Voting in November Elections

	2004	2006	2008	2010
Native American	54.2%	54.1%	70.7%	63.4%
White	72.4%	55.2%	67.2%	56.0%

Voter Table 1

This broad data does not immediately suggest that Native American voting patterns in the November elections lead to

disparities in juror lists created from voter data.

The same broad, statewide measures show smaller proportions of voters for both African Americans and Asians when compared to Whites.⁵² No data was available for Hispanics/Latino(a)s in this data set, who would have had to identify as White, African American, Asian, or Native American.

At least some of the yearly variation in these percentages could be attributed to the small statewide populations of Asians and African Americans. Small changes in population could lead to large changes in percentages. Again, county level variations could lead to disparity in jury lists for some areas.

Eligible North Dakotans Voting in November Elections

	2004	2006	2008	2010
Asian	<i>Not Available</i>	21.5%	42.9%	40.7%
African American	54.1%	29.5%	55.5%	14.6%
White	72.4%	55.2%	67.2%	56.0%

Voter Table 2

Research has recognized that supplementing voter registration lists with lists of licensed drivers may help alleviate under-representation,⁵³ but may still contain biases against minority groups based on differing rates of licensed drivers.⁵⁴ Combined voter and vehicle registration lists often lead to panels that continue to over-represent older, middle and upper income, well-educated, and non-minority individuals.⁵⁵ Some states have attempted to overcome this problem by expanding jury lists to include state income tax filers and public welfare recipients, but little data exists on the effects of such expansions.⁵⁶ Unfortunately, the Commission was unable to discern whether minority under-representation exists in North Dakota supplemental licensed drivers and state identification card lists. The North Dakota Department of Transportation does not record race information and could not provide any such data for analysis.

Some states have considered or implemented supplemental jury list sources such as: state census data; utility and telephone customers; lists of newly naturalized citizens;

property owners; motor vehicle owners; state taxpayers; and welfare and unemployment recipients, depending on the uniqueness of names added and the cost of combining multiple lists, among other factors.⁵⁷ Courts considering multiple lists for jury selection weighed issues regarding the availability of additional lists, the efficiency in combining and updating them, inherent bias within the lists, duplication between multiple sources, and resolving the combined lists into proper jurisdictions.⁵⁸ The Commission received a number of comments advocating the expansion of source lists to improve jury representation.

Some debate exists regarding whether states should expand jury sources at all.⁵⁹ Those skeptical of source list expansion contend that state bias studies often assume minority under-representation without conclusive supporting evidence and then recommend expansion of source lists.⁶⁰ Critics of jury list expansion have also pointed to problems and costs associated with the generation, detection, and deletion of duplicates as reasons to forego expansion.⁶¹ These critics suggest that merging multiple source lists could lead to the double entry of certain individuals, which could actually increase racial disparity.⁶² North Dakota court administrators acknowledged such problems during Commission discussions, including the possibility of duplicates appearing in lists constructed and maintained with computer software.⁶³

However, arguments against expanding jury source lists appear limited in substantive data collection and analysis.⁶⁴ The few states that have completed reliable studies on jury lists have found under-representation of at least some minority groups.⁶⁵ In addition, source lists based on consistently entered information linked to a name, such as a birth date or a Social Security Number, can minimize duplicates.⁶⁶ Given the conflicting scholarship, limited resources, and difficulties in producing studies, some state bias task forces have recommended expansion of jury source lists without extensive demographic studies, justifying recommendations based on inclusiveness arguments.⁶⁷ Recent literature has proposed a theoretical framework for this kind of approach, providing other legal justifications.⁶⁸

Jury Master List Survey

Rather than following an inclusiveness justification, the Commission attempted an exploratory survey to provide some picture of minority representation in the jury master lists and investigate the possible need for expansion. The Research Committee concentrated on gathering data from individuals at both ends of the jury selection process, from individuals selected directly from the master list and those who completed service on jury panels. Members followed Nebraska's much more long-term jury study but also attempted to gather demographic and perception data from the panels.⁶⁹

The first part of the Jury Survey, investigating representation in the master lists, presented a single demographic question asking the participants to identify their race according to Census categories.⁷⁰ The courts distributed this survey throughout the state court system from August 23 to November 30, 2010. Clerks sent the instrument to potential jurors along with the standard Juror Questionnaires. Because most counties have a consistent juror questionnaire non-response rate of less than 10 percent, a relatively low level, the Commission hoped for a high number of returns.⁷¹

The Jury Master List Survey returned 4079 responses. Viewed broadly, the sample appeared to show under-representation of minorities, especially Native Americans and African Americans, but this conclusion could not be supported once data was analyzed in more detail. In the end, the total number of responses was insufficient for reliable calculations. In addition, responses came from only 12 of the 53 counties during that time period, preventing an assessment of jury master list composition on a statewide level. Of the responding counties, all but Burleigh returned insufficient samples to justify some statistical analysis. A majority of responding counties returned such small numbers that a change of just one or two minority residents would have significantly skewed the percentages. Follow-up by courts to non-response to summonses was not uniform throughout the state, and differences in level of follow-up may have affected return rates.⁷²

Results suggest that the court should undertake another, longer term study using a similar method. The short duration of the Commission's study period coupled with the small populations in the state prevented sufficient samples for statistical analysis, though the method used is workable. Burleigh County, the only location that returned an adequate sample to allow some statistical estimates, returned 1839 completed responses, 4.8 percent

from minorities, and appeared to show some minority under-representation relative to the county population.⁷³ This estimate, however, combines distinct minority groups, provides no information on under-representation of particular races or ethnicities within the sample, and does not consider any effects from disproportionate non-returns. Research indicates that minorities are more likely to have greater non-response rates for jury service.⁷⁴ If this characteristic holds true for North Dakota, it would affect the collected data. Commission discussions and information provided by State Court Administrators suggest that long-term or even permanent implementation of the single demographic question to gather more reliable data in this area does not present a substantial practical problem. North Dakota's computerized system used for random jury selection can accommodate such a question and analyze statistical data.⁷⁵

Comments and perceptions gathered through focus groups and other sources indicated that jury trials are infrequent in North Dakota. They suggested that Native Americans are adequately represented on juries in some counties, but that representation varies substantially throughout the state.⁷⁶ One attorney commented that he had never seen an African American juror on a North Dakota jury, despite many years of experience in state courts.⁷⁷

Review and Refreshing Jury Lists

North Dakota Jury Standards direct the State Court Administrator's Office to regularly collect information on the performance of the system and analyze factors including representation, inclusiveness, and responsiveness of individuals to summonses.⁷⁸ Standards also require periodic review to determine if current source lists, selection methods, and other procedures generate representative juries.⁷⁹ The Supreme Court reviews the source list biennially to ensure adequate representation and inclusiveness and appropriate remedial action must follow if the court determines improvement is needed.⁸⁰

The North Dakota master list collects identification from voters in previous elections and driver's license holders. Both of these sources change over time, therefore, court personnel must periodically update the master list. This process is known as "refreshing" the list. North Dakota refreshes its master jury list every two years.⁸¹ The refreshing process combines lists of voters from the Office of the Secretary of State and driver's license lists from the Department of Transportation, breaking each list down by county and

removing detected duplicates.⁸² A high number of bad addresses appear in the latter half of each two-year period, which lead to higher costs because additional summonses must be mailed. According to national studies, racial minorities are statistically more likely to change addresses than Whites, and a greater proportion fail to receive jury summonses mailed to outdated addresses.⁸³ If minorities within North Dakota share in the national trend, changing addresses more often than Whites within a given time span, undeliverable summonses could cause a disparate effect, reducing minority representation from the master lists. Some state task forces considered relying on the National Change of Address System to help address undeliverable summonses, but found this method unable to account for those who do not notify the post office of change of address or who move out of the relevant jurisdiction.⁸⁴

The Commission recognized that if this trend holds true for North Dakota, one might expect a broad correlation between counties with the highest minority populations and those with the highest level of undeliverable summonses.

North Dakota counties appearing in Undeliverable Tables 1 and 2 showed rates of

Over 10% in 3 years from 2008-2010

	2008	2009	2010
Cass	21.42%	15.79%	14.47%
<i>Total Undeliverable:</i>	1758	1697	1681
Grand Forks	26.68%	20.87%	16.38%
<i>Total Undeliverable:</i>	1305	1296	799
Ward	18.19%	12.48%	10.53%
<i>Total Undeliverable:</i>	523	308	266

Undeliverable Table 1

appear on these tables either returned data under the 10 percent level during the period examined or were over 10 percent for only a single year. With the exception of Benson County, the counties shown have populations of minorities that are either near or under the total state proportion.⁸⁵ Current data does not allow a determination of the proportion of undeliverable summonses from minorities in each of these counties, but seems to

undeliverable summonses over 10 percent measured across a three-year period.

Undeliverable Table 1 includes counties with greater than 10 percent non-returns in all three years, while Undeliverable Table 2 includes those returning over 10 percent for two of the three years. Counties that do not

Over 10% in 2 years from 2008-2010

	2008	2009	2010
Benson	18.6%	<10%	11.33%
<i>Total Undeliverable:</i>	72	10	34
Richland	11.97%	11.57%	<10%
<i>Total Undeliverable:</i>	45	4	30
Stark	13.27%	10.13%	<10%
<i>Total Undeliverable:</i>	212	129	239
Walsh	13.22%	13.85%	<10%
<i>Total Undeliverable:</i>	159	68	120

Undeliverable Table 2

provide some evidence showing that counties with the largest concentrations of minority populations in the state are not the same as those with the highest percentages of undeliverable summonses.⁸⁶

Further studies on undeliverable summonses could concentrate on counties appearing in these charts as a starting point for examination.⁸⁷ Three of the counties in Undeliverable Table 1 – those over 10 percent undeliverable for all three measured years – contain universities that might contribute to relatively high proportions of undeliverable summonses because of mobility within the student populations. Commission discussions revealed that more frequent refreshing of source lists could help address any undetected racial disparities in patterns of undeliverable summonses. Previous state task forces recommended frequent refreshing of source lists as an easy remedy to a wide variety of problems, and some sources propose methods to allow refreshing as often as every six months.⁸⁸

Qualification and Potential Bias

Policies governing juror qualification must allow the broadest possible range of participants with exceptions that do not produce disproportionate effects for minority groups.⁸⁹ North Dakota standards appear to meet this criterion. North Dakota jurors must be at least 18 years old, United States citizens, state and county residents, and they must be able to read, speak and understand English reasonably well.⁹⁰ Minors holding driver's licenses are not qualified jurors.⁹¹ Jurors must also be physically and mentally able to serve, with reasonable accommodation, and must not have lost the right to vote because of current imprisonment for a felony.⁹² Statutes require the State Court Administrator to approve a juror qualification form,⁹³ eliciting the name, address, and age of the prospective jurors.⁹⁴

Excuses from jury service can affect the system by introducing racial bias in instances where they apply disproportionately to certain groups because of demographic and social trends present outside the courtroom.⁹⁵ General research suggests that courts are more likely to excuse minority jurors from jury service because of financial hardship, transportation difficulties, or child care responsibilities than other jurors.⁹⁶ In North Dakota, the court, usually on request, decides whether to excuse a juror based on the qualification form or on an interview.⁹⁷ Reasons for successful excuses or deferrals include

undue hardship, extreme inconvenience, or public necessity, and, if granted, the excused or deferred person must reappear for jury service as directed by the court.⁹⁸ Rates for granting excuses in North Dakota counties appear low, most around 10 percent with some counties producing occasional instances of rates around 30 percent, depending on the year and number of jurors, but revealing no evident patterns.⁹⁹ Though overall proportions appear low, the lack of detailed racial and ethnic data makes it unclear whether variations in excuses create or contribute to racial disproportion on North Dakota juries.

Non-Response

If non-response to jury summons occurs disproportionately in minority populations, the jury selection process ceases to be truly random. North Dakota rules require the juror questionnaire to be written in clear English and to notify recipients of the consequences of failure to respond to the summons.¹⁰⁰ Non-response requires the clerk to direct the failing individual to personally appear and fill out the form.¹⁰¹

However, research has suggested that “even when they are contacted, minority residents are less likely to complete a jury questionnaire or to respond to a jury summons.”¹⁰² The Commission recognized this characteristic as a potential complicating factor facing the courts, especially if Native Americans follow broader patterns of minority non-response. North Dakota state courts have no mechanism to deal with instances of non-response on Indian reservations.

Analyzing the actual levels of non-response proved difficult because courts cannot collect racial information at this stage in the process. The Commission instead analyzed rates of non-response by county to find whether counties with higher percentages of minorities or with Indian reservations produce higher rates of non-response. The Commission examined data from 2008 to 2010. Non-Response Tables 1 and 2 show the percentage of non-response in all counties that had rates over 10 percent for all examined years and for those that had non-response rates over 10 percent for two of the three years examined. The tables also show the total number of potential jurors summoned for each year.

Over 10% in 3 years from 2008 to 2010

	2008	2009	2010	% Minority in County
Benson	15.50%	42%	19.67%	55.8%
<i>Total Summoned:</i>	387	200	300	
Mountrail	15.48%	29.72%	14.5%	37.3%
<i>Total Summoned:</i>	252	599	600	
Rolette	32.82%	35.71%	16%	79.7%
<i>Total Summoned:</i>	195	70	100	
Ward	10.23%	13.09%	12.55%	7.6%
<i>Total Summoned:</i>	2875	2452	2525	

Non-Response Table 1

As the Non-Response Tables show, percentages may vary considerably. Counties showing a non-response rate over 10 percent for only a single year also showed substantial annual variation.¹⁰³ Of

the four counties in Non-Response Table 1, three have substantial minority populations, with only Ward County at a level somewhat comparable to the state average.¹⁰⁴ All counties appearing in Non-Response Table 1 except Ward include part or all of an Indian reservation.¹⁰⁵

Non-Response

Table 2 shows counties which had non-response rates over 10 percent in two of the three examined years. Sioux County appeared either to have not summoned jurors or

Over 10% in 2 years from 2008 to 2010

	2008	2009	2010	% Minority in County
McKenzie	< 10%	11.17%	34.38%	23.3%
<i>Total Summoned:</i>	172	179	96	
Renville	41.77%	18.75%	<10%	2.1%
<i>Total Summoned:</i>	79	32	50	
Sioux	29.69%	***	36%	87.4%
<i>Total Summoned:</i>	64	***	50	
Williams	14.61%	<10%	21.82%	7.9%
<i>Total Summoned:</i>	1150	356	1343	

Non-Response Table 2

faced some kind of data error that prevented returning statistics in 2009, and thus displays no data for that year.

Rates of non-response depend on multiple factors, including the number of jurors called.¹⁰⁶ Small numbers returned for some counties in certain years contributed to percentage variations found in Non-Response Tables 1 and 2, and the reliability of characterizations by non-response increases with higher total summonses. However, at least some counties generated high non-response rates and high total numbers over the measured period. With the exception of Ward and Renville Counties, these counties tend to overlap with Indian reservations or have high minority populations.¹⁰⁷ These characteristics could suggest complications in reaching Native Americans living on Indian

reservations. This apparent correlation provides no insight into causes. Possible explanations for high non-responses could include inadequate means of communication and contact between the courts and tribes, disregard or mistrust of state court processes, perceived or actual inconvenience for those called to jury service from Indian reservations, an understanding that residence on Indian reservations exempt individuals from state jury service, or some combination of these factors.¹⁰⁸ This data provides a geographic point of focus for further analysis and for specific attempts to address the issue of non-response.

The Commission considered whether differences in treatment of non-response among courts could contribute to disparities if minorities are less likely to respond.¹⁰⁹ If courts fail to consistently follow-up on non-response, some individuals can effectively opt out of jury duty without consequences.¹¹⁰ North Dakota also lacks systematic statewide follow-up on non-response to jury summonses, a necessary step to implement appropriate safeguards or penalties to reduce non-response.¹¹¹

Focus group comments suggested that non-response often includes instances of minority jurors opting out of jury service because of perceptions of unfairness throughout the entire system.¹¹² According to one focus group attorney, minority perceptions are often that “White courts are designed for White society,” and that minority defendants have no chance in the system, and the best choice is to avoid any involvement at all.¹¹³ Another attorney likened the perception to being tried by courts in a foreign country.¹¹⁴ These perceptions, if accurate, could act as a disincentive for responding to jury summons at all, which would skew representation. Uniform follow-up and application of appropriate penalties may not provide a complete solution, but could improve representative participation.¹¹⁵

Other Factors with Non-Response

Research has noted that officials can take steps to build trust in courts and emphasize the importance of jury service even if enforcing penalties for non-response is not possible.¹¹⁶ A number of states have implemented programs providing education and emphasizing the importance of jury duty.¹¹⁷ Programs are directed specifically to state minority populations.¹¹⁸ These efforts highlight the need for representative juries in an attempt to address non-response.¹¹⁹

States have also attempted to address non-response by other means.¹²⁰ Many recognized that higher compensation may alleviate the perception that jury service is an inconvenience.¹²¹ North Dakota law acknowledges that jurors “must not be burdened by financial hardship” and requires a “reasonable fee” paid to jurors for each day of jury service.¹²² Jury Standards explicitly note that potential financial hardship “falls most heavily on the lower to middle income wage earners[, who] are seldom compensated by their employer in terms of paid leave days and have less flexible income.”¹²³ State law also provides security by prohibiting employers from penalizing workers because of jury service.¹²⁴

Potential jurors can find information on reimbursement from the Juror Guide located on the Supreme Court Website.¹²⁵ North Dakota pays \$25 for the first half day appearance, \$50 for a full day of service, and \$50 for each day thereafter.¹²⁶ Pay provided in other states ranges from \$10 to \$50 per day.¹²⁷ North Dakota also pays mileage.¹²⁸ State census data indicates that minorities make up a disproportionate percentage of the state population falling within 100 percent or 125 percent of the poverty level,¹²⁹ which raises the question of whether existing compensation provides adequate incentive to participate for that proportion of minorities.¹³⁰ Of North Dakota residents living at less than 100 percent of the poverty level, 38.2 percent are Native American, 33.2 percent are African American, while 10.2 percent are White.¹³¹ At less than 125 percent of the poverty level, the proportions for Native Americans and African Americans further increase.¹³² The vast majority of North Dakota trials last only a single day, but the Commission noted that more extended periods of service could contribute to economic and other specific difficulties faced by those at or near poverty levels, exacerbating any disparate effects and contributing to the lack of motivation for jury service.¹³³

The Commission’s Jury Panel Survey, discussed in detail later in this chapter, collected juror perceptions on juror compensation, taking off of work, and employer pay during service. Because of the nature of the sample, which was small and covered few counties, the Jury Panel Survey results cannot be used to generalize characteristics of jurors serving on panels, but does provide information on the perceptions of the particular sample examined. Half of all respondents agreed with the statement that jurors should receive more pay, and about a third disagreed, with roughly 18 percent selecting the “Do Not Know” option. A slightly smaller proportion of minority respondents, 41.1 percent, either

strongly agreed or agreed with the statement and 11.8 percent selected “Do Not Know.” About half of responding minorities and one-third of Whites indicated disagreement for this question.¹³⁴ Three-fourths of respondents in the sample had taken off work in order to serve, with almost two-thirds of that number receiving pay from their employers.¹³⁵ When examined by race, responses indicated that 84 percent of the responding minorities said they took off work to serve, but almost three-fourths received pay during their service compared to only two-thirds of White respondents. The higher minority proportions evident in the sample appear at least partially attributable to the fact that the responses contained no minorities indicating “Full-Time Student,” “Homemaker,” or “Unemployed.” The only minorities who answered that they did not take off work to serve identified themselves as retired.

Removal and Batson Challenges

North Dakota rules set forth the procedure for selecting a jury from those who responded to summons.¹³⁶ If the court determines any potential juror is unable or unwilling to fairly and impartially consider the case, it may remove that person from the panel.¹³⁷ A party may make a challenge for cause in addition to any excusals made by the court.¹³⁸ The rules also govern the exercise of peremptory challenges in civil and criminal cases.¹³⁹ A peremptory challenge does not require a party to give a reason for removing a potential juror, and the judge cannot prevent a party from exercising these challenges without a determination that removal unconstitutionally discriminates based on group characteristics such as a juror’s race, ethnicity, or gender.¹⁴⁰

Courts have recognized peremptory challenges as necessarily “arbitrary and capricious,”¹⁴¹ giving attorneys a high degree of flexibility intended to secure an unbiased and sufficiently qualified jury.¹⁴² However, courts have also recognized that peremptory challenges permit “those to discriminate who are of a mind to discriminate,”¹⁴³ and have found certain restrictions preventing discrimination in the Equal Protection Clause of the Fourteenth Amendment.¹⁴⁴ Batson v. Kentucky provides standards for challenging discrimination in this area.¹⁴⁵ To dispute an allegedly discriminatory peremptory challenge, the disputing party must first show that the excluded juror is a “member of a cognizable racial group” and that the other party made the challenge for discriminatory reasons.¹⁴⁶ The opposing party must articulate a non-discriminatory reason for the peremptory

challenge. If the opposing party provides a justification, the judge determines its validity and rules on whether to allow the challenge after considering all relevant circumstances.¹⁴⁷

Batson challenges in North Dakota case law have generally alleged gender discrimination,¹⁴⁸ with few instances of race-based challenges.¹⁴⁹ Gender-based Batson challenges have hinged on factors and demographic characteristics unique to gender,¹⁵⁰ and constitute an area of examination distinct from challenges based on racial discrimination. In contrast, State v. Stridiron, a North Dakota Supreme Court case considering a race-based Batson challenge, involved the prosecution's removal of a single African American, the only minority potential juror.¹⁵¹

Peremptory challenges are vulnerable to bad intentions, flawed judgment, and implicit bias.¹⁵² The Commission faced difficulty in creating a specific, systematic method of study to capture relevant data in this area. Comments from the Jury Panel Survey, perception surveys, hearings, and focus groups provided perceptions of juries, but little information specifically addressing challenges. A considerable proportion of testimony and nearly all responses to the jury panel survey questions indicated perceptions of adequate non-discriminatory reasons for striking minority potential jurors.¹⁵³ However, some testimony from experienced attorneys indicated that removal of minority jurors occurs often or even regularly, at least in certain areas of the state.¹⁵⁴ One attorney working in eastern North Dakota wrote in reference to a recent case:

During jury selection the states attorney used peremptory challenges to remove an African American and an Hispanic juror. There was absolutely nothing about their responses during voir dire which would have justified the challenge. [...] I try perhaps 20 jury trials per year and see this happening all the time.¹⁵⁵

Another attorney, working in western North Dakota, shared an example of a discriminatory challenge of the kind that he said contributes to the lack of Native Americans on juries.¹⁵⁶ Prosecutors removed a Native American man without asking him any questions. When the attorney challenged the removal, prosecutors responded that they struck the individual because of his youth, which the judge accepted, despite the fact that attorneys received no actual age information and had not questioned the individual at all. The attorney said that at least some of the motivation for this kind of removal comes from a focus on winning cases rather than any overt racial bias, and that prosecutors perceive

Native Americans as less likely to hold pro-prosecution views. The attorney concluded that, regardless of motives, this kind of action leads to fewer Native Americans sitting on juries.

Other attorneys practicing in eastern North Dakota stated bluntly that race does constitute a factor in jury selection.¹⁵⁷ Some indicated that racial considerations would always be present to an extent within the process in instances when attorneys believe that removing persons of a certain race might work to their own client's favor.¹⁵⁸

North Dakota's low minority populations may make any existing patterns of discrimination more difficult to detect. Some attorneys participating in the Bismarck focus group said that they did not feel they could comment on discriminatory peremptory challenges because they rarely encounter minority potential jurors in the regions they serve. Attorneys pointed to "no shows" as a factor contributing to racial disproportion in jury selection and added that they perceived general mistrust of the system and non-response as stemming at least partially from cultural differences.¹⁵⁹

Jury Panel Study Attempt

The second part of the Commission's Jury Survey was distributed to jurors after completion of service. This survey consisted of a more extensive set of questions than the Jury Master List Survey, and included demographic, experiential, and perception questions. Clerks of Court distributed and collected the survey of jury panels that sat during the study period, October 1 to November 30, 2010. Because of the small number of trials during that period, the Commission received only 220 responses. While members hoped that the different start dates of the first and second parts of the Jury Survey would allow substantial duplication of responding counties over both surveys, this occurred in only three counties.¹⁶⁰ Insufficient samples from both the master lists and the panels prevented reliable comparisons in these counties. The Jury Panel Survey did generate comments from members of jury panels who, having experienced the full jury selection and trial processes, were positioned to share experiences, observations, and other perceptions.

The Jury Panel Survey was insufficient to support any generalizations about either county or state populations. The sample itself, however, exhibited certain unexpected characteristics. Minorities within the sample tended to hold higher degrees or to have at least attended college, trade school, or graduate school, at a rate much higher than the overall population of North Dakota. Half of responding minority jurors held a Bachelor's

Degree or higher.¹⁶¹ Almost all jurors, regardless of race, were employed, and the great majority indicated full-time employment. A larger scale survey would be required to determine whether these characteristics indicate a trend toward selection of jurors with higher levels of education or are attributable to an unrepresentative sample. Such a jury panel study would require extremely long-term implementation to generate sufficient data on either the county or state level given the low frequency of jury trials.

In addition to demographic characteristics, the Jury Panel Survey was designed to provide data on minority perceptions of different aspects of the jury process. Responses indicated relatively positive views on jury service, courtroom behavior of attorneys, judges, and court personnel, and very little perception of bias. In the sample received, minority opinions did not appear to differ from those of Whites, though a larger sample size might reveal characteristics the panel survey could not distinguish. Additional surveys of state court employees and the North Dakota bar shared generally positive perceptions, though they returned very few minority responses.

FINDINGS

1. The lack of racial and ethnic information on master lists makes jury composition challenges difficult.
2. Jury source-list expansion poses fewer problems than it has in the past with improvements in technology.
3. Limited data on minority representation in jury source lists has been generated from the Commission's Jury Master List Survey. Further study is necessary to accurately assess representation.
4. North Dakota juror qualifications appear sufficiently broad to prevent discrimination and the grounds for disqualification appear to be adequate.
5. Counties with the largest concentrations of minority populations in the state are not the same as those with the highest percentages of undeliverable summonses.
6. Non-response rates to jury summons measured from 2008 to 2010 appear to show several counties consistently higher than the state average. Counties showing high rates for all years examined overlapped with Indian reservations. This correlation calls for further study.

7. Minorities in North Dakota occupy a disproportionate percentage of individuals at or near the poverty level. Factors associated with poverty may make it difficult to appear for jury service.
8. While North Dakota juror compensation and travel reimbursement is above average for states, it is below the minimum wage and below the North Dakota average wage.
9. Limited survey information suggests that jurors who have completed service have a positive perception of the experience.
10. Based on the data collected, more minorities than Whites believe that juries are not representative of the community.
11. A substantial proportion, though not a majority, of attorneys perceive that juries in some areas of the state do not adequately represent minorities.

RECOMMENDATIONS

1. A long-term or permanent study on jury panels must be undertaken before firm statistical conclusions on minority representation can be reached. Such study would provide information for the review of jury source lists. Courts should be required to request racial and ethnic information from all persons summoned, selected for, or granted excuses and deferrals from jury duty. This data must be collected, preserved, and reported yearly to the State Court Administrator.
2. Courts should pursue a dialogue with the Indian tribes for access to sources of information which may be useful to supplement jury lists.
3. Jury lists should be refreshed at least once per year to reduce undeliverable mailings.
4. Courts should ensure uniform treatment and adequate follow-up for undeliverable addresses in jury summonses throughout the state.
5. Courts should pursue uniform treatment of non-response throughout the state. Further study should concentrate on counties with consistent, high rates of non-response.
6. Courts should increase compensation for jury service.
7. Reimbursement should be paid to jurors for dependent care expenses incurred because of jury service.

8. A pilot project should be conducted to pay jurors by debit card immediately upon completion of jury service.
9. Public education programs should be promoted to increase awareness about the purpose, operation, and importance of juries.
10. Jury challenges based on Batson v. Kentucky, 476 U.S. 79 (1986), should be a topic for continuing research and education.

INTERPRETERS

North Dakota has experienced growth in both racial and language diversity in recent years, especially in Fargo and Grand Forks.¹⁶² Rural areas have been drawing significant out-of-state populations because of recent economic developments. With the growth of language diversity, the use of interpreters for non- or limited-English speakers has become an important consideration for courts. The federal government and many states have attempted to address problems developing interpretation and translation services, with varying levels of success. North Dakota faces particular difficulties in this task because of its small population and the courts' sporadic need for a wide range of languages.¹⁶³

Background

While the United States Constitution does not expressly establish a right to interpreters, courts have recognized such a right through cases applying the Sixth Amendment right to participate in one's own defense and confront witnesses, as well as the right to effective assistance of counsel.¹⁶⁴ At least one state court has found a due process violation in the case of a limited-English speaker who was not provided an interpreter during trial.¹⁶⁵ In 2000, President Clinton signed an executive order to improve access to government services for those with limited-English proficiency.¹⁶⁶ The Department of Justice published implementation guidelines in 2002, requiring court systems receiving federal financial assistance to provide meaningful access to limited-English speakers.¹⁶⁷ These actions have given direction to state efforts.

The need for interpretation and the problems it presents will grow as the demographics of the state continues to change.¹⁶⁸ Research has recognized that lack of interpretation for limited-English speakers creates a disadvantage for those individuals by preventing understanding of proceedings, hampering communication with attorneys, and

limiting the ability to confront witnesses.¹⁶⁹ Non-English or limited-English speakers' inability to effectively communicate with the court system can create access to justice, due process, and assistance of counsel issues.¹⁷⁰ Individuals may lack the ability to effectively communicate with their attorneys, raising concerns about participation in their own defense. Non-English speaking defendants who lack effective interpreters are in a position of having to defend against charges that may be unknown or not fully understood.¹⁷¹ The question arises whether a non- or limited-English speaker can truly be described as "present" at the court proceedings.¹⁷²

Interpreting – Nature and Difficulties

Though court interpreting may seem to be a straightforward process, interpreters must not only understand and fluently speak a second language, they must also have adequate knowledge of legal terminology.¹⁷³ Interpreters must possess accurate, well-trained short-term memories to allow simultaneous translation.¹⁷⁴ Standards for effective interpretation have been outlined in various statements of ethics developed by the National Association of Judiciary Interpreters and Translators, as well as those developed in various state projects and secondary literature.¹⁷⁵ The National Center for State Courts compiled a model guide for court interpretation in 1995, outlining interpreter issues, a guide for judges, and approaches for training, testing, and hiring.¹⁷⁶ North Dakota has also developed an interpreter handbook for use in the courts.¹⁷⁷ These sources contain similar elements, developed with the primary goal of ensuring effective interpretation.

The most important requirement for interpretation is accuracy. Accuracy is defined as transferring source language concepts into the translated language, while conserving all of the elements of the original content and accommodating the patterns of the translated language to make it understandable.¹⁷⁸ Such subtle and difficult aspects of interpreting as hedges, false starts, repetition, as well as register, style, and tone fall under the umbrella of accuracy requirements, indicating that these aspects must be accurately conveyed between languages.¹⁷⁹ Interpreter additions or deletions of any kind, including summarizing and paraphrasing, are not considered acceptable.¹⁸⁰

Guidelines indicate that interpreters must also remain impartial toward all parties and disclose any existing or potential conflicts of interest. Court employees, judges, and attorneys must understand this requirement to ensure that they do not treat the court

interpreter as someone advocating or otherwise appearing on behalf of one of the parties.¹⁸¹ Interpreters should provide translation in the first person.¹⁸² Most general guidelines indicate that judges and court personnel should speak directly to the limited-English speaker rather than the interpreter to ensure clarity, facilitate literal interpretation, and prevent confusion.¹⁸³ The following excerpt from a North Dakota case provides an example of a court failing to engage an interpreter according to guidelines, leading to two simultaneous conversations with both the interpreter and the defendant, which could have disrupted the interpreter's primary task of literal, simultaneous translation:

THE COURT: Then do you understand, sir, that you have the right to plead guilty or not guilty to Count 1, assault, as you wish?

THE INTERPRETER: Yes.

THE COURT: Okay. Tell him to answer out loud, please. And did you hear and understand the constitutional rights that the Court gave you on an earlier date?

THE INTERPRETER: Yes.

THE COURT: Tell him to speak so the microphone can pick it up, please. Tell him to speak up or we'll stop and he can go back to the jail. Okay. Thank you.

And do you understand the nature of this charge, Count 1, assault?

THE INTERPRETER: Yes.¹⁸⁴

In this example, the court attempts to speak directly to the interpreter, who continues in the appropriate role. Guidelines direct interpreters to approach their role as a means of facilitating participation of limited-English speakers to ensure that the court can effectively complete its business.¹⁸⁵ The interpreter should be viewed as voice between the court and limited-English speakers.

By constitution, statute, or court rule, an interpreter may be prevented from disclosing a communication by any person who has a right to claim the privilege.¹⁸⁶ Interpreters should neither attempt to act on behalf of clients nor advocate for them in any manner unrelated to facilitating and providing translation.¹⁸⁷

The high level of language proficiency and familiarity with courtroom proceedings and legal terminology make finding qualified individuals to work as interpreters the primary problem for courts.¹⁸⁸ Issues surrounding hiring and retaining qualified

interpreters compound difficulties.¹⁸⁹ Interpreters may have proficiency in only one or two languages for which there may be limited demand. If consistent need for interpreters occurs in a few languages, interpreters for those languages will likely find sufficient work.¹⁹⁰ If need occurs less frequently or equally in many languages, this can limit available work for a given interpreter, lowering chances to establish a reliable livelihood.¹⁹¹

There is no easy remedy for a shortage of qualified interpreters.¹⁹² Research described the development of “language access centers” as one potential means for courts and other government entities to compensate for problems finding qualified interpreters and providing sufficient work for them to make a living.¹⁹³ Such centers are resource-sharing bodies that coordinate between agencies and across local areas and states to provide sufficient work to support interpreters, while providing a central interpreter list.¹⁹⁴ Alaska has developed a center that not only determines appropriate interpreters for specific translation needs, but also acts as a learning center for interpreters to develop and increase their skills.¹⁹⁵

A Florida court implemented a centralized strategy for court translation, using electronic means for communication between different sites.¹⁹⁶ Such systems allow remote translation similar to the commercially available sources, interactive television, or interpreter telephone lines. Florida’s solution allows state control of interpreter services, lowers costs, lessens travel for interpreters, and does not rely on third parties.¹⁹⁷ Nebraska has implemented similar solutions.¹⁹⁸ Research of interpreting in North Dakota, however, has found in-person interpreters more effective than technology that physically removes the interpreter from the courtroom.¹⁹⁹ One study comparing telephonic and in-person interpreting revealed substantial advantages for in-person interpreting and recommended the use of telephonic interpreting only when effective in-person interpreters are unavailable.²⁰⁰

Interpreters in North Dakota

North Dakota has developed a Limited English Proficiency (LEP) plan following Title VI of the Civil Rights Act of 1964.²⁰¹ All courts receiving federal funds are required to outline steps taken toward providing language assistance to limited-English speakers appearing in state courts.²⁰² According to a needs assessment conducted during development of the LEP plan, approximately 3,550 North Dakota residents indicated that

they spoke English “not well” or “not at all” in the 2000 Census.²⁰³ The LEP plan identified the following non-English languages as those most commonly encountered by the court, based on actual usage of interpreters in 2009:

1. Spanish
2. Somali
3. Bosnian
4. French
5. Arabic²⁰⁴

Interpreters are provided for limited-English speakers at no cost in certain situations, including witnesses and litigants in: criminal, juvenile, mental health, sexually dangerous commitment, domestic violence, guardianship, conservatorship, and disorderly conduct cases.²⁰⁵ Appointment of an interpreter in other cases when services are deemed necessary for effective administration of justice is permissible, but paid for by the person requesting the interpreter.²⁰⁶

Determining the need for an interpreter in a courtroom may take place through several means.²⁰⁷ The limited-English speaker may indicate a need for an interpreter using a sign printed in the most frequently interpreted languages at each court location.²⁰⁸ The LEP plan notes that non-English speakers may either be unaware of the availability of interpreters or may over-estimate their ability to understand the proceedings.²⁰⁹ In such instances, court personnel or judges may also make the determination based on the limited-English speaker’s communication difficulties.²¹⁰ North Dakota’s statewide case management system has the capability of tracking interpreter needs, by flagging case records for individuals requiring an interpreter and providing the courts notice of the need. The case management system also provides detailed reports on interpreter by location, language, and interpreter agency. Another method of determining interpreter need occurs when members of outside agencies inform the court of the need for an interpreter.

North Dakota Qualifications and Compensation

North Dakota does not have a state certification process and instead recognizes interpreters certified by programs located in other jurisdictions or present on another jurisdiction’s roster of interpreters.²¹¹ The North Dakota Court Interpreter’s Handbook suggests that courts may include the following as adequate certification for qualification for

foreign language interpreters: graduates of a foreign language certification program from an accredited university or college; interpreters certified by the Director of the Administrative Office of the United States Court; and individuals with adequate prior experience as a court interpreter or otherwise possessing the necessary expertise.²¹²

Administrative Rule 50 also provides that courts may use “examination or other appropriate means” to determine qualifications, which consist of an ability to communicate with the non-English speaking individual and “orally transfer the meaning of statements” between English and the target language.²¹³ Interpreters may be expected to translate documents for LEP individuals.²¹⁴ Courts also provide a limited number of translated documents.²¹⁵ When non-certified individuals are used within the courtroom, the LEP plan encourages judges to inquire regarding interpreter skills, experience, and potential conflicts of interest.²¹⁶ Bilingual court staff may also assist the courts in certain situations in which individuals require immediate assistance, but should not act as interpreters. Administrative Rule 50 appears to tolerate much broader standards than those developed throughout the national community of interpreters and other research on the subject. But the rule appears tailored to take into account financial, geographic, and other difficulties present in finding adequate interpreters in North Dakota.

Despite difficulties, some North Dakota courts have provided relevant training and resources to develop pools of interpreters.²¹⁷ Courts have provided staff training for assisting limited-English speakers.²¹⁸ Training covered available resources, the process of determining the need for an interpreter, locating interpreters, and considerations in assessing qualifications.²¹⁹ Cass County has developed cards displaying the phrase “I do not read or speak English and require an interpreter” in multiple languages to aid in identifying interpreter needs by allowing individuals to identify their need by simply pointing to their native language.²²⁰ Language cards have been implemented statewide. Courts also maintain a number of translated documents, including applications for public defenders in criminal cases, commitment and domestic violence civil cases, and juvenile cases, statements of rights, Entry of Plea form, and other documents to accommodate LEP individuals.²²¹

In addition to efforts from the state courts, the Legal Services of North Dakota Immigration Law Project has also provided a series of translated materials distributed to LEP individuals, especially New Americans, in conjunction with presentations designed to

improve understanding of legal problems and the legal system in the United States.²²² Sample documents distributed to LEP individuals and covered in the presentations include a summons, a complaint, a lease agreement, and an eviction notice, among others.²²³ These efforts are designed to provide at least a basic level of understanding for possible future interactions with the courts.

North Dakota courts rely on technological remedies for instances when an interpreter cannot attend court or cannot be found. If an interpreter can be found but is unable to attend, interactive television or telephone, including call-in services for multiple languages,²²⁴ are available to facilitate communication.²²⁵ Commercial language lines may be used when an interpreter cannot be found and there are no other alternatives.²²⁶ The ECJD administration has developed a DVD Notice of Rights for use in adult criminal court with Arabic, Bosnian/Serbo-Croatian, French, Somali, and Spanish speakers.²²⁷ The ECJD also completed and implemented a similar project for use in juvenile court.²²⁸

Research

In response to changing state demographics, the North Dakota judicial system, especially in eastern North Dakota, has investigated the need, use, and training of foreign language interpreters in the court system and methods of expansion.²²⁹ In 2007, the ECJD partnered with Metro Interpreting Resource Center, a network providing interpreters for assistance to New Americans, to provide two single-day training courses for interpretation within a court setting.²³⁰ Training included a specific instructional program, pre- and post-training surveys, and focus groups to review the effectiveness of training.²³¹ The project analyzed in-court assessments from participants, finding that in-person interpreters who had completed the program received ratings overwhelmingly higher than telephonic interpretation.²³² The assessment also noted that judges preferred in-person interpretation to electronic means because it provided a sense of interpreter quality, greater effectiveness of communication between interpreter and defendant and facilitated simultaneous interpretation instead of methods requiring long pauses to allow translation.²³³

The small numbers of LEP individuals in the state created difficulties for the Commission's efforts to collect and assess data on interpreter needs, especially in cases where counties had not developed independent assessments. However, the Commission received significant testimony regarding interpreting and translation from court officials

and a number of individuals working as interpreters in the Fargo area. Testimony indicated generally positive perceptions of in-person interpreters.²³⁴ Perceptions tended to support regional studies pointing to positive perceptions of in-person interpretation with regard to levels of professionalism, advantages over telephonic interpreting, and effectiveness.²³⁵

Some testimony suggested that judges and court personnel do not always follow policies designed to ensure adequate interpretation, and sometimes show unawareness or misunderstandings of those policies. An example of this kind of misunderstanding came from a state court employee who observed a 2010 court proceeding involving several Spanish-speaking defendants.²³⁶ The court first attempted to find a Spanish interpreter from the border patrol, but could not locate one. The judge asked the defendants whether any spoke English and one eventually responded that he spoke a little. To the observer, the man obviously possessed little to no understanding of English and displayed uncertainty even as to whether his affirmative response was correct. The judge proceeded to inform the defendants of their rights, but did not ask them for any confirmation of whether they understood. When other individuals, one of whom was identified as a defendant's girlfriend, entered the courtroom, the judge asked whether they could interpret. The girlfriend indicated that she could not, but the judge nevertheless instructed her to translate for the defendants and proceeded with an explanation involving complex legal terms. The observing court employee later asked the judge why the court did not use an available telephonic language line. The judge replied that courts prefer to have an interpreter in person, and said that the case was not important enough for such considerations to be implemented. The observing court employee also related a comment from a prosecutor, stating that interpreter issues were less problematic when the court could call on illegal aliens working at a nearby dairy for Spanish interpreting needs.²³⁷

Other testimony suggested that courts or attorneys have relied on unqualified individuals for translation, at least in the past. One interpreter testified:

[Courts] call anybody, because if you are bilingual, you're an interpreter. If you're the daughter or a son, you are the interpreter. Kids are not going to -- in juvenile cases where the kid is interpreting to the parent what is going on, what kid is going to tell the truth to the parent? Nobody. No kid in the world. So then they are going to skip half of what the attorney is saying, half of the consequences, half of the penalties, and they are not going to tell the mother what they are telling the attorney.²³⁸

Though this testimony related to distant past experiences in the Fargo area, which

has since substantially improved its interpreter services in recent years, similar problems may continue to apply in other regions of the state. Further testimony highlighted the necessity of understanding and accommodation from judges during the actual process of interpretation and of clear interpreter knowledge of their role within the courtroom. One individual described problems that the speed of proceedings can have on client understanding, stating:

Another thing, and that is the speed at which the attorneys and judges talk. They go zip. [A judge] gives the rights in two seconds or less. [...] I am interpreting this. Spanish is 30 percent longer than English, because we have the prepositions and the articles and all this and the syllables are longer, so I have to go faster in order to continue. At the end, the defendants [...] didn't understand because she was going too fast. [...] [Judges] think that it's my fault that I am talking too fast, and for that reason they don't understand.²³⁹

Though the speaker focuses on the court's unawareness, the testimony also shows a need for interpreters to understand their role within the courts. Interpreter standards indicate a professional responsibility for intervening with judges, attorneys, and other court officials to afford sufficient time for translation and to ensure client understanding.²⁴⁰

Interpreters also described problems existing from the very beginning of interaction with the justice system, including interaction with police and attorneys. One individual referenced several incidents in which non-English speaking families that contacted law enforcement ended up having to interact with police officers without any kind of translation at all.²⁴¹ Others identified a similar need for attorneys working outside the courtroom. One interpreter testified:

I've worked with several different attorneys that were court appointed, and I've often heard [them say they] won't meet with [...] client[s] outside of court to discuss their case with an interpreter because [they] won't pay for interpreters for indigent clients [...]. And I think that it's unfair to these clients that don't speak English as a first language and don't have direct experience with the justice system in the United States to not have that time to meet outside of the courtroom and discuss their case, the charges that they are facing or the petition that was filed in regards to custody of their children.²⁴²

North Dakota courts currently have some responsibility for taking reasonable steps to ensure that limited-English speakers have access to court information and court services outside of the courtroom, but only in situations in which court staff interact with LEP individuals.²⁴³ Other agencies, such as defense attorneys, prosecutors, and law enforcement, are responsible for interpreter procurement and payment outside of courts.²⁴⁴

Testimony suggested that juvenile programs may face difficulties related to interpreting. Language barriers prevent some non-English speaking youth and parents from attending and participating in juvenile programs. Testimony provided an example of a youth who spoke some English and who needed a theft prevention class.²⁴⁵ The parents could not speak English and the agency offering the class could not provide interpreters for them. Because court payment for interpreters does not include diversion programs conducted by outside agencies, and neither the family nor the sponsoring agency could provide one, the agency was forced to rely on alternative sanctions. Testimony suggested that many language issues occur at this level with refugees from African or Middle Eastern countries, as well as Bosnians and Russians, and such issues present significant obstacles at this level.²⁴⁶

The Commission received some specific suggestions on how to improve relations and communication with LEP clients, especially from New Americans who emphasize particular cultural approaches to law in their home countries. One suggestion was that courts could institute a process for communicating and developing relationships with elders in communities that traditionally depend on them, especially Somali communities, in which elders may be able to intervene with problems rather than courts.²⁴⁷

Comments also pointed to the need for attorneys to have some basis for cultural understanding in order to communicate procedures, expectations, and the level of information needed by the courts. Many who testified said that New Americans often expect to appear before a judge, tell their whole story, and then never have to appear again.²⁴⁸ Better understanding by attorneys of the client cultures could help address confusion, resistance, and misunderstandings on the part of LEP New Americans as to the processes and procedures of the courts and the necessity of multiple appearances.²⁴⁹

FINDINGS

1. North Dakota faces many problems typical of interpreter services in other states such as scarcity of qualified interpreters and unpredictable workloads for specialists in particular languages.
2. North Dakota courts need interpreters in a considerable number of languages and dialects.
3. Problems arise when judges, court personnel, or interpreters fail to understand the need for effective interpretation, standards of adequate interpretation, role boundaries in the courtroom, or adequate accommodation for interpreters to work.
4. Interpreters are needed at all stages of a person's contact with the legal system.
5. North Dakota does not have a certification process for interpreters.

RECOMMENDATIONS

1. Judges, attorneys, and law enforcement should be educated on the importance, necessity, and functional requirements of interpreters at all stages of a person's contact with the justice system. Administrative Unit 2 efforts provide a model of education programs that can be developed throughout the state.
2. The courts should develop a court-approved voir dire, such as the one developed by the National Center for State Courts, to determine the qualifications of an uncertified interpreter.
3. Court Administrators should compile a list of interpreter resources and the languages they provide, and make this list accessible throughout the state, including it on the North Dakota Supreme Court website.
4. Courts should hire qualified multilingual court personnel.
5. Courts should provide a periodic statewide training program for interpreters, covering court processes and the role of interpreters. Administrative Unit 2 can provide a model training program.
6. The Courts should explore translating judicial forms and documents commonly used in court proceedings into frequently spoken foreign languages.
7. Courts should publish and encourage discussion of existing policies regarding payment for interpreter services outside of court.

8. Courts should investigate and improve outreach and communication with New American communities.
9. The State Bar Association of North Dakota and courts should engage in outreach programs with leaders of local immigrant and culturally diverse communities to educate their members on the role and processes of the court system.
10. Courts should use an interpreter certified by the National Center for State Courts Consortium for State Court Interpreter Certification, whenever available.
11. Courts should explore the development of an interpreter certification program utilizing models provided by the National Center for State Courts Consortium for State Court Interpreter Certification.

Notes

- ¹ See U.S. Department of Justice, Access to Justice Initiative: Mission, <http://www.justice.gov/atj/> (last visited Feb. 3, 2012) (presenting a general definition); Richard Zorza, Richard Zorza's Access to Justice Blog, <http://accesstojustice.net/about/> (last visited Feb. 3, 2012) (defining access to justice as including “innovations in courts, the bar, legal aid and community that make it easier for people to obtain access to justice institutions, and to just results within those institutions”).
- ² Powers v. Ohio, 499 U.S. 400, 409 (1991) (“although an individual juror does not have the right to sit on any particular petit jury, he or she does possess the right not to be excluded from one on account of race.”); see also State v. Stridiron, 2010 ND 19, 777 N.W.2d 892; City of Mandan v. Fern, 501 N.W.2d 739 (N.D. 1993).
- ³ NEBRASKA MINORITY & JUSTICE TASK FORCE, FINAL REPORT 17-18 (2003) [hereinafter NEB. TASK FORCE RPT.]; FINAL REPORT OF THE PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM 52 (2003) [hereinafter PENN. REPORT]; SUPREME COURT OF OHIO & OHIO STATE BAR ASSOCIATION, REPORT OF THE OHIO COMMISSION ON RACIAL FAIRNESS 30 (1999).
- ⁴ EQUAL JUSTICE INITIATIVE, ILLEGAL RACIAL DISCRIMINATION IN JURY SELECTION: A CONTINUING LEGACY, 28 (2010) [hereinafter EJI]; PENN. REPORT, *supra* note 3, at 78; NEB. TASK FORCE RPT., *supra* note 3, at 17-18; OHIO COMM’N ON RACIAL FAIRNESS, *supra* note 3, at 30.
- ⁵ EJI, *supra* note 4, at 28; PENN. REPORT, *supra* note 3, at 78; OHIO COMMISSION ON RACIAL FAIRNESS, *supra* note 3, at 30.
- ⁶ Social and economic disparities outside of the courts can end up creating a disparate effect on juries. Courts may not be able to provide a direct remedy for such problems, but may be able to improve fairness with certain policies and accommodations. See Kim Forde-Mazrui, *Jural Districting: Selecting Impartial Juries Through Community Representation*, 52 VAND. L. REV. 353, 356 (1999) (pointing to financial hardship, transportation difficulties, and child care responsibilities as issues for potential minority jurors).
- ⁷ See Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV., 945, 961, 965-67 (2006) (suggesting that implicit attitudinal biases influence non-deliberate or spontaneous discriminatory behaviors); see also Jerry Kang, *Implicit Bias: A Primer for Courts*, (2009), available at <http://wp.jerrykang.net.s110363.gridserver.com/wp-content/uploads/2010/10/kang-Implicit-Bias-Primer-for-courts-09.pdf>; HON. JOHN F. IRWIN & DANIEL L. REAL, UNCONSCIOUS INFLUENCES ON JUDICIAL DECISION-MAKING: THE ILLUSION OF OBJECTIVITY (2010), available at <http://ssrn.com/abstract=1696643>.
- ⁸ Jeffrey J. Rachlinski, Sheri Lynn Johnson, Andrew J. Wistrich, & Chris Guthrie, *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1223-26 (2009).
- ⁹ PENN. REPORT, *supra* note 3, at 52.
- ¹⁰ Uniform Jury Selection and Service Act, N.D.C.C. § 27-09.1-01 [hereinafter UJSSA].
- ¹¹ N.D. Const. art. I, § 3; UJSSA, *supra* note 10; N.D. Sup. Ct. Admin. R 9., available at <http://www.ndcourts.com/court/rules/administrative/ar09appendix.htm>.
- ¹² N.D. State Data Center, *Population by Race and Hispanic Origin in North Dakota: Census 2000 and July 1, 2008 Estimate*, 25 POPULATION BULLETIN (Oct. 2009). Though the 2010 minority percentage in North Dakota is only 10 percent, other state task forces have completed studies during periods with proportionately smaller minority populations. See U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), <http://quickfacts.census.gov/qfd/states/38000.html>; MINNESOTA SUPREME COURT TASK FORCE ON RACIAL BIAS IN THE JUDICIAL SYSTEM, FINAL REPORT, S-3 (1993) (acknowledging a statewide proportion of 6 percent at the time of the study).
- ¹³ State v. Fredericks, 507 N.W.2d 61, 65 n.3 (N.D. 1993) (stating that the Supreme Court is “conscious of [its] responsibility under N.D.C.C. § 27-09.1-05 to designate supplementary sources for the master lists in keeping with . . . state policy that jurors ‘be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity . . . to be considered for jury service.’ N.D.C.C. § 27-09.1-01. Accordingly, under N.D.C.C. § 27-09.1-18 and N.D. Sup. Ct. Admin. R. 9, we refer

the questions raised by this case to the Jury Standards Committee,” and directing the Jury Standards Committee to examine disparities between the master lists and racial, ethnic, and gender groups.).

¹⁴ Modern selection processes at this stage usually use a computerized method for random selection.

¹⁵ AMERICAN JUDICATURE SOCIETY, *JURIES IN-DEPTH: CHOOSING WHO SERVES* (2009), http://www.ajs.org/jc/juries/jc_whoserves_overview.asp (providing a broad overview of the traditional jury selection process).

¹⁶ Almost all North Dakota counties have implemented a one-step jury process which combines the traditional steps by randomly selecting individuals directly from the jury master list to appear for each case. The six counties in the Northwest Judicial District have not moved to a one-step process at the time of this report.

¹⁷ Causes would include instances when the juror, for some reason, cannot judge the proceedings impartially. For instance, a juror who is a friend or relative of the defendant would be removed.

¹⁸ The number of peremptory challenges depends on each state’s rules. In criminal trials, North Dakota law allows 4 peremptory challenges when a 6-person jury is to be impaneled and 6 peremptory challenges when a 12-person jury is to be impaneled, except when the offense charged is a AA felony, and then each side is entitled to 10 peremptory challenges. See N.D.R.Crim.P. 24(b)(2)(A)(B). In North Dakota civil trials, each side is entitled to 4 peremptory challenges regardless of the size of the jury or the number of parties on a side, though the court may grant additional peremptory challenges at its discretion. See N.D.R.Civ.P. 47(c)(1).

¹⁹ *Duren v. Missouri*, 439 U.S. 357 (1979); see also AMERICAN JUDICATURE SOCIETY, *CONSTITUTING THE JURY POOL* (2009), http://www.ajs.org/jc/juries/jc_whoserves_jurypool.asp (providing a broad overview of “fair cross section”).

²⁰ *Batson v. Kentucky*, 476 U.S. 79 (1986).

²¹ N.D. Sup. Ct. Admin. R. 9. *supra* note 11.

²² N.D.C.C. § 27-09.1-01; N.D. Sup. Ct. Admin. R. 9. *supra* note 11 (Standard 3).

²³ N.D.C.C. §§ 27-09.1-03, 27-09.1-05; N.D. Sup. Ct. Admin. R. 9. *supra* note 11 (Standard 2).

²⁴ *Id.* (Standard 3).

²⁵ *Id.* (Standard 3(c)(i-iii)).

²⁶ *Id.* (Standard 3(c)(iv)).

²⁷ The law sets forth required time limits, allows testimony of the clerk and other evidence, and, if the court finds a failure to comply with required jury selection procedures, allows for appropriate relief; N.D.C.C. ch. 27-09.1; see also *Fredericks*, 507 N.W.2d at 64; *but see State v. Torgerson*, 2000 ND 105, 611 N.W.2d 182 (holding an irregularly raised objection to the jury panel selection process no barrier to appeal because neither party raised the statute to the trial court).

²⁸ See N.D.C.C. §§ 27-09.1-03, 27-09.1-05. The state policy of random selection of jurors, non-discrimination, equal opportunity for jury service, and obligation of service are set forth in N.D.C.C. §§ 27-09.1-01, 27-09.1-02. Determination of which lists should be used to best meet the stated policy is an implementation issue, which should be determined by the judiciary. N.D. Sup. Ct. Admin. R. 9. *supra* note 11 (Standard 2).

²⁹ N.D.C.C. § 27-09.1-05 (including lists of utility customers, property taxpayers, motor vehicle registrations, and license holders as examples of additional sources of juror names).

³⁰ *State v. Robles*, 535 N.W.2d 729, 733 (N.D. 1995).

³¹ UJSSA, *supra* note 10.

³² AMERICAN JUDICATURE SOCIETY, *JURY COMPOSITION CHALLENGES* (2009), http://www.ajs.org/jc/juries/jc_whoserves_challenges.asp (providing a general summary of such challenges).

³³ *Fredericks*, 507 N.W.2d at 65 (citing *Duren v. Missouri*, 439 U.S. 357 (1979)); see also *State v. Robles*, 535 N.W.2d 729 (N.D. 1995).

³⁴ See *Duren v. Missouri*, 439 U.S. at 364.

³⁵ Exclusion must be inherent in the selection process utilized. *Robles*, 535 N.W.2d at 733 (citing *United States v. Garcia*, 991 F.2d 489 (8th Cir. 1993)).

³⁶ See generally *Robles*, 535 N.W.2d at 733; *State v. Marshall*, 531 N.W.2d 284 (N.D. 1995); *Fredericks*, 507 N.W.2d at 61; *State v. Gomez*, 2011 ND 29, ¶¶ 18-20, 793 N.W.2d 451.

³⁷ See generally *State v. Fredericks*, 507 N.W.2d at 65; *Robles*, 535 N.W.2d at 733 (holding no requirement to expand sources for the master list while acknowledging that the Supreme Court may direct clerks to supplement lists); *Marshall*, 531 N.W.2d at 284; *Torgerson*, 611 N.W.2d at 182.

³⁸ See *id.*

³⁹ See *Fredericks*, 507 N.W.2d at 65; see also *Marshall*, 531 N.W.2d at 287; *State v. Manhattan*, 453 N.W.2d 758 (N.D. 1990). However, beginning with *Fredericks*, the Court has tasked certain administrative bodies with investigation into representativeness of the jury pool. *Id.* at 65 n.3.

⁴⁰ As of 1999, North Dakota had fewer than 325 jury trials in the entire state each year. WALDEMAR KOWITZ, ANALYSIS OF JUROR UTILIZATION IN NORTH DAKOTA (1997-1999) (2000).

⁴¹ U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), <http://quickfacts.census.gov/qfd/states/38000.html>.

⁴² 507 N.W.2d at 65.

⁴³ *Id.* at 65 n.3.

⁴⁴ For example, if a supplementary list included a number of individuals not found in the original master list, but these new names were also disproportionately White, as might occur in a state with a low percentage of minority groups, additions from the supplemental source would further exacerbate under representation of minority groups. Memorandum from Jim Ganje, Attorney, North Dakota Supreme Court, to Andrew Frank, Staff for the North Dakota Commission to Study Racial and Ethnic Bias in the Courts (Feb. 08, 2011) (on file with Commission) [hereinafter *Minority Jury Rep. Memo*]; John P. Bueker, *Jury Source Lists: Does Supplementation Really Work?*, 82 CORNELL L. REV. 390 (1997); Ronald Randall, James A. Woods, & Robert G. Martin, *Racial Representativeness of Juries: An Analysis of Source List and Administrative Effects on the Jury Pool*, 29 JUSTICE SYSTEM JOURNAL 72, 76 (2008) (noting that, though merging lists enhances inclusiveness, the proportion of age-eligible population covered by a source list, it may worsen minority representation because of duplicates).

⁴⁵ *Minority Jury Rep. Memo*, *supra* note 44.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ North Dakota Commission to Study Racial & Ethnic Bias in the Courts, Minutes (July 23, 2010), *available at* http://www.ndcourts.gov/court/committees/bias_commission/MinutesJul2010.htm; North Dakota Commission to Study Racial & Ethnic Bias in the Courts, Minutes (May, 21, 2010), *available at* http://www.ndcourts.gov/court/committees/bias_commission/MinutesMay2010.htm.

⁴⁹ U.S. CENSUS BUREAU & BUREAU OF LABOR STATISTICS, CURRENT POPULATION SURVEY (2010); *available at* <http://www.census.gov/cps/>. This data was collected on May 3, 2011, by the North Dakota State Data Center from a tool available at <http://dataferrett.census.gov/>.

⁵⁰ A series of supplemental questions produce estimates for states. See <http://www.census.gov/cps/>.

⁵¹ <http://www.census.gov/hhes/www/socdemo/voting/index.html>.

⁵² U.S. CENSUS BUREAU & BUREAU OF LABOR STATISTICS, *supra* note 49.

⁵³ See G. THOMAS MUNSTERMAN, PAULA L. HANNAFORD, & G. MARC WHITEHEAD, JURY TRIAL INNOVATIONS 35 (1997).

⁵⁴ See *Randall et. al.*, *supra* note 44, at 75, 82 (recognizing the potential for racial variation in driver's license lists).

⁵⁵ See MUNSTERMAN, ET. AL., *supra* note 53 at 29; PENNSYLVANIA INTERBRANCH COMMISSION FOR GENDER, RACIAL AND ETHNIC FAIRNESS JURY SERVICE COMMITTEE, SUGGESTED STANDARDIZED PROCEDURES FOR JURY SELECTION IN PENNSYLVANIA 8 (2007) [hereinafter PENN. INTERBRANCH COMMISSION]. This analysis most likely considers registered voters rather than numbers of actual voters.

⁵⁶ PENN. INTERBRANCH COMMISSION, *supra* note 55, at 3.

⁵⁷ See MUNSTERMAN, ET. AL., *supra* note 53, at 35.

⁵⁸ See *id.* at 5-7.

⁵⁹ See Bueker, *supra* note 44, at 390 (recommending that courts should explore alternative means of addressing representation problems after offering evidence as to the ineffectiveness of list expansion); Randall, et. al., *supra* note 44, at 75 (suggesting that scholars advocating source list expansion have often relied on questionable methods).

⁶⁰ Randall, et. al., *supra* note 44, at 75.

⁶¹ *Id.* at 75-76. This kind of difficulty has diminished from the time of the Jury Standards discussions as the ability to use computer software to sort lists has increased.

⁶² *Id.*

⁶³ North Dakota Commission to Study Racial & Ethnic Bias in the Courts, Minutes (March 18, 2011), available at http://www.ndcourts.gov/court/committees/bias_commission/MinutesMarch%202011.htm.

⁶⁴ See MUNSTERMAN ET. AL., *supra* note 53; Richard M. Re, *Re-Justifying the Fair Cross Section Requirement: Equal Representation and Enfranchisement in the American Criminal Jury*, 116 Y.L.J. 1568 (2007) (explaining an alternate justification for expansion); NEBRASKA MINORITY JUSTICE COMMITTEE, REPRESENTATIVE JURIES: EXAMINING THE INITIAL AND ELIGIBLE POOLS OF JURORS, PUBLICATIONS OF THE UNIVERSITY OF NEBRASKA PUBLIC POLICY CENTER (2008) [hereinafter NEB. MINORITY JUST. COMMITTEE] (finding actual disparities through a systematic study and recommending expansion), available at <http://digitalcommons.unl.edu/publicpolicypublications/28>.

⁶⁵ *Id.* (providing a long-term, systematic analysis of jury pools in Nebraska); Randall et. al., *supra* note 44, at 75-76 (analyzing the effects of expanding source lists for small jurisdictions in Ohio).

⁶⁶ Duplicates would still be possible in instances where, for some reason, the Social Security Number or birth date contain errors or are not collected.

⁶⁷ See Randall et. al., *supra* note 44, at 74; FINAL REPORT OF THE CALIFORNIA JUDICIAL COUNCIL ADVISORY COMMITTEE ON RACIAL AND ETHNIC BIAS IN THE COURTS, 191-201 (1997); NEW JERSEY SUPREME COURT TASK FORCE ON MINORITY CONCERNS, FINAL REPORT (1992) (relying on information from other jurisdictions and public testimony to support master list recommendations); JOHN A. LARSON, JUDICIAL COUNCIL OF CALIFORNIA-ADMINISTRATIVE OFFICE OF THE COURTS: FINAL REPORT: TASK FORCE ON JURY SYSTEM IMPROVEMENTS 10-11 (Rev. 2004) (noting that an example state, New York, relied on inclusiveness criteria and never conducted a formal analysis on expansion, and suggesting that gains in representation from this effort have been minimal); Re, *supra* note 64, at 1568 (distinguishing between demographic and inclusiveness-based standards and further developing the inclusiveness standard).

⁶⁸ *Id.* at 1568.

⁶⁹ NEB. MINORITY JUST. COMMITTEE, *supra* note 64.

⁷⁰ American/Alaskan Native; Asian; Black; Hispanic/Latino(a); Native Hawaiian or Pacific Islander; White; Other.

⁷¹ OFFICE OF THE NORTH DAKOTA SUPREME COURT ADMINISTRATOR, YIELD REPORT FOR ALL LOCATIONS, 2008-2010 (2010) [hereinafter YIELD REPORT]; Randall, et. al., *supra* note 44 at 77 (providing a general range of non-response for states). VICTOR E. SCHWARTZ, MARK A. BEHRENS, & CARY SILVERMAN, THE JURY PATRIOTISM ACT: MAKING JURY SERVICE MORE APPEALING AND REWARDING TO CITIZENS, AMERICAN LEGISLATIVE EXCHANGE COUNCIL, 1 (2003) (indicating a 20 percent non-response average for all states, but suggesting that some regions may return as few as 10 percent of all summonses).

⁷² Consistent follow-up on non-responses would not have solved this problem completely, because the Commission still lacked a means of discerning the racial and ethnic composition of non-responses, but such follow-up would have ensured that variables beyond differentiated court treatment were responsible for measured disparities.

⁷³ The numbers returned from this survey were calculated with a 0.905 percent margin of error at the 90 percent confidence interval, meaning that 9 out of 10 samples have a likelihood of falling between 5.705 percent and 3.895 percent, both ends of which are below the county's 6.1 percent minority population over 18. These numbers, however, may be unreliable because of potential sampling issues that may have influenced the survey as well as other contributing factors. The most evident potential factor influencing the data is non-response to summonses during the period of the study. Total non-response for 2010 indicates a rate of 11.45 percent, the highest Burleigh returned from the years 2000 to 2010. This rate measures the entire year and could vary considerably within 2010, so numbers from the study period may differ significantly.

⁷⁴ Forde-Mazuri, *supra* note 6 at 356; Randall et. al., *supra* note 44 at 77 (2008) (citing R. G. BOATRIGHT, IMPROVING CITIZEN RESPONSE TO JURY SUMMONS: A REPORT WITH RECOMMENDATIONS (1998)); *see also* PENN. REPORT, *supra* note 3, at 68 (finding correlations between areas with higher proportions of minorities and lower juror yields).

⁷⁵ Collected information would be in the computer program, but not automatically shared with attorneys. Members questioned whether an obligation exists to share information with attorneys, either automatically or upon attorney request, and agreed that courts would have to provide copies if asked. *See* North Dakota Commission to Study Racial & Ethnic Bias in the Courts, Minutes (March 18, 2011), *supra* note 63.

⁷⁶ Focus group participants specifically mentioned Montrail county as having juries that they perceived as representative. Public Testimony, Bismarck Attorney Focus Group (Aug. 17, 2011) (on file with the Commission).

⁷⁷ *Id.*

⁷⁸ N.D. Sup. Ct. Admin. R. 9, *supra* note 11 (Standard 12(a-c)); N.D.C.C. ch. 27-09.1.

⁷⁹ *Id.*

⁸⁰ *Id.* (Standard 2(c-d)); N.D.C.C. §§ 27-09.1-03, 27-09.1-05.

⁸¹ North Dakota Commission to Study Racial & Ethnic Bias in the Courts, Minutes (March 18, 2011), *supra* note 63.

⁸² *Id.*

⁸³ Forde-Mazrui, *supra* note 6, at 356.

⁸⁴ PENN. REPORT, *supra* note 3, at 72 (describing a state study that found no use of the U.S. Postal Service change-of-address data by state courts); Randall, et. al., *supra* note 48 at 77 (explaining change of address as one cause contributing to undeliverable summonses).

⁸⁵ State totals for 2010 show approximately 10 percent minority population. *See* U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), <http://quickfacts.census.gov/qfd/states/38000.html>.

⁸⁶ Counties with the highest proportion of minorities within the state tend to be those including Indian reservations. *See id.*

⁸⁷ At least some of the represented counties have a high total number of minority citizens. When viewed as a percentage, the proportion of minority citizens appears comparable to the state average because of the high general population in the county. Cass County is a particular example of this phenomenon.

⁸⁸ NATIONAL CENTER FOR STATE COURTS, JURY MANAGER'S TOOLBOX: CHARACTERISTICS OF AN EFFECTIVE MASTER JURY LIST 3 (2009) *available at* <http://www.jurytoolbox.org/more/Characteristics%20of%20Effective%20MJL.pdf>; NEB. TASK FORCE RPT., *supra* note 3 at 21, 34 (recommending annual refreshing of jury master lists).

⁸⁹ Stephanie Domitrovich, *Jury Source Lists and the Community's Need to Achieve Racial Balance on the Jury*, 33 DUQ. L. REV. 39, 93-94 (1994) (listing blanket exemptions from jury service in Georgia, including professions deemed necessary for public health); NEB. TASK FORCE RPT., *supra* note 3, at 21 (Identifying legal

barriers to those with a criminal conviction as a barrier to full participation contributing to racial disparities in jury selection); PENN. INTERBRANCH COMMISSION, *supra* note 58, at 10-11 (stating that lifetime exclusion from jury service for those convicted of crimes acts as a barrier to full participation leading to jury panels that fail to reflect the community).

⁹⁰ N.D.C.C. § 27-09.1-08; N.D. STATE COURTS, NORTH DAKOTA JUROR'S HANDBOOK, <http://www.ndcourts.gov/court/juror.htm> (last accessed Nov. 2, 2011) [hereinafter JUROR HANDBOOK].

⁹¹ YIELD REPORT, *supra* note 71.

⁹² N.D.C.C. § 27-09.1-08; JUROR HANDBOOK, *supra* note 90.

⁹³ JUROR HANDBOOK, *supra* note 90. Jurors may opt to complete this online version of the form.

⁹⁴ N.D.C.C. § 27-09.1-07.

⁹⁵ Randall et. al., *supra* note 44, at 77.

⁹⁶ Forde-Mazrui, *supra* note 6, at 356.

⁹⁷ N.D.C.C. § 27-09.1-11

⁹⁸ *Id.*

⁹⁹ YIELD REPORT, *supra* note 71.

¹⁰⁰ Standards provide direction to inform potential jurors of consequences on the summons form, and also to establish penalties for failure to reply. See N.D. Sup. Ct. Admin. R. 9. *supra* note 11 (Standard 11(d)); N.D.C.C. ch. 27-09.1.

¹⁰¹ N.D.C.C. § 27-09.1-07.

¹⁰² Forde-Mazrui, *supra* note 6, at 356.

¹⁰³ Burleigh County had 11.45 percent for 2010, but was 5.14 percent for 2008 and 9.61 percent for 2009. Other counties over 10 percent for at least one year were: Bowman, Cavalier, Dickey, Divide, Dunn, Logan, McIntosh, Ransom, and Sheridan. See YIELD REPORT, *supra* note 71.

¹⁰⁴ See U.S. Census Bureau, State and County QuickFacts: North Dakota (2010), *available at* <http://quickfacts.census.gov/qfd/states/38000.html>.

¹⁰⁵ Benson – Spirit Lake; Rolette – Turtle Mountain; Mountrail – Fort Berthold.

¹⁰⁶ Counties that lacked data, did not confirm any jurors, or did not hold trials in at least one year during the three-year study period include: Adams, Bottineau, Burke, Dunn, LaMoure, Logan, Sioux, and Towner. See YIELD REPORT, *supra* note 71.

¹⁰⁷ Benson – Spirit Lake; Rolette – Turtle Mountain; Mountrail – Fort Berthold; Williams – Trenton Service Area; McKenzie – Trenton Service Area; Sioux – Standing Rock.

¹⁰⁸ The number of non-responses does not include undeliverable summonses, because undeliverable rates include the number of summonses that are marked “undeliverable” by the postal service. Non-response counts summonses that are delivered, but not returned.

¹⁰⁹ North Dakota Commission to Study Racial & Ethnic Bias in the Courts, Minutes (March 18, 2011), *supra* note 63.

¹¹⁰ Schwartz, et. al., *supra* note 71 at 7; N. D. Commission to Study Racial & Ethnic Bias in the Courts, Minutes (March 18, 2011). One study determined that the most effective predictor of failure-to-appear rates was whether potential jurors believed that failure would result in negative consequences. Paula Hannaford-Agor, *Systematic Negligence in Jury Operations: Why the Definition of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded*, 59 DRAKE L. REV. 774 (citing R. G. BOATRIGHT, IMPROVING CITIZEN RESPONSE TO JURY SUMMONS: A REPORT WITH RECOMMENDATIONS 68-69 (1998)).

¹¹¹ North Dakota Commission to Study Racial & Ethnic Bias in the Courts, Minutes (May, 20, 2011), *supra* note 63.

¹¹² Public Testimony, Bismarck Attorney Focus Group (Aug. 17, 2011).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See REPORT OF THE ALASKA SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS, 82-88 (1997) [hereinafter ALASKA REPORT] (recognizing non-response as a contributor to racial disparities and recommending methods of consistent follow-up).

¹¹⁶ See Randall et. al., *supra* note 44 at 77.

¹¹⁷ *Id.* at 88; SOUTH DAKOTA EQUAL JUSTICE COMMISSION, FINAL REPORT WITH RECOMMENDATIONS 8-9 (2006) [hereinafter SOUTH DAKOTA REPORT]; PENN. REPORT, *supra* note 3 at 98.

¹¹⁸ SOUTH DAKOTA REPORT, *supra* note 117 at 8-9; PENN. REPORT, *supra* note 3, at 98.

¹¹⁹ ALASKA REPORT, *supra* note 115 at 88 (1997); SOUTH DAKOTA REPORT, *supra* note 117, at 8-9 (recognizing that cultural reason may lead to avoidance of jury duty); PENN. REPORT, *supra* note 3, at 98.

¹²⁰ ALASKA REPORT, *supra* note 115 at 86-88; SDEJC, *supra* note 117, at 8-9; PENN. REPORT, *supra* note 3, at 97-98.

¹²¹ SCHWARTZ ET. AL., *supra* note 71, at 4-5.

¹²² *Id.*

¹²³ *Id.*; N.D.C.C. §§ 27-09.1-14, 27-09.1-17.

¹²⁴ N.D. Sup. Ct. Admin. R. 9, *supra* note 11 (Standard 15(c)).

¹²⁵ Potential jurors may receive notice via this website if they provide an e-response to the qualification questionnaire. JUROR HANDBOOK, *supra* note 90.

¹²⁶ See e.g. JUROR HANDBOOK, *supra* note 90; N.D. Sup. Ct. Admin. R. 9, *supra* note 11 (Standard 15(a)(b)).

¹²⁷ Alabama, available at <http://www.legislature.state.al.us/CodeofAlabama/1975/12-19-210.htm>; Idaho, available at <http://legislature.idaho.gov/idstat/Title2/T2CH2SECT2-215.htm>; Minnesota, available at <http://www.mncourts.gov/?page=1341>.

¹²⁸ JUROR HANDBOOK, *supra* note 90.

¹²⁹ The Census Bureau calculates poverty status using income cutoffs based on family size and the number of members under 18 years old. It compares a person's total family income in the last 12 months with the poverty threshold appropriate for that person's family size and composition. Anyone falling under this level is considered to fall below the poverty level. U.S. Census Bureau, American Community Survey, Puerto Rico Community Survey 2010 Subject Definitions 27, 102-103 (2010), available at http://www.census.gov/acs/www/Downloads/data_documentation/SubjectDefinitions/2010_ACSSubjectDefinitions.pdf; Schwartz et. al., *supra* note 71, at 4-5 (describing the role of compensation in addressing non-responses).

¹³⁰ As discussed, minorities in North Dakota appear to be disproportionately represented among those in poverty. See U.S. Census Bureau, Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months, 2007-2009 American Community Survey 3-Year Estimates: North Dakota (2009).

¹³¹ *Id.*

¹³² See *id.*

¹³³ OFFICE OF THE NORTH DAKOTA SUPREME COURT ADMINISTRATOR, NORTH DAKOTA JUDICIAL BRANCH: ANALYSIS OF JUROR COST BASED ON JURORS SERVING IN 2006 (2011). This data shows 6238 jurors serving one day, 846 serving two, and 227 serving three. The numbers decrease to double-digits beyond three days.

¹³⁴ Counting both "Strongly Disagree" and "Disagree" as a single category.

¹³⁵ The remainder consisted either of non-response or self-employed.

¹³⁶ N.D.R.Civ.P. 47; N.D.R.Crim.P. 24; N.D. Sup. Ct. Admin. R. 9. *supra* note 11 (Standards 7, 8, 9).

¹³⁷ N.D.R.Civ.P. 47(b); N.D.R.Crim.P. 24(b)(1)(A).

¹³⁸ N.D.R.Civ.P. 47(b); N.D.R.CrimP. 24(b)(1)(A). An example of a challenge for cause might include an instance in which a potential juror is related to a defendant or party in the case and, therefore, unlikely to be impartial.

¹³⁹ N.D. Sup. Ct. Admin. R. 9. *supra* note 11 (Standard 9); N.D.R.Civ.P. 47(c); N.D.R.Crim.P. 24(b)(2).

¹⁴⁰ This appears to include the assumption that Black (minority) jurors as a group are unable impartially to consider the State's case against a Black (minority) defendant. See *Batson v. Kentucky* 476 U.S. at 80, 88-89. A Definition of "peremptory strike" is available at <http://dictionary.law.com/Default.aspx?selected=1501>.

¹⁴¹ *Swain v. Alabama* 380 U.S. 202, 219 (1965) (citing *Lewis v. United States*, 146 U.S. 378 (1892)).

¹⁴² *Batson v. Kentucky*, 476 U.S. at 91.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 89.

¹⁴⁵ See *id.* at 91-98.

¹⁴⁶ See *id.* at 80, 88-89.

¹⁴⁷ See *id.* at 96-98.

¹⁴⁸ Fern 501 N.W.2d, 739; see also *Flanagan v. State*, 2006 ND 76, 712 N.W.2d 602.

¹⁴⁹ See generally *State v. Stridiron*, 2010 ND 19, 777 N.W.2d 892.

¹⁵⁰ The fact that gender status involves consideration of only 2 large groups and, populations with approximately 50-50 proportions, creates problems of challenging based on gender since all removals must be either male or female. North Dakota cases involving removal for racial discrimination do not share this similarity.

¹⁵¹ See generally 2010 ND 19, 777 N.W.2d 892.

¹⁵² See *Batson v. Kentucky* 476 U.S. at 105-106 (Marshall, J, concurring); Jeb C. Griebat, *Peremptory Challenge by Blind Questionnaire: The Most Practical Solution for Ending the Problem of Racial and Gender Discrimination in Kansas Courts While Preserving the Necessary Function of the Peremptory Challenge*, 12 KAN. J. OF L. & PUB. POL'Y 323, 331-333 (2003) (highlighting the difficulties courts face in deciphering attorneys' reasons for strikes in an examination of *Batson* Challenges in a survey of Kansas courts) available at <http://www.law.ku.edu/publications/journal/pdf/v12n2/griebat.pdf?pagewanted=all>.

¹⁵³ The Commission's jury panel survey indicated that no one from the sample of responses taken during the study period indicated a perception that attorneys struck jurors based on race.

¹⁵⁴ Public Testimony, Bismarck Attorney Focus Group (Aug. 17, 2011) (on file with the Commission).

¹⁵⁵ E-mail to the Commission (received Jan. 12, 2011) (on file with the Commission).

¹⁵⁶ E-mail to the Commission (received Oct. 25, 2010) (on file with the Commission).

¹⁵⁷ Memorandum from Hon. Wickham Corwin, District Judge, East Central Judicial District, to Justice Carol Kapsner, Justice, North Dakota Supreme Court, and Hon. Donovan Foughty, Presiding Judge, Northeast Judicial District, 1 (March 18, 2011) (on file with Commission) [hereinafter *Fargo Inns of Ct. Memo*]; North Dakota Commission to Study Racial & Ethnic Bias in the Courts, Minutes (March 18, 2011), *supra* note 63.

¹⁵⁸ *Fargo Inns of Ct. Memo*, *supra* note 157 at 1; N.D. Commission to Study Racial & Ethnic Bias in the Courts, Minutes (March 18, 2011), *supra* note 63.

¹⁵⁹ Public Testimony, Bismarck Attorney Focus Group (Aug. 17, 2011) (on file with the Commission).

¹⁶⁰ Burleigh, Cass, and Stark counties showed some level of overlap.

¹⁶¹ 52.6 percent (79 percent counting answers indicating an Associate's Degree or some college). Whites for the same sample were at 37.1 percent indicating a bachelor's degree or above and 70.5 percent indicating some college or above.

¹⁶² North Dakota State Data Center, *Population by Race and Hispanic Origin in North Dakota: Census 2000 and July 1, 2008 Estimate*, 25 POPULATION BULLETIN (2009); see also U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), <http://quickfacts.census.gov/qfd/states/38000.html>.

¹⁶³ MIGRATION POLICY INSTITUTE, TOP LANGUAGES SPOKEN BY ENGLISH LANGUAGE LEARNERS NATIONALLY AND BY STATE, ELL INFORMATION CENTER FACT SHEET 2, 4 (2010) [hereinafter MIGRATION POLICY INSTITUTE], available at http://www.migrationinformation.org/ellinfo/FactSheet_ELL3.pdf (noting that, unlike most other states, Spanish is not the top language spoken by English Language Learners in North Dakota, and that less than half of the North Dakota English Language Learners spoke the top language, indicating a greater than average number of languages needed); DEPARTMENT OF EDUCATION, CONSOLIDATED STATE PERFORMANCE REPORT FOR STATE FORMULA GRANT PROGRAMS, PART I 48 (2010) (indicating the top five languages spoken by Limited-English-Proficiency students throughout the state); RODNEY OLSON, AN ANALYSIS OF FOREIGN LANGUAGE INTERPRETER SERVICES PROVIDED FOR THE DISTRICT COURT IN CASS COUNTY, NORTH DAKOTA AND IMPROVEMENT RECOMMENDATIONS 15 (2009) (acknowledging the lack of a “main” foreign language need in Cass County, North Dakota’s largest county and the county most likely to require interpreters because of resettlement of New Americans); CONFERENCE OF STATE COURT ADMINISTRATORS, WHITE PAPER ON COURT INTERPRETATION: FUNDAMENTAL ACCESS TO JUSTICE 4-5 (2007) [hereinafter CONF. OF ST. CT. ADMINISTRATORS], available at <http://cosca.ncsc.dni.us/WhitePapers/CourtInterpretation-FundamentalToAccessToJustice.pdf>.

¹⁶⁴ CONF. OF ST. CT. ADMINISTRATORS, *supra* note 163 at 16 (citing *Chao v. State*, 604 A.2d 1351, 1362 (Del. 1992)); *State v. Calderon*, 13 P.3d 871, 879 (Kan. 2000); *State v. Rodriguez*, 682 A.2d 764, 766 (N.J. Superior Court 1996); *State v. Guzman*, 712 A.2d 1233, 1241 (N.J. Super. 1998), *cert. denied*, 719 A. 2d 1022 (N.J. 1998); *People v. Avila*, 797 P.2d 804, 805 (Colo. Ct. App. 1990)).

¹⁶⁵ *Ling v. State*, 702 S.E.2d 881 (Ga. 2010).

¹⁶⁶ Improving Access to Services for Persons with Limited English Proficiency, Exec. Order No. 13166, 3 C.F.R. pt. 5 (2000), available at <http://www.justice.gov/crt/about/cor/Pubs/eolep.php>.

¹⁶⁷ 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance).

¹⁶⁸ A number of state studies noted the effects of rapidly changing state demographics. MINNESOTA SUPREME COURT TASK FORCE ON RACIAL BIAS IN THE JUDICIAL SYSTEM, FINAL REPORT 69 (1993); NEB. TASK FORCE RPT., *supra* note 3 at 10; CALIFORNIA JUDICIAL COUNCIL ADVISORY COMMITTEE ON RACIAL AND ETHNIC BIAS IN THE COURTS, FINAL REPORT 94-95 (1997).

¹⁶⁹ Virginia E. Hench, *What Kind of Hearing? Some Thoughts on Due Process for the Non-English-Speaking Criminal Defendant*, 24 T. MARSHALL L. REV. 251, 258 (1999); Richard W. Cole & Laura Maslow-Armand, *Role of Counsel and the Courts in Addressing Foreign Language and Cultural Barriers at Different Stages of a Criminal Proceeding*, 19 W. NEW ENG. L. REV. 193 (1997); Charles M. Grabau & Llewellyn Joseph Gibbons, *Protecting the Rights of Linguistic Minorities*, 30 NEW ENG. L. RE. 227 (1996), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=870481; SUPREME COURT OF OHIO, INTERPRETERS IN THE JUDICIAL SYSTEM: A HANDBOOK FOR OHIO JUDGES, Introduction, available at http://www.sconet.state.oh.us/publications/interpreter_services/ISHandbook.pdf (last visited Nov. 9, 2011).

¹⁷⁰ CONF. OF ST. CT. ADMINISTRATORS, *supra* note 163, at 8, 16, 18.

¹⁷¹ Hench, *supra* note 169, at 252-54; Cole & Maslow-Armand, *supra* note 169, at 194.

¹⁷² Hench, *supra* note 169, at 254.

¹⁷³ See Bill Piatt, *Attorney as Interpreter: A Return to Babble*, 20 N.M. L. REV. 1 (1990) (discussing harm caused by bilingual attorneys attempting to act simultaneously as translators); Wanda Romberger, *The Provision of Court Interpreter Services in the 21st Century*, 49 JUDGE’S JOURNAL 2, 17 (2010).

¹⁷⁴ See Piatt, *supra* note 173, at 1; Romberger, *supra* note 173, at 17.

¹⁷⁵ SUZANNE ZENG, INTERPRETER CODE OF ETHICS (Rev. 2008, used with permission); NATIONAL ASSOCIATION OF JUDICIARY INTERPRETERS & TRANSLATORS, CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITIES [hereinafter NAT’L ASS’N OF JUDICIARY INTERPRETERS AND TRANSLATORS], available at <http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf> (last visited Nov. 9, 2011); Franklyn P. Salimbene, *Court Interpreters: Standards of Practice and Standards for Training*, 6 CORNELL J.L. & PUB. POL’Y 645, 649-658 (1997).

¹⁷⁶ WILLIAM E. HEWITT, COURT INTERPRETATION: MODEL GUIDES FOR POLICY AND PRACTICE IN THE STATE COURTS (1995).

¹⁷⁷ N.D. STATE COURTS, NORTH DAKOTA COURT INTERPRETER'S HANDBOOK, §M, <http://www.ndcourts.gov/court/interpreter.htm> (last accessed Nov. 2, 2011) [hereinafter INTERPRETER HANDBOOK].

¹⁷⁸ NAT'L ASS'N OF JUDICIARY INTERPRETERS & TRANSLATORS, *supra* note 175.

¹⁷⁹ *Id.*

¹⁸⁰ ZENG, *supra* note 175; NAT'L ASS'N OF JUDICIARY INTERPRETERS & TRANSLATORS, *supra* note 175.

¹⁸¹ Romberger, *supra* note 173, at 17.

¹⁸² INTERPRETER HANDBOOK, *supra* note 177.

¹⁸³ *Id.*

¹⁸⁴ *Abdi v. State*, 2000 ND 64, ¶ 6, 608 N.W.2d 292.

¹⁸⁵ HEWITT, *supra* note 176, at 202, 206; Wanda Romberger & William E. Hewitt, *Wanted: Career Paths for Court Interpreters*, FUTURE TRENDS IN STATE COURTS 2006, 77-8 (2006), available at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/accessfair&CISOPTR=132>.

¹⁸⁶ N.D.C.C. § 28-33-06; INTERPRETER HANDBOOK, *supra* note 177; see also NAT'L ASS'N OF JUDICIARY INTERPRETERS & TRANSLATORS, *supra* note 175; ZENG, *supra* note 175.

¹⁸⁷ See Romberger, *supra* note 173 at 17; see also HEWITT, *supra* note 176 at 202, 206

¹⁸⁸ VIRGINIA SUVEIU, THE GROWING NEED FOR QUALIFIED COURT INTERPRETERS, FUTURE TRENDS IN STATE COURTS 101 (2004).

¹⁸⁹ Romberger & Hewitt, *supra* note 185 at 77-8.

¹⁹⁰ OLSON, *supra* note 163, at 15; ROMBERGER & HEWITT, *supra* note 185.

¹⁹¹ OLSON, *supra* note 163, at 15; ROMBERGER & HEWITT, *supra* note 185.

¹⁹² SUVEIU, *supra* note 187, at 101; ROMBERGER & HEWITT, *supra* note 185, at 77.

¹⁹³ Wanda Romberger, *Language Access Centers, A Win-Win Idea*, FUTURE TRENDS IN STATE COURTS 2008, 1 (2008).

¹⁹⁴ *Id.* at 2.

¹⁹⁵ *Id.* at 3.

¹⁹⁶ Information for Centralized Interpreting System, available at <http://www.ninthcircuit.org/programs-services/court-interpreter/centralized-interpreting/>.

¹⁹⁷ *Id.*

¹⁹⁸ Romberger, *supra* note 173, at 18.

¹⁹⁹ OLSON, *supra* note 163, at 41-42 (comparing telephone and in-person interpreting and finding in-person generally more effective).

²⁰⁰ *Id.* at 41-42.

²⁰¹ Pub.L. 88-352, 78 Stat. 241, 42 U.S.C §§ 2000d - 2000d-7.

²⁰² Title VI of the Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241, 42 U.S.C §§ 2000d - 2000d-7; NORTH DAKOTA STATE COURTS, LIMITED ENGLISH PROFICIENCY PLAN, POLICY 522, 1 (2010) [hereinafter N.D. LEP]; Memorandum from Sally Holewa, State Court Administrator, to Chief Justice Gerald VandeWalle, Chief Justice of the Supreme Court of North Dakota (February 8, 2010) (presenting Limited English Proficiency Plan) (on file with Commission).

²⁰³ N.D. LEP, *supra* note 202, at 1.

²⁰⁴ *Id.* at 2. Other measures of language diversity, recorded to measure need for English education classes, indicate that there is no single language need great enough to justify concentrating efforts on providing services for that language. MIGRATION POLICY INSTITUTE, *supra* note 163, at 4.

²⁰⁵ N.D. LEP, *supra* note 202, at 3.

²⁰⁶ *Id.*

²⁰⁷ Clerk of court and juvenile court locations. *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Ct. Interpreter Qualifications & Procedures, N.D. Sup. Ct. Admin. R. 50 § 2(B) (2005) [hereinafter Admin. R. 50], available at <http://www.ndcourts.gov/court/rules/administrative/ar50.htm>. North Dakota does not maintain its own roster of interpreters. N.D. LEP, *supra* note 202, at 4; HEWITT, *supra* note 176, at 3 (recognizing general state difficulties).

²¹² INTERPRETER HANDBOOK, *supra* note 177.

²¹³ Admin. R. 50, *supra* note 211.

²¹⁴ N.D. LEP, *supra* note 202, at 6.

²¹⁵ *Id.*

²¹⁶ *Id.* at 5.

²¹⁷ OLSON, *supra* note 163.

²¹⁸ *Id.* at 31-33, 78-106.

²¹⁹ N.D. LEP, *supra* note 202, at 7.

²²⁰ OLSON, *supra* note 163, at 25-26.

²²¹ N.D. LEP, *supra* note 202, at 6. Translated forms and documents are available at <http://admin.ndcourts.gov>.

²²² Memorandum from Linda Catalano, Director of the Immigration Law Project, to Carol Ronning Kapsner, Justice, Supreme Court of North Dakota (March 31, 2011) (presenting collected Legal Services of North Dakota materials used for Introduction to Civil Law for Non-citizens program).

²²³ *Id.*

²²⁴ N.D. LEP, *supra* note 202, at 5. Available services include International Translation Services (Moorhead, Minnesota), Spanish Hotline (Minnesota), Somali Translation and Interpreter Services (Minnesota), Commercial Telephone Interpreter Services, and Relay North Dakota 24-hour text-telephone service for deaf and hearing impaired (available in Spanish). See *id.*

²²⁵ *Id.*

²²⁶ *Id.* at 6.

²²⁷ OLSON, *supra* note 163, at 16-17.

²²⁸ *Id.* at 17.

²²⁹ *Id.* at 10.

²³⁰ *Id.* at 32.

²³¹ *Id.* at 32-33.

²³² *Id.* at 35-44.

²³³ *Id.* at 45.

²³⁴ See *generally* Public Testimony, Fargo Public Library Transcript (June 22, 2010) [hereinafter Fargo Lib. Tr. I]; Public Testimony, Fargo Public Library Transcript (June 23, 2010) [hereinafter Fargo Lib. Tr. II].

²³⁵ OLSON, *supra* note 163, at 33-45.

²³⁶ Written testimony to the Commission (received Sept. 29, 2010).

²³⁷ *Id.* Additional public testimony appeared to indicate a reliance on language lines instead of in-person interpreting. One defense attorney stated that he had never witnessed an in-person interpreter in his area, which instead relied exclusively on the language lines. Public Testimony, University of North Dakota Transcript, pp. 54-55 (Apr. 13, 2010).

²³⁸ Fargo Lib. Tr. I p. 84 (June 22, 2010).

²³⁹ *Id.* at 83-4.

²⁴⁰ NATIONAL ASSOCIATION OF JUDICIARY INTERPRETERS & TRANSLATORS, *supra* note 175.

²⁴¹ Fargo Lib. Tr. I p. 85 (June 22, 2010).

²⁴² *Id.* at 68-9.

²⁴³ N.D. LEP, *supra* note 202, at 3.

²⁴⁴ *Id.* at 5-6.

²⁴⁵ Written testimony to the Commission (received Oct. 19, 2010).

²⁴⁶ *Id.*

²⁴⁷ Fargo Lib. Tr. I pp. 85-6 (June 22, 2010).

²⁴⁸ *Id.* at 82.

²⁴⁹ *Id.*

*chapter***2**

Criminal and Juvenile Justice

Arrests

Corrections

Juvenile Justice

CRIMINAL JUSTICE

A considerable amount of research exists on the intersection of race and criminal justice. Most research relates to African Americans or Hispanic/Latino(a)s rather than Native Americans.¹ The Commission attempted to collect statistical information and perceptions from Native Americans along with other minorities throughout the state. Though many groups proved difficult to reach or hesitant to share written or in-person experiences, the Commission gained some useful data that appeared similar to the findings of broader research.

North Dakota law enforcement and correctional facilities track a large volume of data, including race and ethnicity information. A number of federal programs compile data reported from states to create broad pictures of arrests, corrections, and juvenile justice. The Commission could not gather data on certain key study areas within its allotted duration and budget. For example, county-level data on pretrial detention was too inconsistent to allow collection and reliable analysis. An original study might have provided sufficient data, but would have required time and resources beyond availability. Likewise, a detailed, original analysis of potential bias and sentencing would have required long-term case studies controlling for multiple variables. Commission members identified impartial observation from in-court court watchers as a particularly effective way to gain insight on a number of processes within the criminal system, but a lack of resources prevented any serious consideration of this kind of original study. The Commission instead relied on experiential data from members of the public, attorneys, and court workers.

The Commission concentrated on the areas of arrests, sentencing, drug courts, incarceration, and issues related to recidivism. Analysis of arrests and corrections allowed for comparisons at the beginning and end of the court process. The Commission also analyzed the area of juvenile justice, benefiting from a large volume of collected statistical data.

Jurisdiction and Reservations

Analysis of race and North Dakota courts must consider the issue of jurisdiction between tribal, state, and federal courts. State jurisdiction in Indian country is limited by grants of exclusive jurisdiction to tribal or federal courts in certain instances, meaning that

many cases potentially involving racial and ethnic bias are not heard in state courts.² In addition to considering whether an offense occurred in Indian country, determinations of jurisdiction consider the status of offenders and victims as either Indian or non-Indian.³ Whether the crime was major, minor, or victimless also has an effect in determining which court system has jurisdiction.⁴

The State of North Dakota has jurisdiction in Indian country when a non-Indian offender commits a non-federal crime against a non-Indian or when a non-Indian commits a victimless crime.⁵ North Dakota has a unique jurisdictional relationship with the Spirit Lake Nation,⁶ in that the State has concurrent jurisdiction with the tribe over misdemeanor crimes committed on the reservation.⁷

Jurisdictional issues affected the Commission's research because testimony often referenced problems in tribal or federal courts, areas beyond the scope of study. Some testimony suggested a need for better interaction and cooperation between tribal, state, and federal authorities.⁸ Some individuals expressed concern that the state sometimes overstepped its jurisdiction in Indian country, while others seemed to perceive the opposite, that state authorities could do more to help remedy certain difficulties on reservations.⁹

In North Dakota, tribal and federal criminal jurisdictional authority removes a significant number of Native Americans from contact with the state courts. Despite this, Native Americans are disproportionately represented in state criminal corrections. If all three jurisdictional authorities are considered, the disproportionate representation of Native Americans in the criminal justice system is even greater.¹⁰

Arrests

The area of arrests is the entry point into the criminal system; therefore, disparities at this step can lead to disproportionate representation in subsequent steps, even if following steps are fair. If subsequent procedures do not reduce or eliminate initial disparities, disproportion will continue through the process. Law enforcement agencies track and report arrest statistics to state officials and to the FBI Unified Crime Reports (UCR) project, which facilitated the Commission's examination of statewide arrest data. The UCR provides a breakdown of offenses by race.

Arrest rates measure one of two activities: police clearance rates for reported crimes;¹¹ or crimes that police observe directly.¹² Because of these limitations, the rates only reflect a portion of all crimes that occur. The majority of available data consists of reported crimes rather than those witnessed by police officers. Police priority-setting and varying resources available for certain cases or categories of crime may affect reported arrest rates, along with varying practical difficulties in making arrests for different crimes.¹³ These factors can contribute to disparity in arrest rates by race if particular crime categories

correlate with offenders of a certain race or ethnicity.

Arrest data has been reproduced from CRIME IN NORTH DAKOTA, an annual report from the North Dakota Attorney General's Office.¹⁵ This publication compiles data reported to the UCR from across the state and records arrests within designated categories referred to as "Index Crimes." Reporting does not include arrests made by tribal authorities.¹⁶

UCR Raw Numbers from 2009

Offense Classification¹⁴	White	Black	Native American	Asian	Total
Murder/Non-Negligent Manslaughter	7	-	-	-	-
Negligent Manslaughter	5	-	2	-	7
Forcible Rape	18	4	4	-	26
Robbery	26	3	8	-	37
Aggravated Assault	240	30	89	1	360
Burglary	234	16	54	2	306
Larceny/Theft	1,772	140	563	10	2,485
Motor Vehicle Theft	120	5	54	-	179
Other Assaults	1,461	157	419	10	2,049
Arson	9	-	5	-	14
Forgery and Counterfeiting	71	8	10	1	90
Fraud	629	15	63	2	709
Embezzlement	27	1	2	1	31
Stolen Property Offenses	83	12	31	-	126
Vandalism	384	23	106	5	518
Weapons Offenses	152	9	5	2	168
Prostitution	4	-	-	-	4
Other Sex Offenses	72	3	13	1	89
Drug Abuse Violations	1,718	100	238	7	2,063
Gambling	1	-	-	-	1
Offenses Against Family and Children	131	21	32	1	185
Driving Under the Influence	5,086	120	601	12	5,819
Liquor Law Violations	4,490	108	835	16	5,449
Disorderly Conduct	1,382	119	340	2	1,843
Vagrancy	-	-	-	-	-
All Other Offenses	4,202	276	1,044	20	5,542
Suspicion	-	-	-	-	-
Curfew and Loitering	240	8	47	1	296
Runaways	389	23	111	1	524
Arrest Total	22,955	1,201	4,674	95	28,925

Arrest Table 1

The number of offenses committed in 2009 appears in Arrest Table 1, organized by Index Crime category and race. This data does not include information on the number of

Hispanic/Latino(a) individuals arrested, so this classification does not appear on the table. Because individuals who would self-identify as Hispanic/Latino(a) had to choose another identification in the UCR statistics, inclusion of a Hispanic/Latino(a) category would most likely raise the proportion of total minority arrests in comparison to Whites. Those Hispanic/Latino(a) individuals who selected another minority category would not affect the proportion of minorities to Whites in following charts, while those who selected “White” would instead appear in a “minority” category, according to the definitions in this report. The only way inclusion of a Hispanic/Latino(a) category would not increase total proportions of minorities would be if no Hispanic/Latino(a) self-identified as White.

The content of Arrest Table 2 derives from the numbers found on Table 1, but provides percentages of arrests by race within each offense category according to the 2009 UCR data. This breakdown allows a better sense of proportions by race, but omits categories with small numbers of total arrests based upon the potential of such percentages to create a misleading picture of crime within the state.¹⁷

The Arrest Tables indicate that even though Whites make up the majority of arrests within the state by number, African Americans and Native Americans show arrest rates proportionally higher than each group’s percentage of the state population in most offense categories.¹⁸ A similar pattern of minority over-representation holds when combining arrest totals for the UCR categories.¹⁹ However, data does not provide any suggestion of causes behind the disparate arrest rates.

Selected UCR Percentages from 2009

Offense Classification	White	Black	Native American	Asian
Forcible Rape	69%	15.4%	15.4%	0
Aggravated Assault	66.7%	8.3%	24.7%	0.3%
Burglary	76.5%	5.2%	17.6%	0.7%
Larceny/Theft	71.3%	5.6%	22.7%	0.4%
Motor Vehicle Theft	67%	2.8%	30.2%	0
Other Assaults	71.4%	7.8%	20.5%	0.5%
Forgery and Counterfeiting	78.9%	8.9%	11%	1%
Fraud	88.7%	2.1%	8.9%	0.3%
Stolen Property Offenses	65.9%	9.5%	24.6%	0
Vandalism	74.1%	4.4%	20.5%	1%
Weapons Offenses	90.5%	5.4%	3%	1.2%
Other Sex Offenses	80.9%	3.4%	14.6%	1.1%
Drug Abuse Violations	83.3%	4.8%	11.5%	0.3%
Offenses Against Family and Children	70.8%	11.4%	17.3%	0.5%
Driving Under the Influence	87.4%	2.1%	10.3%	0.2%
Liquor Law Violations	82.4%	2%	15.3%	0.3%
Disorderly Conduct	75%	6.5%	18.4%	0.1%
All Other Offenses	75.8%	5%	18.8%	0.4%
Curfew and Loitering	81.1%	2.7%	15.9%	0.3%
Runaways	74.2%	4.4%	21.2%	0.2%
Arrest Total	79.3%	4.2%	16.2%	0.3%

Arrest Table 2

One explanation sometimes proposed as the cause of disparate rates blames minority over-representation entirely or primarily on minorities committing more crime.²⁰ Empirical analyses tend not to support this explanation.²¹ Research does suggest that factors such as law enforcement practices and punitive sentencing policies may influence patterns of racial disparity.²² For example, studies have indicated that policy decisions that rely on police as the primary response to social problems in low-income areas can constrain other potential actions by criminal justice practitioners.²³ This kind of activity might include instances in which police make more drug arrests in low-income neighborhoods that lack sufficient resources to provide alternatives to address drug problems.²⁴ Commission testimony provided similar evidence, suggesting that a concentration in arrests may occur in areas bordering reservations, and some individuals alleged that the state authorities sometimes violated tribal sovereignty or ignored tribal jurisdiction.²⁵

The Commission received a number of comments relating to general minority mistrust of law enforcement. Native Americans who spoke with the Commission usually perceived that they received heightened suspicion or even harassment from the police outside Indian reservations and attributed this treatment to racial bias.²⁶ Comments usually described this treatment as linked to local practices rather than characterizing the entire state.²⁷ Testimony suggested that police stops occur more often in certain areas of the state if vehicle occupants are visibly Native American, a practice apparently perceived as common enough to have been nicknamed “DWI” or “Driving While Indian.”²⁸ Some testimony suggested greater bias exists in courts that border reservations and that police policies in these areas lead to disproportionate arrests, which, in turn, leads to disproportion throughout subsequent steps in the system.²⁹ Individual testimony also highlighted long-term effects that can result from bias in arrests:

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. ³⁰

Mistrust of courts and law enforcement appeared to come not only from perceptions that minorities receive worse treatment from police, but also more generalized perceptions of fear, unfairness, and intimidation from authorities.³¹

Research on crimes affecting Native Americans shows high levels of crime victimization.³² In 1999, the Bureau of Justice Statistics generated a study on Native

Americans and crime from compiled statistics including the National Victimization Survey, the UCR, the National Incident-Based Reporting System, and other data collection programs.³³ The report identified unique Native American issues from both the victimization and arrest perspectives.³⁴ Findings indicated that the violent crime victimization rate for Native Americans was more than twice the national average.³⁵ Data suggests that Native Americans face a greater likelihood than other groups to be victimized by a member of another race.³⁶ A high likelihood of inter-racial victimization coupled with an inherent mistrust of courts could suggest that a number of crimes against off-reservation Native Americans could go unreported. This possibility requires further study.

Public testimony suggested other influences on arrest disparities. Native Americans testified that reservations often lack sufficient resources to deal with juvenile delinquency, and this leads to patterns of behavior that may carry over into state jurisdictions with sufficient resources to impose consequences.³⁷ Statistical research tends to support these perceptions, finding that lack of sufficient intervention for juveniles and adults can increase offending.³⁸ Native Americans acknowledged drugs and alcohol as contributors to crime in many instances.³⁹ Studies on arrests support this perception, finding that Native Americans have more than double the national rate of alcohol violations, though arrest rates for other crimes, such as violent offenses, are similar to the national averages.⁴⁰

Testimony also discussed perceptions of arrests from members of other minority groups. Individuals with long-term experience working with the courts or cooperating organizations testified that trends toward bias exist within law enforcement, especially when cases involve recent immigrants.⁴¹ One commented that law enforcement sometimes detains people of color for the purpose of finding out whether or not they are illegal immigrants.⁴² The individual felt that this led to increased police contact for legal residents.⁴³ Another testified that:

A Sudanese man was stopped at the bus station [...], and he was a documented legal resident, but he was offended by the fact that he was asked to prove his citizenship even though he provided a license. After that, he tried to refuse continuing conversation. He tried to walk away, and he tried to stop them from touching him, which resulted in him being arrested for assault of the officers. And he was held for five days in jail. They wanted to release him to a halfway house, but his attorney got him finally released. So this man had to spend five days in jail because he looked brown.⁴⁴

Other testimony suggested bias toward Hispanic/Latino(a) individuals is typically linked with immigration issues.

We've had incidents of people in their home in West Fargo that were working at a Mexican restaurant, and the police came because there was foreign music, ethnic music, playing in the house. Instead of getting a citation for a violation of a noise ordinance, they were all arrested, and the police stated that they called ICE because they needed an interpreter.⁴⁵

Another member of the public described an arrest of large numbers of Hispanic/Latino(a)s following a traffic stop.⁴⁶ The individual questioned how an initial stop could lead to the eventual arrest and deportation of dozens of Hispanic/Latino(a) people who had not been present in the vehicle.⁴⁷ The testimony suggested that inconsistencies existed in the processing for some arrested in that case.⁴⁸

Other testimony attributed problems to lack of understanding between officers and minorities.⁴⁹ A state employee related a story of a minority man who was arrested for breaking into his own house.⁵⁰ State authorities eventually resolved the problem, but the speaker believed that police did not make a sufficient effort to understand the situation from the beginning.⁵¹

Bond Issues

The Commission discussed implementing a uniform bond schedule to ensure greater consistency across the state. Courts bordering certain Indian reservations treat Native Americans who reside on the reservations as “out of state” residents, while other courts do not, leading to inconsistencies depending on geographic location. Testimony from Bismarck-area attorneys indicated a perception that Native Americans tend to receive higher bonds than Whites.⁵² Attorneys said that the disparity could be at least partially attributed to location and related factors, but they perceived the existence of a racial correlation.⁵³ Commission discussions also acknowledged different treatment for Native Americans living on Indian reservations.

Disparate treatment of individuals from Indian reservations could be perceived by the public as based on race even if other considerations, such as differing systems of cooperation between state and tribal authorities, underlie variations. Members suggested that ensuring a higher level uniformity in bond schedules, while maintaining an adequate

level of flexibility for judges to adjust bonds depending on individual situations, would go some way to addressing concerns in this area.

Sentencing

The Commission analysis of sentencing relied heavily on evidence gathered from surveys, public meetings, and written statements provided by mail or email. Members discussed producing an original case study of sentencing patterns throughout the state, but decided that the Commission lacked the necessary time and resources to complete such a study. Instead, the Criminal Justice Committee relied substantially on secondary sources and on a 1999 North Dakota study examining race and punishment severity.⁵⁴ This approach allowed some comparison between statistical and experiential data on sentencing.

A 2006 National Center for State Courts (NCSC) survey found that a majority of Americans felt that low-income offenders were treated worse in sentencing than others convicted of the same crime.⁵⁵ This opinion held relatively consistent across races.⁵⁶ A substantial portion of respondents also believed that non-English speakers are more likely to receive unfair sentences than English speakers.⁵⁷ Race and ethnicity related strongly to attitudes about sentencing fairness, with minorities more likely to identify bias.⁵⁸ Three-fourths of African Americans answering the survey thought offenders of their racial background received worse treatment in sentencing.⁵⁹ Seventy percent held the same opinion with regards to low-income people of any race.⁶⁰ Members of minority groups were less likely than Whites to believe that sentencing is too lenient.⁶¹ Unfortunately, the NCSC survey did not provide analysis specifically for Native American perceptions.⁶²

Generally, minorities tend to identify bias against their own and other minority groups more often than Whites.⁶³ Minorities also tend to feel more strongly that low-income people receive worse treatment in sentencing.⁶⁴ Responses to North Dakota state surveys and the Commission's public meeting feedback showed a similar minority perception of negative treatment by the courts.⁶⁵ Testimony often revealed a belief that minority offenders sometimes receive longer sentences than Whites in instances when other factors, such as criminal history, do not differ significantly.⁶⁶ Additional testimony indicated a perception that Native Americans receive harsher sentences than Whites, even in instances when Whites appeared to have committed more serious offenses or had more

extensive criminal records.⁶⁷ Such examples appear to coincide with findings from general research on minority perceptions.

The majority of Americans in the NCSC survey agreed that judges should have more leeway in deciding an appropriate punishment.⁶⁸ In contrast, many perceptions gathered from the Commission's survey of individuals incarcerated within the North Dakota Department of Corrections and Rehabilitation (DOCR) actually urged less leeway for judges or even sentencing guidelines as potential solutions for perceived sentencing disparities.⁶⁹ Though individuals advocating sentencing guidelines tended to have broader reasons than racial bias, minority respondents did voice perceptions of disparate treatment based on race in their own or others' cases. However, the 1999 North Dakota study of race and punishment severity offered evidence that sentencing patterns vary substantially, but by region rather than race.⁷⁰ The study collected survey data from a sample of inmates and controlled for variables such as prior criminal record.⁷¹ Analysis did not reveal a significant correlation between race and punishment severity, but acknowledged previous studies indicating Native Americans tended to serve a greater proportion of sentences prior to release than other groups.⁷² The study found that prior convictions for juvenile burglary or juvenile assault predicted punishment severity.⁷³ It did not examine whether the same juvenile variables affected disparities in earlier stages of the system, such as arrest or incarceration.⁷⁴

Drug Courts

The Commission examined minority participation in drug courts in light of national research and testimony pointing to drugs as a factor in crime and disparity.⁷⁵ A large body of evidence has led to a consensus that drug courts reduce criminal recidivism.⁷⁶ Drug courts have also proven highly cost-effective, especially when services target serious, high-risk offenders.⁷⁷ Many of the substantial positive effects of drug courts are attributable to their effectiveness with high-risk participants, including those with severe antisocial backgrounds.⁷⁸ However, successful drug courts require fidelity to the complete drug court model, because there is a danger of making individual situations worse if only partial adherence to a program occurs.⁷⁹

Drug Court Table 1 shows the number of North Dakota adult drug court participants

	Drug Court Starts	Percent Starts	Non-completion Status	Percent Non-Complete
2007	60	-	17	28.3%
Caucasian	58	97%	16	27.5%
Native American	2	3%	1	50%
2008	64	-	18	28%
Caucasian	57	89%	15	26.3%
Native American	7	11%	3	42.9%
2009	91	-	23	25.3%
African American	1	1%	0	0%
Asian	1	1%	0	0%
Caucasian	83	91%	21	25%
Hispanic	1	1%	0	0%
Native American	5	5%	2	40%
Grand Total	215	-	58	27%

Drug Court Table 1

by race for 2007 to 2009. “Non-completion Status” refers to the number of individuals who failed to complete the program for any reason, and includes all eligible classes of offense.⁸⁰ If a

particular race category does not appear under a given year, this means that no individuals of that race participated in the program for that year.

Almost half of the total number of minorities in the chart did not complete drug court, compared to about a quarter to a third of Whites. However, proportions for minority program completion derive from a low total number of participants, and so might have been altered by only a few additional completions or non-completions. This characteristic makes comparisons of success by race unreliable. Data also indicates minority under-representation for the years examined. Data for 2007 shows only 4 percent minority participation, while subsequent years show an increase to 11 percent in 2008 and 9 percent

in 2009. The latter proportions appear representative when compared to the overall state population, but not when compared to other points in the criminal system, such as arrests and incarceration.⁸¹

Drug Court Table 2 breaks down both class of offense and completion status as an additional level of detail to data presented in Drug Court Table 1. In Table 2, the label “Starts” indicates an offender each time he or she began drug court. This means that individuals may be counted multiple times in the “Starts” column.⁸²

The results for all the years examined in these tables yield a majority of 198 White participants (92.1 percent), and 14 Native American (6.5 percent), 1 Asian, 1 Hispanic, and 1 African American (0.47 percent) participants. As noted, when compared to statistics showing considerably higher proportions for Native Americans and African-Americans in arrests and incarceration, under-representation of these minority groups in drug courts appears evident.⁸³ Commission perception data tends to support this conclusion.⁸⁴

Drug Court Starts	Starts	Proportion by Race	Percent Completed
2008	64		
<i>Felony</i>	21		
Caucasian	19	90.5%	68.4%
Native American	2	9.5%	100%
<i>Felony, Misdemeanor</i>	13		
Caucasian	11	84.6%	91%
Native American	2	15.4%	100%
<i>Misdemeanor</i>	30		
Caucasian	27	90%	70.4%
Native American	3	10%	0%
2009	91		
<i>Felony</i>	32		
Caucasian	30	93.75%	70%
Allowed to Withdraw	1	-	-
Native American	1	3.1%	100%
African American	1	3.1%	100%
<i>Felony, Misdemeanor</i>	14		
Caucasian	13	92.9	69.2%
Native American	1	7.1	0%
<i>Misdemeanor</i>	45		
Caucasian	40	88.9	80%
Hispanic	1	2.2	100%
Native American	3	6.7	66.7%
Asian	1	2.2	100%
Grand Total	215		

Drug Court Table 2

Incarceration

In 2006, 1 in 31 Americans was under some sort of criminal justice supervision.⁸⁵ Recent national data shows overall state prison populations declined for the first time in 38 years.⁸⁶ North Dakota consistently ranks as having one of the lowest rates of imprisonment nationally,⁸⁷ but was not among the states contributing to the national decrease measured

from 2008 to 2009, instead increasing 2.3 percent during that period.⁸⁸ Research suggests that prison growth does not stem primarily from increases in crime or population trends, but from policy choices that send offenders to prison at higher rates and keep them confined for longer periods.⁸⁹ It is unclear whether similar trends affect rates in North Dakota, but a 1999 North Dakota study examining race and punishment severity recognized that minimum mandatory sentencing and truth in sentencing legislation could play a role in both observed and projected growth in prison populations.⁹⁰ Considering the small number of incarcerated individuals in North Dakota, a 2.3 percent increase does not represent a large increase in real numbers, but such growth must be considered in light of potential racial disparity in the system. However, the Commission found that NDDOCR incarceration data on individuals who passed through the state courts in fact indicates a decrease between 2008 and 2009, so increases measured in national studies may stem from factors outside of the state system.

Just as arrest constitutes the entry point into the criminal justice system, corrections is an end point for examination. Racial disparities in incarceration rates may be evidence of problems located at earlier points in the system.⁹¹ Comparison of incarceration rates with arrest rates can constitute evidence to indicate whether the intervening criminal justice process alleviates or contributes to any initial disparities.⁹²

A 2007 study completed by the Sentencing Project, which examined relative rates of incarceration by race for each state, showed wide variation in rates depending on race.⁹³ The study reviewed data from 2005, which showed incarceration rates for all measured races significantly higher than past studies.⁹⁴ Data for North Dakota showed Whites at a ratio of 267 inmates per 100,000 residents, African Americans at 2,683 per 100,000, and Hispanics/Latino(a)s at 848 per 100,000 residents.⁹⁵ The study characterized North Dakota as having a rate of African American and Hispanic/Latino(a) incarceration above the national average, and a rate of White incarceration considerably below the national average.⁹⁶

Researchers also calculated North Dakota's ratio of incarcerated African Americans to Whites as 10 to 1, and the Hispanic/Latino(a) to White ratio at 3.2 to 1.⁹⁷ The study did not include rates for Native Americans, North Dakota's largest minority group both among those incarcerated and in the total state population.⁹⁸ Based on 2009 NDDOCR data and 2009 Census Estimates, the estimated rate of Native American incarceration would equal

approximately 760 per 100,000.⁹⁹ Depending on the time period examined, Native Americans accounted for roughly 20 to 25 percent of individuals incarcerated in the state prison system.¹⁰⁰ These percentages, compared to the roughly 5 to 6 percent Native Americans in the state population,¹⁰¹ become more difficult to explain when the effect of state jurisdictional limits on reservations is considered.¹⁰²

The NDDOCR Inmate Demographics 2009 table shows racial proportions within the state corrections system. It consists of a snapshot of the prison population for December 31, 2009, excluding federal inmates and inmates from other states.¹⁰³ Chart data comes directly from NDDCOR. Because individuals continually move in and out of NDDOCR,

data varies from month to month, but real numbers tend to remain relatively stable.¹⁰⁴

<i>State Inmates Under DOCR Responsibility</i> 1,204		
White	769	64%
<i>State Pop.:</i>	576,498	89%
Black	83	6.9%
<i>State Pop.:</i>	7,233	1.1%
American Indian/ Alaskan Native	268	22.3%
<i>State Pop.:</i>	35,272	5.6%
Hispanic/ Latino(a)	76	6.3%
<i>State Pop.:</i>	14,718	2.3%
Asian	2	0.2%
<i>State Pop.:</i>	5,520	0.9%
Other Race/Ethnicity	2	0.2%
<i>State Pop.:</i>	7,603	1.2%
No Data	4	0.3%

UCR Index Crime data shows Native Americans comprised approximately 16 percent of arrests in 2008 and 2009.¹⁰⁶ The NDDOCR 2009 Inmate Count shows that Native Americans comprised 22.3 percent of incarcerated population.¹⁰⁷ During that period, the same data shows that African Americans accounted for 4.2 percent of arrests.¹⁰⁸ Data shows African Americans at 6.9 percent of those incarcerated. Because no Hispanic/Latino(a) category appeared in the arrest data from the UCR, no comparison with incarceration data could be completed, though Hispanics/Latino(a)s make up a significant proportion of incarcerated individuals.

The apparent growth of some minority proportions between the arrest and incarceration stages raises concerns about court processes between the two points.¹⁰⁹ Several considerations also arise from the comparisons. The inclusion of a Hispanic/Latino(a) category for arrests could significantly alter proportions. In addition, because arrest totals measured in UCR data include only Index Crimes, the possible inclusion of additional arrest categories for non-Index Crimes could lead to variation in proportions; whether such variation would occur or would be substantial is unclear.¹¹⁰

Nationally, minorities are more likely than Whites to indicate that mandatory education and job training, as well as treatment and counseling programs for drug offenders or mentally ill inmates, should be used in place of prison.¹¹¹ Surveys have found broad support for problem-solving courts across all demographic categories.¹¹² The Commission inquiries directed at the state inmate population did not return results or comments that reflected these conclusions. Results instead indicated skepticism regarding treatment, from both minority and non-minority respondents. Those who commented instead stressed the need for adequate support, especially in adjusting to the post-incarceration period. Inmate responses also revealed a perception that the legal requirement to serve 85 percent of sentences for certain crimes is unfair, with some comments alleging that it produces disparate results.¹¹³ Previous North Dakota studies acknowledged that Native Americans tend to serve greater proportions of sentences before release than other groups, granting this perception some support.¹¹⁴ Responses provided no specific comments on problem-solving courts.

The Commission attempted to examine the areas of parole and probation, with an emphasis on the role of violations and recidivism as continuing points of contact between

courts and defendants. In 2007, there were 4,468 individuals on probation and 342 on parole in the North Dakota state system.¹¹⁵ More recent data, from 2009, shows a total of 394 individuals on parole and 4,230 on probation.¹¹⁶ Totals for 2009 appear in Parole/Probation Table 1.

Year	Sentence Type	Race	Total	Percent of total
2009	Parole	African American	16	4%
		Asian	1	0.3%
		Caucasian	23	71.8%
		Hispanic	21	5.3%
		Native American	73	18.5%
	Parole Total		394	
	Probation	African American	187	4.4%
		Asian	20	0.5%
		Caucasian	3147	74.4%
		Hispanic	153	3.6%
		Native American	723	17.1%
Probation Total			4,230	

Parole/Probation Table 1

The table also provides the reasons for revocation, labeled “New Offenses,” “Absconding Violations,” and “Technical Violations.” More than one reason may apply to a single revocation, so the numbers within the three revocation categories may add up to a higher number than the total number displayed for “Inmates with Revocations.” Percentages

reflect the proportion of a certain category relative to the reason for revocation. For example, Native Americans constitute 23 percent of those revoked in 2007, and 18 percent of those revoked in the same year for New Offenses. Percentage totals may not equal 100 percent because of rounding.

Parole/Probation Table 2 shows a disparate number of Native American violations attributable, at least in part, to absconding.¹¹⁷ One White inmate observed that “it’s unfair how the parole board will not parole people to their home communities because of lack of programming but if the person is from a larger community they will have a better chance of parole to a halfway house.”¹¹⁸ The comment points to an explanation for high levels of Native American absconding –the desire to return to home communities, which are often Indian reservations. NDDOCR officials corroborated this view, indicating that they recognized a pattern of absconding Native Americans returning to reservations.¹¹⁹ Other violations for all races, however, appear comparable to overall proportions of inmates in corrections, as measured by annual counts.¹²⁰

<i>Revocation Date</i>	RACE	Inmates with Revocations	New Offenses	Absconding Violations	Technical Violations	
2007	African American	4.7%	4.7%	7.2%	4.4%	
	<i>Number:</i>	66	28	33	54	
	Asian	0.2%	0.3%	0.2%	0.2	
	<i>Number:</i>	3	2	1	2	
	Caucasian	67.5%	73%	56%	69%	
	<i>Number:</i>	942	437	255	848	
	Hispanic	4.3%	4%	3.1%	4.1%	
	<i>Number:</i>	60	24	14	51	
Totals	Native American	23%	18%	34%	23%	
	<i>Number:</i>	325	110	153	280	
	Totals	1396	601	456	1235	
	2008	African American	5.3%	4.5%	5.5%	5.3%
		<i>Number:</i>	78	27	25	66
		Asian	0.3%	0.2%	0.4%	0.2%
		<i>Number:</i>	4	1	2	2
		Caucasian	66%	71%	52%	67%
<i>Number:</i>		967	432	236	835	
Hispanic		4.6%	4.8%	4.4%	4.8%	
<i>Number:</i>		67	29	20	60	
Totals	Native American	24%	19%	38%	23%	
	<i>Number:</i>	354	116	170	293	
	Totals	1470	605	453	1256	
	2009	African American	5.1%	4.5%	4.8%	4.8%
		<i>Number:</i>	68	24	20	55
		Asian	0.2%	0.2%	0.2%	0.3%
		<i>Number:</i>	3	1	1	3
		Caucasian	64%	67%	53%	64%
<i>Number:</i>		851	358	219	734	
Hispanic		4.7%	5.5%	5.8%	4.9%	
<i>Number:</i>		63	29	24	56	
Totals	Native American	26%	23%	36%	26%	
	<i>Number:</i>	350	120	149	294	
	Totals	1335	532	413	1142	

Parole/Probation Table 2

The Commission members examined revocations by sentence type and revocation disposition for the years 2007 to 2009. A comparison yielded no apparent racial disparity for those receiving a county jail sentence or an NDDOCR sentence (either with or without probation), which together account for at least half of all revocation dispositions for all categories and races. Research recommends that courts and probation agencies have a broad range of graduated sanctions and services available to respond to violations in order to reduce recidivism and address racial disparities.¹²¹ NDDOCR maintains such a process of intermediate sanctions to manage non-compliant behavior of probationers and

parolees.¹²² By the time a petition for revocation is filed, incarceration is likely to result, regardless of race.

Treatment Programs and Transitional Services

The Criminal and Juvenile Justice Committee recognized that racial and ethnic disparities in patterns of recidivism could contribute to overall disparities within the criminal justice system by repeatedly placing minorities under the control of courts. Nationally, individuals with a previous conviction make up nearly 60 percent of felony defendants in state court systems.¹²³ Over 40 percent fail to complete probation.¹²⁴ North Dakota consistently ranks below the national average for recidivism, but still faced a rate of 39.6 percent from 2004 to 2007.¹²⁵ Individuals who do not receive appropriate and effective services during or subsequent to prison face greatly increased odds of incarceration for a new offense.¹²⁶ Studies have identified promoting the reduction of recidivism as an explicit goal of state sentencing policy and working toward using effective treatment services as integral parts for strategies aimed at reducing crime.¹²⁷

Research indicates that long periods of incarceration for non-violent crimes appear to worsen individual behavior in the long run, leading to future contact with the criminal justice system.¹²⁸ Though a majority of Americans support giving violent offenders longer sentences and diverting more non-violent offenders into treatment and education programs,¹²⁹ difficult cases involving high-risk and violent offenders often benefit most from intensive treatment programs.¹³⁰ Such programs may have a considerable effect in reducing recidivism in the groups most likely to reoffend.¹³¹ Recent studies have suggested that adequately implemented evidence-based programs are most effective in reducing recidivism, even for violent offenders, so efforts to provide such services must be carefully selected and adequately followed through to completion.¹³²

The character of court interaction with offenders in treatment appears to affect recidivism rates.¹³³ Both interpersonal relationships with authority figures and perceptions of fairness reduce recidivism; criminal defendants have more trust in the system when they view court processes as fair.¹³⁴ Effective implementation of sentencing and corrections policies to achieve reduction in recidivism requires close cooperation between courts, probation agencies, and treatment providers.¹³⁵ Strategies for these programs must address

specific minority issues that may affect subsequent contact with the courts and could impact disparities throughout the system.¹³⁶

Part of the Commission's investigation focused on examining treatment for minorities on parole and treatment services available during incarceration as factors affecting recidivism rates. Inmates attempting to reenter society face many obstacles.¹³⁷ General research on inmate populations has recognized that, often, limited job training, rehabilitation, or education occurs in prison.¹³⁸ Issues specific to minority groups, such as the availability of support or appropriate programs to minority communities and individuals on Indian reservations, create further difficulties for these groups. Some evidence from Commission research showed that inmates may hold negative perceptions regarding treatment, but data on actual minority participation in available North Dakota education and work programs was relatively proportional to inmate population in the years examined.¹³⁹ Comments to the Commission pointed to a largely consistent set of difficulties after release. Some individuals noted a lack of program availability in certain communities. Others stated that accumulated debts, such as child support payments, restitution, fines, and fees required immediately on release, interfere with basic self-support, which makes adjusting to life after incarceration difficult. A number of inmates said that the suspension of driver's licenses created difficulties in obtaining or maintaining employment.

The Commission examined educational programs within NDDOCR from 2007 to 2010 to ascertain whether disparities existed in minority and non-minority use during that period.¹⁴⁰ Though available data allowed examination of race and participation, it did not allow accurate measurement of differing success rates by race for those who started the program. The most evident characteristic was the high proportion of minority participation for all years measured, with some years showing equal or greater numbers of minority inmates participating in GED programs compared to Whites.

Federal studies directed specifically at Native American issues have suggested that a lack of sufficient training for staff in state criminal and juvenile justice systems often contributes to recidivism, especially lack of training related to the development of culturally competent programs or reentry plans.¹⁴¹ These studies have described the level of investment in training and appropriate follow-up as minimal compared to the cost of offenders returning to the criminal justice system.¹⁴² North Dakota provides some culturally-based programs that concentrate directly on providing services to Native

American juveniles.¹⁴³ For adult offenders, similarly directed programs do not exist, though general programs are available for inmates regardless of race.¹⁴⁴

2009	Transition Starts	Percentages
	739	-
African American	18	2.4%
	<i>Fail</i>	4
	<i>Success</i>	14
Asian	1	0.14%
	<i>Success</i>	1
Caucasian	487	65.9%
	<i>Fail</i>	81
	<i>Success</i>	405
<i>No Discharge Type Indicated</i>	1	0.2%
Hispanic/ Latino(a)	24	1.1%
	<i>Fail</i>	3
	<i>Success</i>	21
Native American	142	19.2%
	<i>Fail</i>	32
	<i>Success</i>	110
No Race Indicated	65	8.9%
	<i>Fail</i>	10
	<i>Success</i>	49
<i>No Discharge Type Indicated</i>	6	9.2%

Transition Table 1

starts measured in the 2009 data. The subcategories beneath each racial group indicate successes and failures, both measured as a percentage of the total for each race classification, not as a proportion of the 739 transition starts.

A comparison against incarceration data, presented on page 75 shows some variation between minority starts and the inmate population, though Native American and White proportions appear relatively comparable.¹⁴⁷ However, varying options for self-identification between the two data sets prevent a strict comparison. The inclusion of a “No Race Indicated” category in the transition data creates additional ambiguity. Because of the low total numbers, proportions could change if even a few of the “No Race Indicated” individuals had selected another category. Failure rates for Whites, those indicating no race, and Hispanic/Latino(a)s range from 12 to 16 percent, while both Native Americans and African Americans showed failure rates of over 20 percent.

North Dakota does provide transitional services to help address this end of the process, including transition facilities, planning services, cognitive and other behavioral programs, such as anger management, and job seeking skills programs.¹⁴⁵ Transition Table 1 highlights 2009 transition starts¹⁴⁶ as well as success and failure rates by race. Each race category shows by a number followed by a percentage, indicating the total number of starts by race and the percentage of the 739

Research has noted occasions in which difficulties in tribal-state interaction may prevent proper notification when the state releases Native American offenders.¹⁴⁸ This potentially affects coordination and collaboration between service agencies to develop offender rehabilitation or reintegration plans.¹⁴⁹ North Dakota officials have discussed potential solutions to address these and other specific needs of Native Americans and other minorities in the state. The Transition from Prison to Community Steering Committee has discussed developing closer relationships between tribal officials and NDDOCR, since each tribe addresses and manages issues differently.¹⁵⁰ The group has also discussed strategies of engaging and improving relationships with individual tribal courts, staff training, increasing contact with successful Native Americans in the community and institutions, and providing technical assistance on reservations.¹⁵¹

FINDINGS

1. Available statistics on arrest show that minorities, especially African Americans and Native Americans, are arrested at a rate higher than their percentages in the state population.
2. Testimony reveals a perception that police stops occur more often in certain areas of North Dakota if vehicle occupants are visibly minorities.
3. Testimony reveals a perception that Indian tribes often lack sufficient resources to deal with juvenile delinquency occurring on Indian reservations and that lack of consequences leads to patterns of behavior that can increase contact with state courts when individuals leave Indian reservations.
4. Differing bond schedules may contribute to actual or perceived bias throughout the state. Treatment of Native Americans living on Indian reservations as out-of-state residents contributes to actual or perceived bias.
5. A perception exists among attorneys, court employees, others working with the courts, and Native Americans that minorities are more likely than Whites to plead guilty for cultural reasons or to avoid lengthy court processes.
6. Minorities perceive that minority defendants receive longer sentences than Whites for the same crimes.
7. Minorities are under-represented in adult drug courts.

8. Minorities are over-represented in the state prison population.
9. The proportion of minorities in the system appears higher at the incarceration stage than at arrests for Index Crimes, especially for Native Americans.
10. Testimony suggests that minorities face difficulties with housing, transportation, child support, and finding adequate employment after release from incarceration.
11. Analysis of parole and probation revocations does not reveal significant racial disparities except for a greater proportion of revocations for Native Americans occurring because of absconding violations.
12. Minority participation in North Dakota Department of Corrections and Rehabilitation education and transitional service programs designed to reduce recidivism appears to be proportional to minority populations in the state prison system.
13. The Commission was unable to gather information about minority incarcerations in the county system.

RECOMMENDATIONS

1. More detailed and long-term studies on race and the criminal justice system should be undertaken at all levels, especially in the areas of arrests, recidivism, and sentencing disparities.
2. The court should encourage the state to develop a retrieval mechanism for race and other data collected at the county and regional jail level.
3. Courts and law enforcement should establish and expand cultural liaisons to minority communities to provide education on the courts, police, and legal issues.
4. Courts should establish an objective screening tool for determining bail and should standardize bond schedules to ensure the equal treatment of Native Americans living on Indian reservations.
5. Courts should gather data on dispositions for all criminal defendants and juveniles. Such information should be maintained by racial and ethnic category.
6. Along with the sentencing factors of N.D.C.C. § 12.1-32-04, evidence-based sentencing practices and risk-assessment tools should be used.

7. Courts should provide training to judges in the use of researched-based tools to incorporate in sentencing practices.
8. Drug Courts should be expanded throughout the state, and minority participation should be increased. Experience and methods learned from existing drug court programs should be shared throughout the state.
9. Driving under suspension penalties should be reviewed because these penalties compound difficulties in obtaining or maintaining employment.
10. All law enforcement officers, including police and highway patrol, should receive cultural diversity training at regular intervals.
11. All law enforcement officers should receive training on tribal, state, and federal jurisdiction at regular intervals.
12. Efforts should be made for collaboration between the state and the Indian tribes on honoring court orders and warrants.

JUVENILE JUSTICE

The Criminal and Juvenile Justice Committee analyzed race and bias issues within the state juvenile justice system. This study benefited from the existence of collected data that provided a picture of juvenile participation at various points in the court system. Amendments to the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 require states participating in certain grant programs to address racial disproportionality at every point of contact with the system.¹⁵² States finding overrepresentation of minority youth must determine its causes and demonstrate efforts toward reduction.¹⁵³ North Dakota gathers data in accordance with these requirements, including information on confinement, arrests, and other points in the juvenile justice process.¹⁵⁴

The JJDP Act requirements have led to studies confirming the existence of widespread disparity throughout state and national systems, while generating a number of consistent concerns, trends, and themes associated with disproportionate minority contact with the justice system.¹⁵⁵ For instance, a 1995 Department of Justice report on minorities in juvenile justice systems noted that a sustained body of research showed that state processes did not have racially neutral effects.¹⁵⁶ The report found minority youth more likely than the majority to become involved in the system and that direct or indirect racial

effects at certain decision points contribute to this likelihood.¹⁵⁷ The most instructive observation, however, recognized that small disparities could accumulate over many decision points in the system and could therefore grow over the course of the process.¹⁵⁸

Though research has indicated that state juvenile processes are not racially neutral, studies have also recognized many factors beyond the scope of the juvenile justice system that contribute to the disparate detention of minority youth.¹⁵⁹ Such factors can be generally categorized as social and structural inequalities, which influence disproportionate minority contact before the arrest stage. Factors such as social and economic conditions, existing racism, and vestiges of racism such as segregation in housing, education, and employment contribute to the likelihood of disparate contact.¹⁶⁰ However, these factors do not fully explain disparities in the juvenile justice system. For example, research indicates that variations in offending patterns do not explain the difference in arrest rates between White youth and African American youth.¹⁶¹ African American juveniles charged with the same offenses and with the same prior convictions as White juveniles were six times more likely to be incarcerated, while Hispanics/Latino(a)s were three times more likely to be incarcerated in the same situation.¹⁶² Findings also suggest that a general increase in juvenile detention during the late 1980s and early 1990s stemmed primarily from an increase in incarceration of minority youth.¹⁶³

Most research presents little or no available data on Native Americans, North Dakota's largest juvenile minority group, at approximately 9 percent of the total juvenile population, so the Commission found few reference points to compare whether state trends reflect more general patterns.¹⁶⁴ The existence of the JJDP data mitigated this difficulty somewhat by allowing comparison between the state's total minority population, including Native Americans, to trends in the total minority populations referenced in broader studies.

Despite the lack of specific information on Native American youth, existing research provides guidance to strengthen attempts to address juvenile disparities. Studies repeatedly recommend developing clear and engaged leadership to identify problems and using authority to enable confrontation of unpleasant situations.¹⁶⁵ Studies also unanimously recommend adequate and sustained data collection and analysis to determine whether disparities in detention stem from specific court practices or from a combination of other causes.¹⁶⁶ In addition to long-term data collection on minority youth in the system, North Dakota has conducted county-level studies concentrating specifically on Native

American youth.¹⁶⁷ These studies, combined with existing long-term data and information on general trends from secondary sources, formed the basis of the Committee's study of race and juvenile justice in North Dakota.

Burleigh County Assessments

An assessment of Native Americans in the Burleigh County juvenile system was completed in 2002.¹⁶⁸ The effort was prompted by an increase in over-representation of Native American youth in the early 2000s.¹⁶⁹ This increase had occurred despite the implementation of an intervention plan.¹⁷⁰ The assessment focused on Burleigh County because it appeared to have significant minority over-representation and provided a larger population for statistical samples and comparisons than other counties.¹⁷¹ Research not only attempted to gather statistics, but also relied on interviews to provide information on context, policy, and other subjects.¹⁷² Though the initial Burleigh assessment focused on single counties with high minority over-representation, researchers anticipated that the findings and recommendations would have statewide application.

The Burleigh assessment characterized Native American youth that had lived for much of their lives on reservations as particularly at-risk for involvement in the juvenile justice system because of significantly different community expectations for behavior between reservation and non-reservation living situations.¹⁷³ Interviewees suggested that delinquent behavior tolerated on Indian reservations would usually result in an intervention in the Bismarck community.¹⁷⁴ More recent comments from Commission surveys and from Native Americans who shared testimony also suggested a similar perception.¹⁷⁵ Commission testimony, however, suggested that apparent "tolerance" of delinquent behaviors on reservations in fact stemmed from insufficient resources for law enforcement, including a lack of sufficient locations to hold offending juveniles and inadequate means for dealing with delinquency and negative behaviors in schools.¹⁷⁶ The Burleigh assessment also uncovered perceptions that the transitory living situations of many Native American youth, between state court jurisdiction and reservations, as well as a lack of family structure in the off-reservation community contribute to the high levels of detention and out-of-home placement.¹⁷⁷

The assessment identified a statewide arrest rate for Native American youth of about twice the rate of the overall youth population for the five-year period examined.¹⁷⁸ In

Burleigh County, researchers calculated an arrest rate four times that of the total county youth population during the same period.¹⁷⁹ About half of citations for all races were given for status offenses, including alcohol possession or consumption, with no significant difference between minority groups and the majority population.¹⁸⁰ Over-representation of Native American juveniles tended to occur in the more serious crime categories, similar to trends for minority groups examined in broad national or multi-state studies.¹⁸¹ The assessment found little improvement in the detention rate for Native Americans over previous years, and little to no relationship between the severity of offense and decisions to detain.¹⁸² The majority of offenses were property or substance-related.¹⁸³ The researchers did not have adequate data to determine whether Native American youth face particular aggravating circumstances that contribute to detention decisions, and recommended a risk-based detention tool to facilitate a more objective decision making process.¹⁸⁴ Over the five-year period examined, the researchers found Burleigh County's juvenile court referral rate for Native American youth significantly higher than that of other races.¹⁸⁵ Native American youth comprised over one-third of all referrals, a rate over three times higher than the rate of referral for all juveniles.¹⁸⁶ Cases involving Native American juveniles were also slightly less likely to be disposed of by informal means such as diversion.¹⁸⁷

A second Burleigh County assessment was completed in 2007.¹⁸⁸ This follow-up project reviewed a sample of case files in an attempt to determine causes of disproportionate contact by comparing Native American and White youth at numerous process points, and examining prior records, demographic, and social variables.¹⁸⁹ The assessment found that behavior of youth and families, social history, and prior record variables played larger roles in disproportionate contact than policies or processes within the system, and found much of the disproportion attributable to poverty, domestic problems, and frequent relocation of families.¹⁹⁰ Analysis could not determine an adequate explanation for over-representation of Native American youth, although it found that the group had higher rates of prior arrests compared to Whites.¹⁹¹

The 2007 Assessment also noted the potential for deceptive relative rates to appear in county statistical data, since Bismarck Police Youth Bureau (PYB) employees focus on avoiding detention in favor of other alternatives and this activity leads to reductions in the number of cases recorded in the data.¹⁹² Similar factors, such as informal treatment of referrals in Juvenile Court, may produce a comparable effect on numbers and proportions

of formal court petitions.¹⁹³ Underlying issues, such as domestic, supervision, and poverty issues, could significantly affect recidivism rates, particularly for Native American youth.¹⁹⁴

Data Collection

The North Dakota Division of Juvenile Services (DJS) collects data and develops programs for juvenile justice prevention, intervention, and treatment activities. Collection focuses on both the community and state levels. DJS collaborates with state agencies and community organizations working on delinquency and other youth-related problems.¹⁹⁵ This collaboration has led to collection of juvenile justice data over several years, generating statistics on racial representation in the juvenile justice system. Data includes relative rates of representation in various stages of the juvenile process, organized by race. Though different stages may return numbers too low for statistical analysis in some years, others regularly return statistically significant data. The Relative Rate Index (RRI) Tables display rates of racial representation at certain points in the juvenile process from 2007 to 2009. The RRI assesses the levels of disproportionate minority contact at various stages of the juvenile system and was developed by Federal authorities for use by the states to measure disproportionality. White youth are the baseline for comparison on the tables, with the rate for White youth always equaling “one.” Rates for minority youth are measured against this baseline, meaning that a value of 2.00 indicates a rate twice that of White juveniles while a rate of 0.5 indicates half.

Off-reservation rates were calculated statewide and for Burleigh, Cass and Grand Forks counties, the three counties with the highest concentration of off-reservation minority youth, with at least 1,000. The 2010 calculations are the first to include Ward County. Calculations relied on juvenile court dispositional data to find rates for some of the process points (i.e. Juvenile Arrests, Cases Diverted, etc.) on the tables. Some of the dispositional totals in the data derive from estimates because dispositions did not have unique identifiers to allow tracking of individual cases.

Relative Rate Index Compared with White Juveniles
Statewide Reporting Period: 1/1/2008-12/31/2008¹⁹⁶

	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	2.91	0.70	0.15	*	2.04	*	1.75
Refer to Juvenile Court	0.94	1.51	**	*	1.08	*	1.11
Cases Diverted	0.76	0.77	**	*	0.90	*	0.86
Cases Involving Secure Detention	1.58	2.38	**	*	1.77	*	1.79
Cases Petitioned	1.44	1.42	**	*	1.18	*	1.25
Cases Resulting in Delinquent Findings	0.98	0.95	**	*	1.03	*	0.52
Cases Resulting in Probation Placement	1.15	1.17	**	*	0.93	*	1.98
Cases Resulting in Commitment to the Division of Juvenile Services	0.70	1.14	**	*	1.32	*	2.20
Cases Transferred to Adult Court	**	**	**	*	1.25	*	0.91
Group Meets 1% Threshold for Separate Analysis	Yes	Yes	Yes	No	Yes	No	

Relative Rate Index Compared with White Juveniles
Statewide Reporting Period: 1/1/2009-12/31/2009

	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	3.27	0.87	0.44	*	2.18	*	1.91
Refer to Juvenile Court	0.94	1.12	**	*	0.93	*	1.02
Cases Diverted	0.85	0.86	**	*	0.86	*	0.86
Cases Involving Secure Detention	1.87	2.88	**	*	2.07	*	2.06
Cases Petitioned	1.28	1.26	**	*	1.25	*	1.26
Cases Resulting in Delinquent Findings	0.95	1.04	**	*	1.00	*	1.00
Cases Resulting in Probation Placement	1.04	0.85	**	*	0.81	*	0.85
Cases Resulting in Commitment to the Division of Juvenile Services	0.61	**	**	*	1.83	*	1.39
Cases Transferred to Adult Court	**	**	**	*	0.66	*	0.59
Group Meets 1% Threshold for Separate Analysis	Yes	Yes	Yes	No	Yes	No	

**Relative Rate Index Compared with White Juveniles
Statewide Reporting Period: 1/1/2010-12/31/2010**

	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	4.68	1.14	*	*	2.53	0.37	1.94
Refer to Juvenile Court	0.82	0.95	*	*	0.90	1.88	0.94
Cases Diverted	0.85	0.88	*	*	0.97	0.89	0.93
Cases Involving Secure Detention	2.21	4.03	*	*	1.86	2.42	2.18
Cases Petitioned	1.49	1.39	*	*	1.11	1.36	1.23
Cases Resulting in Delinquent Findings	0.97	0.92	*	*	1.01	1.16	1.01
Cases Resulting in Probation Placement	1.10	1.16	*	*	0.63	0.79	0.83
Cases Resulting in Commitment to the Division of Juvenile Services	1.49	**	*	*	2.67	**	1.98
Cases Transferred to Adult Court	**	**	*	*	0.67	**	0.53
Group Meets 1% Threshold for Separate Analysis	Yes	Yes	No	No	Yes	Yes	

Juvenile filings for 2009 appear in Juvenile Filings Table 1, organized by judicial district, providing some context for understanding relative rates and a sense of the overall volume of cases. The majority of total filings come from the ECJD and SCJD. Though not specifically indicated on Juvenile Filings Table 1, the greatest amount of activity for Native American juveniles occurs in Burleigh County (SCJD) and the greatest amount for both African American and Hispanic/Latino(a) juveniles occurs in Cass (ECJD).¹⁹⁷

The RRI Tables show that from 2008 to 2010, the areas of arrests and

	NEJD	ECJD	SEJD	SCJD	SWJD	NWJD	NECJD
Filings	266	714	152	546	88	327	379

Juvenile Filings Table 1

detention consistently showed the highest statistically significant disproportionate rates for minorities.¹⁹⁸ Minority rates in these categories were close to double the rate for Whites, varying depending on the year.¹⁹⁹ The tables show that, for any year examined, only four North Dakota juvenile minority groups consistently exceeded the 1 percent population threshold for sufficient number of cases for analysis: American Indian, African American, Hispanic/Latino(a), and Asian, though Asian youth only represented a sufficient number of

cases for the point of arrests on a statewide basis.²⁰⁰ Data for Asian youth was not statistically significant in 2010, but that year is the only one to include sufficient data for analysis of multiple-race individuals. Measures of rates of referral, cases diverted, and cases petitioned were usually statistically significant in individual race categories, but more often statistically significant when examining all minority groups combined.²⁰¹

Data from 2010, the most recent year analyzed, shows a minority secured detention rate slightly more than twice that of Whites. Juvenile arrests for Native Americans are over twice the rate as Whites, and African Americans show over four times the white rate. Cases for Native Americans, Hispanics/Latino(a)s, African Americans, and multi-racial youth were all at least one and a half times more likely to involve secure detention than Whites, and all groups except Native Americans were considerably less likely to have their cases diverted. The combined minority total for 2009 showed a somewhat greater likelihood of minority commitment to the Division of Juvenile Services than Whites, while, minority rates for other examined years were close to twice those of Whites.

Native American youth, though only about 9 percent of the state juvenile population, account for 17 percent of juvenile arrests, 18 percent of cases petitioned by the juvenile court, and 30 percent of commitments to juvenile corrections.²⁰² Examination of 2009 county-level juvenile relative rates reveals Burleigh and Cass are the only two counties with statistically significant minority rates for processing points other than arrest and detention for that year.²⁰³ Data from 2010 showed statistically significant minority rates at additional process points in other examined counties.²⁰⁴ At the local level, disparities become even more evident, with minority arrest rates four to six times those of whites, depending on the year and county examined.

Comparison of 2008 RRI data to previous years showed a steady, continuing decrease for statewide rates of arrest and detention of Native American juveniles, though data from Burleigh and Cass counties showed increases in arrest rates over the same years.²⁰⁵ However, 2009 data indicated an RRI increase for Native Americans from 2008, and this appears to have broken the trend. Disproportion continues to be most significant for Native American and African-American juveniles, especially in Burleigh and Cass counties, and Hispanic/Latino(a) juveniles in Cass County.²⁰⁶ Existing plans suggest Burleigh and Cass counties are appropriate targets for concentrating resources to address problems with race-based disparities in the juvenile system.²⁰⁷

The year-to-year calculations presented in the RRI tables included a category for cases resulting in commitment to the DJS. DJS takes custody of children committed to its care by the juvenile courts and operates the North Dakota Youth Correctional Center as well as eight community-based services offices located statewide.²⁰⁸ A risk and needs assessment process determines placement decisions for juveniles at this stage. Given that determinations for custody follow an objective risk and needs assessment, disparities at this stage probably reflect the influence of non-racial attributes correlating with race rather than direct bias.

Juvenile Drug Courts

Testimony to the Commission referenced the role that alcohol and drugs play in leading to contact with state courts.²⁰⁹ Research has also suggested a link between juvenile and adult offending.²¹⁰ Juvenile drug courts are a major component in dealing with these issues because they address both substance abuse and youth offending.

In the late 1990s, North Dakota saw substantial and rapid increases in violations of alcohol laws and in the number of juvenile drug offenses.²¹¹ In response, the Supreme Court established juvenile drug court pilot programs in Fargo and Grand Forks,²¹² and additional locations after research supported the effectiveness of the pilot programs, especially in reducing recidivism.²¹³ Minority youth have comprised a significant proportion of participants in juvenile drug courts. From 2000 to 2006, participation in North Dakota juvenile drug courts increased from 26 participants to 210, and the drug courts continued initial levels of success. Demographic data indicates that 80 percent of participants were Caucasian, 17 percent Native American, one percent Hispanic/Latino(a), 1 percent African American, and 1 percent of other ethnicities.²¹⁴

North Dakota juvenile programs apply several criteria to screen youth for participation in the drug court program.²¹⁵ These criteria rule out participants who have committed violent offenses.²¹⁶ Generally, researchers expect intensive programs such as drug courts to have the greatest effects for offenders deemed high-risk, though this conclusion comes from data on adult rather than youth drug court programs.²¹⁷ Research on juvenile drug treatment programs remains less developed, and no similar data exists.²¹⁸ However, data from adult drug courts also indicates that not only the highest-risk drug court participants, but also the youngest high-risk participants showed the most substantial

benefits from intensive programs.²¹⁹ This evidence could suggest that restricting high-risk youth drug court participants from programs may not optimize the effectiveness of those programs. Though relevant studies have not included Native Americans, data suggests that minority youth, in general, tend to comprise a greater proportion of individuals falling within more high risk, serious crime categories.²²⁰

Research on drug courts indicates that frequent judicial status hearings play an important role in effective programs, though little research appears to exist regarding the extent of contact required for juveniles.²²¹ North Dakota operates its drug courts in line with recommended guidelines, with juvenile drug courts in the ECJD allowing more discretion in some individualized programs.²²² The state drug court program also provides a series of incentives and sanctions based on appropriate circumstances.²²³ Early program assessments did not find significant differences by race or particular problems for Native American or other minority youth with regard to status hearings.²²⁴ Subsequent evaluations have not revealed significant racial disparities in drug court participation rates within the small total numbers of participants.²²⁵ However, analysis indicates that 48 percent of White participants but only 1 percent of Native Americans graduated in 2008 and 2009.²²⁶ During the same period, Native Americans were terminated at a much higher rate than White participants.²²⁷ No Hispanic/Latino(a) or African American participants graduated, though the total number of participants for these two groups in 2008 and 2009 was minimal.²²⁸

Research has identified family and substance abuse issues as important factors influencing disproportionate minority contact.²²⁹ Findings suggest that a lack of strong family support may contribute to juvenile substance abuse and can contribute to susceptibility to negative peer pressure.²³⁰ Data from Commission hearings and focus groups highlighted a broad concern from minorities regarding the role of families in addressing criminal and juvenile justice issues, but did not specifically address issues related to family roles in juvenile programs.²³¹ The North Dakota juvenile drug programs attempt to include family and provide family guidelines, including orientation for youth and parents and review of program policies and expectations with family.²³² Programs depend on participants' families to provide supportive environments and sufficient supervision to ensure active participation during drug court involvement, including required participation in progress review hearings and treatment as ordered by the judge.²³³ Program

requirements appear to align with research that indicates more successful outcomes occur with greater family participation.²³⁴

Additional North Dakota Efforts

States have adopted a number of common policies and practices in addressing juvenile issues. Over forty states focus on evidence-based programs, approaches that extensive research and evaluation have found effective.²³⁵ Most states, however, encourage use of these approaches without requiring them.²³⁶

The most common strategies for approaching and managing disparities in juvenile justice include implementation of objective admissions screening instruments, new or better alternatives to detention, efforts to expedite case processing to reduce lengths of stay, and implementation of new policies and practices for probation violations and other cases.²³⁷ North Dakota juvenile initiatives have incorporated similar efforts based on both national research and original county-level studies. The 2002 Burleigh assessment recommended further study, clear and appropriate written policies and procedures, and a review of indigent counsel provisions.²³⁸ The assessment also suggested continued tracking of Native American services, service providers and mentors, as well as development of services incorporating traditional healing practices and support systems.²³⁹ The report recommended ensuring notice of right to counsel, especially for indigent youth, and the establishment of a Native American juvenile court liaison position.²⁴⁰ The 2007 Burleigh assessment emphasized a number of similar points from the original study and recommended tracking race and arrest recidivism for youth, establishing a Native American juvenile court liaison or mentor, and expanding services to address broader social and economic issues facing Native Americans.²⁴¹

The Burleigh County Juvenile Court began piloting a detention screening tool in January 2010, following the 2002 and 2007 assessment recommendations.²⁴² Courts undertook this pilot program with the intention of expanding it statewide after the initial pilot program completed work. Plans called for an expansion of the program statewide after pilot testing.²⁴³

Courts established the Youth Cultural Achievement Program (YCAP) in November 2008, following the recommendations from the 2007 Burleigh assessment. The program provides a juvenile court liaison focused on preventing Native American youth from

entering the juvenile justice and child welfare systems, and on assisting the court and families in the SCJD.²⁴⁴ YCAP has been developing and implementing new programs, including crisis counseling, crisis intervention, mentors, culturally relevant programs, individual counseling, and family counseling. Service providers approach delivery on a case-by-case basis varying services depending on which methods have the greatest likelihood of effectiveness.

Fifty-seven Native American youth completed participation in YCAP programs as of September 2010, and about 93 percent are enrolled tribal members. As of 2010-2011, the program received an average of two to four referrals each week, which came from the Bismarck Police Youth Bureau, Youth Services Division of the Mandan Police, and Juvenile Court.²⁴⁵ Of those who completed YCAP by 2011, only 32 percent received further citations from law enforcement following intake into the program²⁴⁶ and about half²⁴⁷ of participants had no placement intervention after intake. Many of the participants completed educational, support and summer activity programs, some of which concentrated on delivering culturally specific programming. Nearly half received mentoring from Native American mentors.²⁴⁸

One primary goal for the YCAP program was reducing the number of petitions filed with the juvenile court. Some indications show that the pilot program appears to be working toward meeting this goal. Courts witnessed a decrease in petitions in Burleigh and Morton counties by more than half, coinciding with the first year of the YCAP program in 2009, though this correlation does not necessarily rule out other causes.²⁴⁹

Most of these positive developments for juvenile justice efforts in Burleigh County and the SCJD had roots in recommendations from the initial 2002 Burleigh County Assessment or the 2007 follow-up. A similar study in Cass County has been planned in cooperation with the Criminal Justice and Political Science Department at the North Dakota State University. This assessment will study the disproportionate minority contact at the time of arrest and booking into juvenile detention and will focus on what may be driving the higher rates of arrest of minority youth based on the Relative Rate Index calculations.²⁵⁰ This assessment will use a survey to evaluate the practices, perceptions, and attitudes of police officers and sheriff's deputies. The study will draw a random sample of officers and deputies to provide in-depth qualitative interviews, focus groups, or a combination of the two. Though most of the recommendations will likely aim towards law

enforcement or detention staff, the study may also contain information and recommendations for the state court system.²⁵¹ In addition, the consistent high rates of arrest for minorities in Burleigh County have led to plans to conduct another assessment focused specifically on arrests, focused particularly on quantitative analysis. The target date for finalization of both studies is August 2012.

FINDINGS

1. Juvenile justice processes in North Dakota have benefited from continued studies and data collection on Native American and other minority youth in accordance with federal requirements.
2. Public testimony supports previous findings that tribes often have insufficient resources for law enforcement, including facilities to hold offending juveniles, and lack means to deal with delinquency, all of which contribute to later offending.
3. North Dakota minority youth, especially Native Americans and African Americans, tend to be over-represented in arrests and detention when compared to White youth.
4. Hispanic/ Latino(a) youth in North Dakota tend to be over-represented in secured detention, but tend not to show similarly high relative rates of arrest compared to Native Americans and African Americans.
5. Minority youth were less likely to have their cases diverted from the formal court process and more likely to have their cases formally petitioned in the years examined.
6. Demographic data suggests that Burleigh, Cass, Grand Forks, and Ward counties are appropriate targets for concentrating state resources to address problems with race-based disparities in the juvenile system.
7. Data from juvenile drug courts shows that the number of Native American drug court participants is proportional to the number of Native American juveniles arrested.
8. Though limited relevant data exists for youth drug courts, general drug court data indicates that high-risk individuals benefit more from intensive drug court programs. The youngest high-risk individuals benefit the most from such programs.

9. North Dakota has piloted additional efforts to address racial disproportion in the juvenile system, including the Youth Cultural Achievement Program and a detention screening tool.

RECOMMENDATIONS

1. An assessment should be conducted to investigate causes of the high minority juvenile arrest rates.
2. A single statewide tool should be implemented to guide the decision to detain. The tool should include criteria that are related to the purpose of detention, measure objectively, and apply uniformly.
3. The Court should explore establishing a juvenile minority liaison program in counties demonstrating a need, similar to the program in Burleigh County.
4. The State Court Administrator's Office should develop a list of services available for minority youth and their families. This list should be made available in the offices of clerks of district court.
5. Courts should develop and fund culturally sensitive programs for minority youth, which emphasize the skills needed to give minority youth the best chance at rehabilitation and prevent reentry to the juvenile justice system.
6. Youth drug courts should offer intensive services to high-risk youth in order to generate the greatest overall benefit. Such services should be culturally sensitive.
7. Efforts should be made by the state to work out reciprocal juvenile probation agreements with the Indian tribes so that Native American juveniles who leave, or return to, an Indian reservation can receive supervision.
8. The state should continue efforts to identify and reduce the barriers to full and equal access to juvenile diversion.
9. All state and local agencies should make significant efforts in the recruitment, training, retention, and promotion of qualified minority personnel within the juvenile justice system. These efforts should be directed toward providing personnel in proportion to the client community, and not be based solely upon demographic representation of communities of color in the population at large.

10. Judges, attorneys, social workers, guardians ad litem, and court personnel should receive education and training to increase their sensitivity to cultural and racial issues.
11. The State should continue to provide annual training on the provisions of Indian Child Welfare Act.
12. The Court should support agencies' efforts to increase recruitment and licensure of minority foster care parents.
13. The courts should support efforts to identify experts as required by the Indian Child Welfare Act for purposes of testifying under the Act.

Notes

¹ See e.g. MARC MAUER & RYAN S. KING, *UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY*, THE SENTENCING PROJECT (2007) (providing information on Black, White, and Hispanic demographic groups); JENNIFER L. TRUMAN & MICHAEL R. RAND, *CRIMINAL VICTIMIZATION: NATIONAL CRIME VICTIMIZATION SURVEY*, BUREAU OF JUSTICE STATISTICS (2010) (including Native Americans in an “Other” group with Alaskan Native, Asian, Native Hawaiians, and Pacific Islanders).

² Indian country means all land located in an existing Indian reservation, as well as “dependent Indian communities” and Indian allotments for which Indian titles have not been extinguished. 18 U.S.C. §1151; N.D. Op. Att’y Gen. 93-L-244, pp. 2-3; see also CONFERENCE OF WESTERN ATT’YS GEN., *AMERICAN INDIAN LAW DESKBOOK*, 141, 160-161 (4th ed. 2008) (explaining general considerations for criminal jurisdiction in Indian country).

³ Consideration of several factors such as having Indian blood, tribal status, government assistance (specific to Indians), benefits of tribal affiliation, and social recognition. N.D. Op. Att’y Gen. 93-L-244, p. 3.

⁴ See JOHN SCHNEIDER, *UNITED STATES ATTORNEY’S PROPOSED POLICY ON PROSECUTION OF MISDEMEANORS OCCURRING IN INDIAN COUNTRY* (Jan. 13, 1994) (providing a chart layout of jurisdiction for major, minor, and non-federal crimes); N.D. Op. Att’y Gen. 93-L-244 (covering jurisdiction for misdemeanors, considered minor crimes); N.D. Op. Att’y Gen. 2001-F-01 (covering victimless crimes in Indian country); see also *AMERICAN INDIAN LAW DESKBOOK*, *supra* note 2 at 147-149 (discussing major crimes).

⁵ See N.D. Op. Att’y Gen. 2001-F-01 (indicating extensive but not exclusive state jurisdiction for victimless crimes in Indian country); N.D. Op. Att’y Gen. 93-L-244, pp. 3-4; see also *AMERICAN INDIAN LAW DESKBOOK*, *supra* note 2 at 160-61 (including general guidelines on Indian/non-Indian distinction).

⁶ *State v. Hook* 476 N.W.2d 565 (N.D. 1991) (holding state criminal jurisdiction for non-major offenses committed by or against Indians on the Spirit Lake Reservation); N.D. Op. Att’y Gen. 93-L-244, p. 1; see also *AMERICAN INDIAN LAW DESKBOOK*, *supra* note 2 at 141 (noting that federal statutes sometimes authorize state jurisdiction over some or all crimes within Indian country).

⁷ N.D. Op. Att’y Gen. 93-L-244, p. 1.

⁸ Public Testimony, Turtle Mountain Reservation Transcript, pp. 10-12, 15-16 (Sept. 28, 2010) [hereinafter Turtle Mtn. Reservation Tr.]; Public Testimony, Bismarck Civic Center Transcript, pp. 3-6, 19-26 (Sept. 10, 2010) [hereinafter Bismarck Civic Ctr. Tr.].

⁹ Turtle Mtn. Reservation Tr., *supra* note 8 at pp. 10-12, 15-16; Bismarck Civic Ctr. Tr., *supra* note 8 at p. 3, 65-6 (mentioning interactions between state and tribal courts and suggesting state cooperation with tribal colleges to educate Native Americans about the system); Public Testimony, Fargo Transcript, pp. 61-62 (June 22, 2010) [hereinafter Fargo Tr.].

¹⁰ MICHAEL NASON, *SENTENCING PATTERNS IN NORTH DAKOTA 3* (1999) (acknowledging minority disparity in incarceration despite the fact that lack of state jurisdiction presumably lowers the number of Native American offenders in state courts).

¹¹ Clearance Rates refer to rates arrests for a given crime; a particular case is cleared when an arrest is made in that case, regardless of the ultimate outcome from that arrest. COLLEEN WELTZ, *CRIME IN NORTH DAKOTA 2009: A SUMMARY OF UNIFORM CRIME REPORT DATA 2* (2010).

¹² ASHLEY NELLIS, JUDY GREENE & MARC MAUER, *REDUCING DISPARITY IN THE CRIMINAL JUSTICE SYSTEM*, THE SENTENCING PROJECT 5 (2008).

¹³ *Id.* at 5.

¹⁴ *Id.* at 38.

¹⁵ WELTZ, *supra* note 11 at i-ii.

¹⁶ *Id.* at 33. Data includes all arrests, which are collected by the type of apprehension at the time of initial contact with the arrestee, so it does include cases that would be tried in federal court. Email from Colleen

Weltz, NIBRS/UCR Program Manager, to Andrew Frank, Staff to Commission to Study Racial and Ethnic Bias in the Courts (Feb. 17, 2012) (on file with the Commission).

¹⁷ 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 manslaughters being White. This would render a 75 percent to 25 percent ratio of Native Americans to Whites arrested for Murders/Non-negligent manslaughters out of only four total arrests. WELTZ, *supra* note 11 at 37.

¹⁸ Because available UCR data includes rates for only 2009, the Commission used 2009 Census Estimates rather than 2010 Census data as a basis for comparison. 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.

¹⁹ Table 2 does not include all Index Crime categories because of the potential for their low total numbers for generating deceptive proportions when viewed individually. Inclusion of these numbers, sometimes only in the single digits would likely create a misleading picture of these categories. However, total percents appearing at the bottom of the chart derive from calculating all numbers from all categories. See *id.*

²⁰ Alfred Bulmstein, *On the Racial Disproportionality of United States' Prison Populations*, 73 J. CRIM. L. & CRIMINOLOGY 1259 (1983) (attributing disparity to disproportionate rates of involvement with serious crimes rather than all crime); see also Alfred Blumstein, *Racial Disproportionality of U.S. Prison Populations Revisited*, 64 U. CO. L.R. 743 (1993).

²¹ NELLIS ET. AL., *supra* note 12, at 6 (citing C. Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, CRIMINAL JUSTICE, NATIONAL INSTITUTE OF JUSTICE 566 (2000)).

²² NELLIS ET. AL., *supra* note 12, at 6.

²³ *Id.*

²⁴ *Id.* at 7.

²⁵ Emails to the Commission (received Oct. 25, 2010 & Oct. 27, 2010); Turtle Mtn. Reservation Tr., *supra* note 8 at pp. 26-27 (dealing with police stops just outside of an Indian Reservation); Bismarck Civic Ctr. Tr., *supra* note 8 at pp. 19-26.

²⁶ Public Testimony, Sitting Bull College Transcript, p. 76 (Oct. 28, 2010) [hereinafter Sitting Bull College Tr.]; Public Testimony, United Tribes Technical College Transcript, p. 8 (Oct. 25, 2010) [hereinafter UTTC Tr.]; Public Testimony, University of North Dakota Transcript, pp. 10-11, 14 (Apr. 13, 2010) [hereinafter UND Tr.] (indicating profiling exists based on tribal license plates); Turtle Mtn. Reservation Tr., *supra* note 8 at pp. 26-27.

²⁷ Public Testimony, Fargo Attorney Focus Group (Oct. 19, 2011) [hereinafter Fargo Attorneys Focus Group] (notes on file with the Commission) (differentiating between characteristics of stops in the Fargo area and other areas); UND Tr., *supra* note 26 at pp. 16-20, 7-9 (discussing examples of police treatment in areas throughout the state).

²⁸ UND Tr., *supra* note 26 at pp. 7-9, 10, 11-12, 13, 16 (using the phrase “driving while Indian” and describing having a Native American “look” as having an effect during an arrest); Turtle Mtn. Reservation Tr., *supra* note 8 at pp. 26-27 (alleging that police in a certain area of the state determine stops based on whether vehicle occupants are visibly Native American); Fargo Attorney Focus Group, *supra* note 27 (mentioning the phrase “driving while Indian” and describing a similar phenomenon for Hispanics/Latino(a)s); see also UTTC Tr., *supra* note 26 at pp. 18, 57-59 (discussing the perception of a high likelihood of police stops based on physical appearance generally).

²⁹ Turtle Mtn. Reservation Tr., *supra* note 8 at pp. 26-27.

³⁰ Fargo Tr., *supra* note 9 at p. 16.

³¹ New Americans, in particular, noted these kinds of generalized fears. Public Testimony, New Americans Leaders Focus Group (Oct. 20, 2011); see also Fargo Attorneys Focus Group, *supra* note 27 (discussing worry on the part of New Americans because of fear related to immigration issues or deportation because of interaction with authorities). UTTC Tr., *supra* note 26 at pp. 33, 34 (courts), 66 (defenders), 102 (noting that

even getting involved with the system carries the perception of risk); Testimony, North Dakota State University Alumni Center Transcript, pp. 33, 87 (Feb. 24, 2011).

³² LAWRENCE A. GREENFELD & STEVEN K. SMITH, *AMERICAN INDIANS AND CRIME* 35-37 (1999).

³³ *Id.*

³⁴ *Id.* at v-viii.

³⁵ *Id.* at iii, 7.

³⁶ *Id.*

³⁷ Bismarck Civic Ctr. Tr., *supra* note 8 at pp. 71-75.

³⁸ Douglas B. Marlowe, *Research Update on Adult Drug Courts*, NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS NEED TO KNOW 5 (2010); Douglas B. Marlowe, *Research Update on Juvenile Drug Treatment Courts*, NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS NEED TO KNOW 2-3 (2010).

³⁹ Sitting Bull College Tr., *supra* note 26 at p. 58; Bismarck Civic Ctr. Tr., *supra* note 8 at pp. 42, 90, 93.

⁴⁰ Greenfeld & Smith, *supra* note 32 at vii, 25.

⁴¹ Fargo Tr., *supra* note 9 at pp. 18-19.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at pp. 22-24.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ UND Tr., *supra* note 26 at p. 53.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Public Testimony, Bismarck Attorney Focus Group (Aug. 17, 2011) (notes on file with the Commission).

⁵³ *Id.*

⁵⁴ NASON, *supra* note 10.

⁵⁵ The figure for “majority” was 60 percent. PRINCETON SURVEY RESEARCH ASSOCIATES INTERNATIONAL, *THE NCSC SENTENCING ATTITUDES SURVEY: A REPORT ON THE FINDINGS 4* (2006).

⁵⁶ *Id.*

⁵⁷ *Id.* at 27.

⁵⁸ *Id.* at 4-5.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 5, 23.

⁶² See generally NCSC SENTENCING ATTITUDES SURVEY, *supra* note 55.

⁶³ NCSC SENTENCING ATTITUDES SURVEY, *supra* note 55 at 28; NATIONAL CENTER FOR STATE COURTS, *HOW THE PUBLIC VIEWS THE STATE COURTS, A 1999 NATIONAL SURVEY* (1999) available at www.flcourts.org/gen_public/family/diversity/bin/publicop_natl.pdf.

⁶⁴ NCSC SENTENCING ATTITUDES SURVEY, *supra* note 55, at 28; HOW THE PUBLIC VIEWS THE STATE COURTS, *supra* note 63.

⁶⁵ NORTH DAKOTA COMMITTEE ON PUBLIC TRUST AND CONFIDENCE IN THE COURTS, PUBLIC TRUST AND CONFIDENCE SURVEY (1999), *available at* <http://www.ndcourts.com/court/committees/trust/survey.htm>. The Commission Interim Report discusses both the North Dakota Public Trust and Confidence Survey and the Commission Perceptions Survey in light of perceptions of race and bias in the court system, noting that, though unscientific, the Perceptions Survey supported public meeting testimony indicating that minorities appear to have less favorable opinions of the court system, a characteristic similar to general survey data on minority opinions. NORTH DAKOTA COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS, INTERIM REPORT 29-30 (2010); HOW THE PUBLIC VIEWS THE STATE COURTS, *supra* note 62, at 13, 29-30, 37-39 (showing substantial perceptual differences of state court treatment of minorities that varied according to respondents' own minority status).

⁶⁶ UTTC Tr., *supra* note 26 at pp. 35-36; Sitting Bull College Tr., *supra* note 26 at pp. 53, 59, 73, 91. A number of comments from the Commission User Survey and Perception Survey also indicated this perception. *But see* UND Tr., *supra* note 26 at pp. 81-2, 85-6 (contrasting perceptions of harsher minority sentences presented in the Interim Report with attorney perceptions of geographic disparity).

⁶⁷ UTTC Tr., *supra* note 26 at pp. 35-36; Sitting Bull College Tr., *supra* note 26 at pp. 53, 59, 64, 73, 91; *see also* Letter to the Commission (received March 9, 2012) (on file with the Commission) (containing testimony of harsher penalties for minorities than for whites when crimes were the same, or when minority crimes were less serious).

⁶⁸ NCSC SENTENCING ATTITUDES SURVEY, *supra* note 55, at 6, 23.

⁶⁹ Interestingly, most User Survey respondents who directly advocated implementation of some form of sentencing guidelines tended to be White rather than minority. Reasons they shared included a mistrust of sentencing decisions made by one individual, concerns with objectivity, and apparent variation in sentences between similarly situated individuals.

⁷⁰ *See generally* NASON, *supra* note 10.

⁷¹ *See id.* at 19-21.

⁷² *Id.* at 17 (citing T. BRYNUM & R. PATERNOSTER, DISCRIMINATION REVISITED: AN EXPLORATION OF FRONTS STAGE AND BACK STAGE CRIMINAL JUSTICE DECISION MAKING, SOCIOLOGY AND SOCIAL SCIENCE RESEARCH 94 (1984)).

⁷³ *Id.* at 57.

⁷⁴ Commission members discussed whether youth factors, such as lower minority high school graduation rates, also contribute to differences in juvenile offending. Data indicates an overall statewide graduation rate for North Dakota students at 79 percent, but a rate of only 40 percent for Native Americans and 28 percent for Hispanics/Latino(a)s. ALLIANCE FOR EXCELLENT EDUCATION, UNDERSTANDING HIGH SCHOOL GRADUATION RATES IN NORTH DAKOTA (2009), http://www.all4ed.org/files/NorthDakota_wc.pdf. NDDOCR data indicates that, in 2010, 900 new arrival inmates were interviewed and assessed for educational needs. Of the 900, 216 (24%) came into the prison system without a GED/HS diploma. In 2011, of the 901 new arrivals interviewed 197 (22%) came in without a GED/HS diploma. This data was not categorized by race. Email from Amy Vorachek, NDDOCR Director of Administrative Services, to Andrew Frank, Staff for the North Dakota Commission to Study Racial and Ethnic Bias in the Courts (March 1, 2012) (on file with the Commission).

⁷⁵ GREENFELD & SMITH, *supra* note 32, at vii, 25; Sitting Bull College Tr., *supra* note 26 at p. 58; Bismarck Civic Ctr. Tr., *supra* note 8 at pp. 42, 90, 93.

⁷⁶ *Research Update on Adult Drug Courts*, *supra* note 38 at 3.

⁷⁷ This kind of targeting also contributes to cost effectiveness by allowing fewer re-arrests, less law enforcement contacts, court hearings, and use of jail or prison beds. *See Research Update on Adult Drug Courts*, *supra* note 38 at 3.

⁷⁸ *Id.* at 3.

⁷⁹ An example of this is drug testing once every few weeks rather than once or twice per week, and adequate attention from the judge, defense and prosecuting attorneys, and treatment providers. *Research Update on Adult Drug Courts*, *supra* note 38 at 3-4.

⁸⁰ This category counts “allowed to withdraw,” “probation expired,” and “deceased” as possible options; but no minorities failed to complete for these reasons during the years measured.

⁸¹ For instance, Native Americans alone account for approximately 16 percent of arrests. See WELTZ, *supra* note 11; 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.

⁸² The alternate method of tracking such data, by “Unique Starts” would mean that regardless of how many times an offender begins treatment, probation, parole, etc., the offender appears only once in the data.

⁸³ No category for Hispanic/Latino(a) is represented in the UCR arrest data so no comparison may be made for this group. WELTZ, *supra* note 11, at 37.

⁸⁴ Email to the Commission (received July 22, 2010) (describing minority under-representation in drug courts); N.D. EAST CENTRAL JUDICIAL DISTRICT, DESCRIPTION OF FARGO DRUG COURT PARTICIPANTS (2011) (showing minority under-representation in Fargo drug courts); Sitting Bull College Tr., *supra* note 26 at p. 58 (describing a perception of disparate treatment against a minority woman because she did not receive alcohol treatment).

⁸⁵ NELLIS ET AL., *supra* note 12, at 8 (citing L.E. Glaze & T.P. Bonczar, *Probation and Parole in the United States*, 2006, BUREAU OF JUSTICE STATISTICS (2007)).

⁸⁶ PEW CENTER ON THE STATES, PRISON COUNT 2010: STATE POPULATION DECLINES FOR THE FIRST TIME IN 38 YEARS (2010) [hereinafter PRISON COUNT 2010], *available at* http://www.pewtrusts.org/uploadedFiles/Prison_Count_2010.pdf.

⁸⁷ PEW CENTER ON THE STATES, 1 IN 31: THE LONG REACH OF AMERICAN CORRECTIONS FACT SHEET: NORTH DAKOTA (2009) [hereinafter 1 IN 31: NORTH DAKOTA], *available at* http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact_Sheets/PSPP_1in31_factsheet_ND.pdf (ranking the state 45th in the nation but including federal prison population).

⁸⁸ PRISON COUNT 2010, *supra* note 87. In real numbers, however, this percent increase is relatively few (in the tens rather than hundreds) because of low state populations. See *id.*

⁸⁹ PEW CENTER ON THE STATES, 1 IN 100: BEHIND BARS IN AMERICA 3 (2008), *available at* <http://www.pewcenteronthestates.org/uploadedFiles/One%20in%20100.pdf>.

⁹⁰ NASON, *supra* note 10 at 3. “Truth in Sentencing” refers to provisions that require offenders to serve a certain percentage of their sentences, in North Dakota this percentage is a minimum of 85 percent. *Id.* at 15-16.

⁹¹ *Id.* at 59-60; NELLIS ET AL., *supra* note 12 at 2, 5-9.

⁹² White: 79.3 percent, African American: 4.2 percent, Native American: 16.2 percent, Asian: 0.3 percent. WELTZ, *supra* note 11 at 38.

⁹³ Mauer & King, *supra* note 1 at 5-7.

⁹⁴ National averages: White: 487, Black: 2290, Hispanic: 742. MAUER & KING, *supra* note 1, at 1-6.

⁹⁵ *Id.*

⁹⁶ *Id.* at 8-9, 13.

⁹⁷ *Id.* at 11, 14.

⁹⁸ NDDOCR Jan., 2009, *supra* note 85 at 4.

⁹⁹ 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 (2010). This number has been derived directly from the 268 Native American inmates identified in NDDOCR data. Data included inmates in all facilities in 2009 and excluded non-state inmates. See also NDDOCR Jan., 2009, *supra* note

85 at 4 (listing 317 inmates for Jan. 2009, which would yield a higher rate per 100,000, if used, but includes federal inmates).

¹⁰⁰ *Id.* at 4. The approximate 20 to 25 percent figure holds both for previous One-Day Counts and for data gathered directly from NDDOCR from 2007 to 2009.

¹⁰¹ Exact proportions depend on the year examined. See 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; U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), <http://quickfacts.census.gov/qfd/states/38000.html>.

¹⁰² NASON, *supra* note 10, at 3.

¹⁰³ Data for the category “Native Hawaiian or Pacific Islander” has been omitted because the values for both were zero for the entire span of one day count for December 31, 2009. Percentages may not total 100 because of rounding. Additional data available at <http://www.nd.gov/docr/media/stats.html>.

¹⁰⁴ Data indicates, for instance, that from the month of March 2008 to January 2009, the population of American Indian/ Alaskan Natives varied between a low of 317 inmates and a high of 332, the African American population varied between 80 and 86 inmates, and the White prison population varied between 921 and 972. NDDOCR Jan., 2009, *supra* note 85, at 4. The same data for 2010 indicates that Native Americans varied from 344 to 365 and African-Americans from 91 to 94 during the period from January to June 2010. NDDOCR June, 2010, *supra* note 85 at 5.

¹⁰⁵ Data for the categories “Native Hawaiian or Pacific Islander” and “Inmates with Unknown/Missing Race/Ethnicity” has been omitted because the values for both were zero for the entire span of one day counts. NDDOCR, *One Day Count for Jan. 2009*, THE INSIDER, 4 (April 2009) [hereinafter NDDOCR Jan., 2009]; NDDOCR, *One Day Count for June 2010*, THE INSIDER, 5 (July 2010) [hereinafter NDDOCR June, 2010]. Percents may not total 100 because of rounding. Additional data available at <http://www.nd.gov/docr/media/stats.html>. State totals for 2009 were calculated from 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; U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), <http://quickfacts.census.gov/qfd/states/38000.html>.

¹⁰⁶ WELTZ, *supra* note 11 at 38; COLLEEN WELTZ, CRIME IN NORTH DAKOTA 2008: A SUMMARY OF UNIFORM CRIME REPORT DATA 42 (2009).

¹⁰⁷ NDDOCR June, 2010, *supra* note 85 at 5. Earlier one day counts show roughly comparable patterns. NDDOCR Jan, 2009, *supra* note 85 at 4.

¹⁰⁸ WELTZ, *supra* note 11 at 38.

¹⁰⁹ As noted in earlier discussion, UCR data includes arrests that would have held trial in federal courts. Email from Colleen Weltz, NIBRS/UCR Program Manager, to Andrew Frank, Staff to Commission to Study Racial and Ethnic Bias in the Courts (Feb. 17, 2012) (on file with the Commission). Data presented in the NDDOCR Inmate Demographics 2009 Table includes only incarcerated individuals tried in the state system and UCR data did not allow removal of individuals who went on to trial in federal courts. The Commission found that minority proportions increased from arrests to incarceration in the same manner when NDDOCR federal inmates were included in the comparison.

¹¹⁰ *Id.* at 1.

¹¹¹ NCSC SENTENCING ATTITUDES SURVEY, *supra* note 55 at 33.

¹¹² *Id.* at 35.

¹¹³ North Dakota provisions require offenders to serve 85 percent of their sentences for certain crimes. Though some comments suggested that this creates disparate effects, the majority of responses critical of the 85 percent requirement tended to identify detrimental effects broadly rather than with reference only to members of one race.

¹¹⁴ NASON, *supra* note 10, at 17.

¹¹⁵ 1 IN 31: NORTH DAKOTA, *supra* note 87.

¹¹⁶ The Commission gathered recent data on parole and probation directly from NDDOCR during the summer and fall of 2010.

¹¹⁷ As noted, more than one violation may apply for each instance of revocation mentioned.

¹¹⁸ Commission to Study Racial & Ethnic Bias in the Courts, User Survey Comments (2011).

¹¹⁹ Minutes of the Transition from Prison to Community, Transition Steering Committee (June 9, 2010) (acknowledging Native Americans who abscond because they wish to return to reservations).

¹²⁰ NDDOCR June, 2010, *supra* note 85, at 5; NDDOCR Jan, 2009, *supra* note 85 at 4 (showing some data by month for 2008 and 2009).

¹²¹ PEW CENTER ON THE STATES, ARMING THE COURTS WITH RESEARCH: 10 EVIDENCE-BASED SENTENCING INITIATIVES TO CONTROL CRIME AND REDUCE COSTS, PUBLIC SAFETY POLICY BRIEF 5 (2009) [hereinafter ARMING THE COURTS WITH RESEARCH].

¹²² See NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION, MANAGING NONCOMPLIANT BEHAVIOR (2009).

¹²³ ARMING THE COURTS WITH RESEARCH, *supra* note 121, at 1.

¹²⁴ *Id.*

¹²⁵ PEW CENTER ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA'S PRISONS 11 (2011), available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf.

¹²⁶ NELLIS ET. AL., *supra* note 12 at 17; Research Update on Adult Drug Courts, *supra* note 37 at 1-2, 4-5 (listing reduction of recidivism as one positive outcome for drug courts, but emphasizing necessary efforts to provide appropriate services).

¹²⁷ ARMING THE COURTS WITH RESEARCH, *supra* note 121 at 2.

¹²⁸ Hon. Karen Arnold-Burger, *Evidence-Based Sentencing*, ABA HIGHWAY TO JUSTICE, 1 (2010).

¹²⁹ NCSC SENTENCING ATTITUDES SURVEY, *supra* note 55 at 41.

¹³⁰ *Research Update on Adult Drug Courts*, *supra* note 38 at 3.

¹³¹ *Id.* (noting that intensive programs such as drug courts may generate greatest benefits for highest risk populations).

¹³² Arnold-Burger, *supra* note 128, at 1.

¹³³ *Id.* at 5.

¹³⁴ *Id.*

¹³⁵ *Id.* at 5-6.

¹³⁶ *Id.* at 2.

¹³⁷ NELLIS ET AL., *supra* note 12 at 8.

¹³⁸ *Id.*

¹³⁹ Comments, Commission to Study Racial & Ethnic Bias in the Courts User Survey (2011).

¹⁴⁰ Years were measured from the middle of the starting year, to the middle of the next, as follows: 2007-2008, 2008-2009, 2009-2010.

¹⁴¹ U.S. DEPARTMENT OF JUSTICE, STRATEGIES FOR CREATING OFFENDER REENTRY PROGRAMS IN INDIAN COUNTRY 11 (2010) [hereinafter DOJ REENTRY].

¹⁴² *Id.*

¹⁴³ Available at <http://www.nd.gov/docr/juvenile/treatment/native.html>.

¹⁴⁴ Information available at <http://www.nd.gov/docr/programs/inmates.html>. North Dakota benefits from an informal Native American volunteer mentoring program that undertakes periodic visits to Jamestown and Bismarck prisons, as well as New England Women's Prison. The goal is to strengthen values, coping mechanisms, and ability to connect to the community upon release using a holistic approach. Volunteers encourage participation in correctional services.

¹⁴⁵ See North Dakota Department of Corrections and Rehabilitation, <http://www.nd.gov/docr/> (last visited Feb. 21, 2012).

¹⁴⁶ Transitional starts count an offender each time he or she begins treatment, so the number of those participating in treatment programs may be lower than the number of starts presented.

¹⁴⁷ The NDDOCR One-Day Count for June 2009 indicates Whites comprised 66.5 percent of the inmate population; African Americans 5.6 percent; Native Americans, 22 percent; Hispanics/Latino(a)s, 5.4 percent; Asians, 0.3 percent; and Other, 0.3 percent. Non-citizens comprised 0.6 percent. NDDOCR Jan., 2009, *supra* note 85 at 4. For comparison, data for 2010 indicated: Whites comprised 64 percent; African Americans 6.3 percent; Native Americans, 24.4 percent; Hispanic/Latino(a)s, 5.4 percent; Asians, 0.1 percent; and Other, 0.1 percent. Non-citizens comprised 0.5 percent. NDDOCR June, 2010, *supra* note 85 at 5.

¹⁴⁸ DOJ REENTRY, *supra* note 141 at 11.

¹⁴⁹ *Id.*

¹⁵⁰ Minutes of the Transition from Prison to Community, Transition Steering Committee (June 9, 2010).

¹⁵¹ *Id.*

¹⁵² Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. § 5601 (amended 2002).

¹⁵³ MARK MARTIN, ASSESSMENT OF OVER-REPRESENTATION OF NATIVE AMERICAN YOUTH IN THE JUVENILE JUSTICE SYSTEM (2002).

¹⁵⁴ The reauthorization of the JJDP Act in 2002 resulted in the phrase "confinement" being changed to "contact." States are required to analyze every point of contact with the system, not just confinement. Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. § 5601 (amended 2002).

¹⁵⁵ NATIONAL COUNCIL ON CRIME AND DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 4 (2007).

¹⁵⁶ CARL E. POPE & WILLIAM FEYERHERM, MINORITIES IN THE JUVENILE JUSTICE SYSTEM: RESEARCH SUMMARY 1 (1995), available at <https://www.ncjrs.gov/pdffiles/minor.pdf>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* The term "decision points" includes areas such as arrests, detention, and referrals.

¹⁵⁹ ELANOR HINTON HOYTT, VINCENT SCHIRALDI, & JASON ZIEDENBERG, REDUCING RACIAL DISPARITIES IN JUVENILE DETENTION, PATHWAYS TO JUVENILE JUSTICE REFORM 12 (2001), available at <http://www.aecf.org/KnowledgeCenter/Publications.aspx?pubguid=%7B1A09F957-BADB-44E6-A8B7-0C8317BB8F69%7D>; Darnell F. Hawkins, John H. Laub, Janet L. Laureitsen, & Lynn Cothorn, *Race, Ethnicity, and Serious and Violent Juvenile Offending*, OJDP JUVENILE JUSTICE BULLETIN (2000).

¹⁶⁰ HOYTT ET. AL., *supra* note 159 at 17.

¹⁶¹ *Id.* at 19.

¹⁶² *Id.*

¹⁶³ *Id.* at 11.

¹⁶⁴ NORTH DAKOTA DISPROPORTIONATE MINORITY CONTACT PLAN 6 (2010) [hereinafter DMC PLAN] (indicating that all other minority groups make up 6 percent of the state juvenile population).

¹⁶⁵ HOYTT, ET. AL., *supra* note 159 at 14.

¹⁶⁶ *Id.*

¹⁶⁷ MARTIN, *supra* note 153.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 4.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 5.

¹⁷² *Id.*

¹⁷³ *Id.* at 8.

¹⁷⁴ *Id.*

¹⁷⁵ Bismarck Civic Ctr. Tr., *supra* note 8 at p. 84.

¹⁷⁶ *Id.* at pp. 71-85.

¹⁷⁷ MARTIN, *supra* note 153 at 8-9.

¹⁷⁸ *Id.* at 15.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 18 (2002).

¹⁸³ *Id.*

¹⁸⁴ Examples of an “aggravating circumstances” would be failure to contact a parent or non-residence. Such circumstances could lead to temporary detainment, and a correlation with Native American race could suggest a particular set of aggravating circumstances for Native American youth. *Id.*

¹⁸⁵ *Id.* at 21.

¹⁸⁶ *Id.*

¹⁸⁷ Cass: 70 percent; Burleigh: 75 to 80 percent. *Id.* at 26.

¹⁸⁸ MARK MARTIN, ASSESSMENT OF DISPROPORTIONATE CONTACT OF NATIVE AMERICAN YOUTH IN THE BURLEIGH COUNTY JUVENILE JUSTICE SYSTEM (2007); DMC PLAN, *supra* note 164, at 6.

¹⁸⁹ MARTIN, *supra* note 188, at 2, 3-4; DMC PLAN, *supra* note 164 at 6.

¹⁹⁰ MARTIN, *supra* note 188, at 24-25; DMC PLAN, *supra* note 164 at 7.

¹⁹¹ MARTIN, *supra* note 188, at 25; DMC PLAN, *supra* note 164 at 7.

¹⁹² *Id.*

¹⁹³ MARTIN, *supra* note 188, at 25; DMC PLAN, *supra* note 164 at 8.

¹⁹⁴ MARTIN, *supra* note 188, at 13-14 25.

¹⁹⁵ North Dakota Association of Counties, Juvenile Justice, <http://www.ndaco.org/?id=91> (last visited Feb. 6, 2012).

¹⁹⁶ Table Key: **Bold** (statistically significant results); *(Group is less than 1 percent 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).

¹⁹⁷ DMC PLAN, *supra* note 164 at 5.

¹⁹⁸ *Id.* at 3.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 1.

²⁰¹ *Id.* at 1-2.

²⁰² *Id.* at 6.

²⁰³ It is worth noting that rates for points of contact other than arrests and detention in the available data do not reach the same level of disparity as each of these two points. *Id.* at 4.

²⁰⁴ Email from Lisa Jahner, Juvenile Justice Program Analyst, North Dakota Association of Counties, to Andrew Frank, Staff to Commission to Study Racial and Ethnic Bias in the Courts (March 20, 2012) (containing RRI and explanation) (on file with the Commission).

²⁰⁵ *Id.* DMC PLAN, *supra* note 164 at 5.

²⁰⁶ Cass is the only county with sufficient cases for analysis of Hispanic/Latino(a) juveniles. *Id.* at 5.

²⁰⁷ *Id.*

²⁰⁸ <http://www.nd.gov/docr/juvenile/>.

²⁰⁹ Public Testimony, Sitting Bull College, *supra* note 26 at p. 58 (Oct. 28, 2010); Bismarck Civic Ctr. Tr., *supra* note 8 at pp. 42, 90, 93.

²¹⁰ See generally KEVIN M. THOMPSON, AN ADULT RECIDIVISM OUTCOME EVALUATION OF NORTH DAKOTA'S JUVENILE DRUG COURT (2004); CATHY FEDERER, EVALUATION OF NORTH DAKOTA JUVENILE COURT 3 (2012) (citing NATIONAL INSTITUTE OF JUSTICE, BREAKING THE CYCLE OF DRUG USE AMONG JUVENILE OFFENDERS (1999)).

²¹¹ Justice Mary Muehlen Maring, *North Dakota Juvenile Drug Courts*, 82 N.D. L. REV. 1337, 1404 (2006).

²¹² THOMPSON, *supra* note 210, at 3; Maring, *supra* note 211 at 1406-07.

²¹³ KEVIN M. THOMPSON, AN OUTCOME EVALUATION OF JUVENILE DRUG COURT USING THE CHILD AND ADOLESCENT FUNCTIONAL ASSESSMENT SCALE 2-3 (2006); Maring, *supra* note 211 at 1409.

²¹⁴ *Id.* at 1420 (citing KEVIN M. THOMPSON, RESEARCH EVALUATION OF NORTH DAKOTA JUVENILE DRUG COURT: A PROFILE OF PARTICIPANTS & DRUG COURT EFFECTIVENESS – 2000-2006 slide 2 (2006)). Native American youth comprise approximately 9 percent of the total state youth population. DMC PLAN, *supra* note 164 at 6. The estimated proportion of total minority youth for 2009 was approximately 14 percent of the total state youth population from 0 to 17. U.S. Census Bureau & the National Center for Health, U.S. Census Populations with Bridged Race Categories: Persons Ages 0 to 17 by Race and Hispanic Origin in North Dakota by County: July 1, 2009 (2009).

²¹⁵ Criteria include the following: 1) Referring offense may be either drug or non-drug related (there are no restrictions on the number of prior offenses or convictions); 2) Juvenile must be between the ages of thirteen and seventeen; 3) No prior violent felony level adjudications or pending petitions alleging violent felony level delinquent acts; 4) No previous referral to juvenile drug court; 5) No prior or pending charges of selling and/or manufacturing controlled substances; 6) Admission to the offense and/or a court order to the program; 7) An assessment must be completed indicating a drug and/or alcohol abuse problem; 8) The juvenile drug court team has flexibility as to who is eligible to enter the program, depending on age, drug or alcohol history, and the nature of prior convictions. To be a suitable participant, a juvenile must be motivated and have the ability to benefit from the services. Furthermore, appropriate services must exist within the drug court treatment providers to effectively address the juvenile's needs. N.D. STATE COURTS, NORTH DAKOTA JUVENILE DRUG COURT MANUAL 4 (Rev. 2003) [hereinafter N.D. JUV. DRUG MANUAL], available at <http://www1.spa.american.edu/justice/publications/revisedmanual.pdf>.

²¹⁶ *Id.*

²¹⁷ Douglas B. Marlowe, *Research Update on Adult Drug Courts*, NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS NEED TO KNOW 3 (2010).

²¹⁸ Douglas B. Marlowe, *Research Update on Juvenile Drug Treatment Courts*, NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS NEED TO KNOW 1 (2010).

²¹⁹ Marlowe, *supra* note 217 at 3.

²²⁰ Hawkins, *supra* note 159 at 1, 4. Though this study did not specifically refer to Native American youth, it pointed to studies showing that certain characteristics of groups, such as poverty, appear to affect family situations, which directly affect offending rates. *Id.* See also THE SENTENCING PROJECT, REDUCING DISPARITY IN THE CRIMINAL JUSTICE SYSTEM: A MANUAL FOR PRACTITIONERS AND POLICYMAKERS 5-6 (2008) (stating that patterns of minority crime, generally, tend to correlate with a few particular offenses, including violent offenses); KEVIN M. THOMPSON, A RECIDIVISM OUTCOME EVALUATION OF A JUVENILE DRUG COURT 9 (2002) (noting guidelines preventing juveniles with a prior violent level adjudication from participating in drug courts in North Dakota).

²²¹ Marlowe, *supra* note 217 at 4; Marlowe, *supra* note 218 at 4.

²²² Studies indicate that fewer than bi-weekly meetings do not really affect success, at least in adult drug courts, beyond the first “phase” of a drug court program, generally the first few months. Marlowe, *supra* note 216 at 4.

²²³ N.D. JUV. DRUG MANUAL, *supra* note 215 at 5.

²²⁴ See e.g. KEVIN M. THOMPSON, A COST-BENEFIT ESTIMATE OF NORTH DAKOTA’S JUVENILE DRUG COURT: RECIDIVISM COST SAVINGS (2002); KEVIN M. THOMPSON, A PRELIMINARY OUTCOME EVALUATION OF NORTH DAKOTA’S JUVENILE DRUG COURT – RECIDIVISM ANALYSIS (2001); KEVIN M. THOMPSON, REAPPEARANCE RATES IN THE NORTH DAKOTA JUVENILE COURT SYSTEM 1995-97 (1999).

²²⁵ See FEDERER, *supra* note 210 at 14.

²²⁶ See *Id.*

²²⁷ See *Id.*

²²⁸ See *Id.* Though the total number of Hispanic/Latino(a) and African American participants was small, it was still proportional when compared to the overall number of participants. See *Id.* at 25-6.

²²⁹ Patricia Devine, Kathleen Coobaugh, & Susan Jenkins, *Disproportionate Minority Confinement: Lessons Learned From Five States*, JUVENILE JUSTICE BULLETIN 7 (1998).

²³⁰ *Id.*

²³¹ Bismarck Civic Ctr. Tr., *supra* note 8 at pp. 77-78.

²³² N.D. JUV. DRUG MANUAL, *supra* note 215 at 11-13.

²³³ *Id.* at 21.

²³⁴ Marlowe, *supra* note 218 at 2-3.

²³⁵ MARY E. POULIN & ASHLEY NELLIS, STATUS OF THE STATES REGARDING JUVENILE JUSTICE EVALUATION 1, 11 (2005), available at <http://www.jrsa.org/njyec/publications/sots-report-final.pdf>.

²³⁶ *Id.* at 1, 11.

²³⁷ HOYTT, *supra* note 159 at 31.

²³⁸ MARTIN, *supra* note 153 at 39.

²³⁹ *Id.* at 39.

²⁴⁰ *Id.* at 22.

²⁴¹ DMC PLAN, *supra* note 164 at 9.

²⁴² *Id.* at 10. The North Dakota effort was subsequent to efforts in a number of other states that piloted and implemented screening tools and found them effective at reducing racial disparities in their juvenile processes. Associated Press, *S.D. County Locks Up Fewer Juveniles*, Bismarck Tribune, October 2, 2011 (explaining the effectiveness of detention screening tools similar to the one piloted in North Dakota).

²⁴³ DMC PLAN, *supra* note 164 at 8, 10.

²⁴⁴ Youthworks of North Dakota, The Youth Cultural Achievement Program (YCAP), <http://www.youthworksweb.com/programs/the-youth-cultural-achievement-program-ycap/> (last visited Nov. 9, 2011).

²⁴⁵ The Bismarck Police Youth Bureau accounts for 31.6 percent, the Mandan Youth Services Division and police account for 10.5 percent, and juvenile court accounts for 12.3 percent. See *Id.*

²⁴⁶ 82.5 percent had been cited at the time of the referral. *Id.*

²⁴⁷ 51 percent. *Id.*

²⁴⁸ 47.7 percent. *Id.*

²⁴⁹ 54 percent. *Id.*

²⁵⁰ DMC PLAN, *supra* note 164 at 14.

²⁵¹ Memorandum from Rodney Olson, Trial Court Administrator, Unit 2, to Sally Holewa, State Court Administrator (July 12, 2010) (on file with the Commission) (discussing culturally appropriate services).

*chapter***3**

Civil Justice
Legal Services of North Dakota
Unbundling
Self-Representation

The number of civil cases brought in North Dakota has increased in recent years. In 2009, there were 36,310 civil filings, an increase of 16 percent since 2000.¹ Such growth is consistent with the increase in the state population. Very little data exists to allow an assessment of minority involvement with civil litigation and most available evidence comes from public testimony and focus groups. Some testimony suggests that minority involvement in some areas of the state is significant and generally proportional,² but there is cause for concern. Experiential data regarding minorities faced with criminal charges does suggest frequent mistrust regarding the capacity of the court system to treat them fairly. If such mistrust holds for civil cases, minorities may simply refrain from use of the civil court system.

The Commission discussed the concept of unbundled legal services as it related to minority access to civil courts. Previous North Dakota surveys show that a majority of the public perceives a link between ability to pay and ability to receive justice in the legal system, a result similar to broader findings from national and multi-state research.³ Because of the intersection of race and poverty, the unbundling of legal services may make some proceedings more affordable, thereby improving minority access.⁴

The Civil Justice Committee examined the availability of pro bono legal services throughout the state, and methods used to provide information to individuals in need of these services, especially minorities. The Committee also reviewed data from Legal Services of North Dakota (LSND) to confirm that minorities disproportionately rely on legal service programs.⁵

Perceptions of Civil Courts

Information on minority use of civil courts, though sparse and dependent primarily on experiential evidence, appears to indicate substantial minority use. Focus group perceptions indicated roughly proportional numbers of civil cases brought by minorities, in at least some areas of the state.⁶ Comments regarding the existence of bias within the courtroom were mixed. Some participants described instances in which judges directed disrespectful or inappropriate comments at a minority client, but attorneys also shared experiences of when the system functioned without any suggestion of bias.⁷

Focus group discussions suggested that expectations from tribal court can create impressions that carry over into state court. Participants identified one such expectation as

the ability to bring outside issues, including local political issues, into court. Focus group attorneys observed that tribal court politics can have significant influence on decisions and individual treatment. This leaves some Native Americans expecting similar disparate treatment, and individual variation, in state court. Attorneys stated that different cultural traditions also contribute to difficulties in understanding between Native Americans and the state courts.⁸ Focus group discussions also addressed the role race plays in settlement negotiations. Attorneys described racial influence as “inevitable” when dealing with cases involving parties of different races, and agreed that race considerations are always significant from a standpoint of determining the settlement value of a claim, though such considerations may not receive open discussion.⁹

Some comments from New Americans and Native Americans referenced participation in civil cases related to family law issues.¹⁰ Different cultural attitudes towards children, childcare and support can create gaps in understanding between courts and litigants.¹¹ For example, one focus group participant stated that different cultural considerations affect ideas regarding “support.” Some minority groups, especially Native Americans, consider aunts and uncles to be appropriate caretakers for children, while other cultures tend not to recognize this view. Testimony from Native Americans also identified jurisdictional concerns and enforcement issues between state and tribal courts, especially in cases involving Native American and non-Native American spouses.¹² Organizations such as the National Center for State Courts have recognized such issues and developed resources, such as a standardized protection order, to facilitate better cooperation between states and tribes.¹³

Courts have established a pilot project for mediation in the area of family law. Ongoing assessments have analyzed aspects of the program related to race and ethnicity, including findings based on experiential and demographic data taken from individuals after the completion of mediation.¹⁴ Data did not include any survey responses from judges, lawyers, court staff, or mediators about attitudes toward mediation.¹⁵ During the study period, March 1, 2010, to August 31, 2011, 94 percent of participants were identified as White, four percent were Native American, less than one percent African American, 3 percent Hispanic/Latino(a), and two percent “Other.”¹⁶ Minority satisfaction scores in reference to the mediation program were lower than the median scores for Whites, though they were still very high, at least 75 percent.¹⁷ One comment to researchers recommended a

Native American mediator to help address cultural issues, a suggestion that the researchers recommended based on lower rates of Native American satisfaction with the process.¹⁸

Only three participants indicated a non-English primary language over the first three and a half years of the pilot project, but a small number also reported difficulties in mediation participation because of a lack of interpreters.¹⁹ In addition, assessments indicate that most participants in mediation are represented by attorneys, and levels of self-representation in this area are relatively low.²⁰

Legal Services

LSND provides legal advice, education, and legal representation in both state and tribal courts to low-income residents and to disadvantaged elderly in North Dakota.²¹ Formed in 2004 through the consolidation of two previous state legal aid programs, the organization focuses primarily in the areas of family law, employment law, consumer, and housing law.²²

LSND receives grants to provide help on North Dakota Indian reservations. Until 2012, LSND operated an immigration law project in Fargo, which helped recent immigrants to understand the legal process, in an attempt to facilitate meaningful participation in court proceedings.²³ LSND's low-income taxpayer clinic provides assistance to individuals with tax problems and controversies. Service areas include the Fort Berthold, Turtle Mountain, and Spirit Lake Indian Reservations.²⁴

Race	2010 Legal Services Use²⁵	2010 Population Data²⁶
Asian/Native Hawaiian or Pacific Islander ²⁷	50	7,129
Black	246	7,720
Hispanic	173	13,467
Native American	1,976	35,562
White	5,305	598,007
Multiple Race	No Data Available ²⁸	10,365
Other/Unknown	630	341
Totals	8,380	672,591

Legal Services Table 1

Sufficient data exists to compare legal service applications to population data from 2010. Legal Services Table 1 presents raw numbers for legal services utilization, compared to overall state populations. This table uses 2010 Census population data, counting those who self-identify as "Multiple Race" as a separate category in addition to existing Legal Services categories. This means those individuals from the LSND data who

considered themselves multiple-race either had to select the “Other” category or choose a single race for self-identification.

Legal Services Table 2 provides a percentage comparison. This chart provides a clearer picture of the disproportion in legal service applications by race. Population percentages are derived from calculations of census totals, again from 2010.²⁹ A positive number in the last column indicates a higher proportion of legal services applicants than in the general state population, while a negative number means that the proportion of legal services use was smaller than the state population.

Race	% 2010 Legal Services Use	% 2010 Population Data (One Race Only)	% of Legal Services Clients v. % of General Population
Asian/ Native Hawaiian or Pacific Islander	0.6%	1%	- 0.4
Black	2.9%	1.1%	+ 1.8
Hispanic	2.1%	2%	+0.1
Native American	23.6%	5.3%	+ 18.3
White	63.3%	88.9%	- 25.6
Other/Unknown	7.5%	.05%	+7.45

Legal Services Table 2

Legal Services Table 3, shows similar trends in total applications for legal services during the period from 2004 to 2009. During this period the largest single minority group, Native Americans, accounted for 27 percent of all applications.³⁰ Minorities accounted for approximately 31.5 percent of total applications for legal services.³²

Total Applications for Legal Services by Race, 2004 to 2009³¹

Race	Totals	Percentage
Asian/ Pacific Islander	226	0.5%
Black	913	2%
Hispanic	868	2%
Native American	12,611	27%
White	29,568	63.3%
Other	2,467	5.2%
Totals	46,653	100%

Legal Services Table 3

Data for each of the years represented in Legal Services Table 3 was available for examination but is not presented, since these years presented proportions comparable to Legal Services Tables 1 and 2. Data appears to consistently demonstrate a disproportionate minority need for services intended to benefit the poor. Most applications for legal services come from: Cass, Burleigh, Ward, Mountrail, and Rolette counties.³³ Each of these counties contains one of the five legal services offices.³⁴

Two factors should be noted. First, in recent years the state's minority population has grown at a much higher rate than the White population. During the period 2000 to 2008, the overall minority population grew by 21.4 percent, while the White population decreased by 1.8 percent.³⁵ Second, minorities are more likely to be living at or below poverty levels than Whites.³⁶ This suggests that minority access to legal services for civil matters will be an increasing concern in the future.

Unbundling of Legal Services

Because census data indicates that minorities make up a disproportionate percentage of those at or near the poverty level, the Commission reviewed past efforts to facilitate unbundling as a means of expanding minority access to courts. The Pro Bono Task Force of the State Bar Association of North Dakota advocated the unbundling of legal services, which allows a lawyer to perform a limited number of tasks for a client rather than acting in the traditional manner as an attorney for the entire case.³⁷ The limited scope arrangements that fall under the umbrella of "unbundling" include simple coaching, advice and counsel, document assistance, "ghostwriting" documents for certain cases, strategy and negotiation, and making court appearances for limited purposes.³⁸

Research suggests that successful unbundling programs require several elements in addition to rules changes, including adequate attorney training to ensure delivery of quality services.³⁹ Prepared materials for attorneys, including sample forms, fee agreements, office procedures, and other aids contribute to smooth functioning and limit the risk of attorney error in offering unbundled services.⁴⁰ Easily accessible notice on unbundling can benefit minorities if it effectively conveys the extent and scope of unbundled services. Successful unbundling programs also require sufficient referral sources to inform and direct potential clients to attorneys or firms willing to provide limited-scope representation.⁴¹

Self-Representation

Studies undertaken specifically to examine relationships between race and self-representation appear rare. Existing research attempting to define common characteristics of individuals who choose to self-represent, such as race or economic status, is often conflicting.⁴² For instance, some studies have noted that many who choose to self-represent would have been able to afford an attorney.⁴³ Others have found that large numbers of poor minorities tend to self-represent, but correlations between race or

economic status and self-representation remain largely unknown.⁴⁴ Such results point to a high level of diversity among individuals choosing to self-represent.⁴⁵ The Committee could not assess the level of minority self-representation in North Dakota, because little information on the subject exists.⁴⁶ The court system does not maintain statistical information on the race of litigants in civil cases. The Commission did not undertake an original study to produce such data because of limited time and resources.

National studies of self-representation show a general increase in the number of people choosing to represent themselves, especially in the area of family law.⁴⁷ Analysis of similar North Dakota data from 2008 to 2011 indicates growth in these areas, most of it in family law cases.⁴⁸ North Dakota provides an online information and research center that contains information to persons seeking to self-represent.⁴⁹ Included are an overview of the state court system, a glossary, an electronic filing guide, and other information.⁵⁰ In addition, a research section provides access to North Dakota Supreme Court opinions and rules, as well as links to the Supreme Court library, various state agencies, and LSND.⁵¹

FINDINGS

1. Civil proceedings have tended to become increasingly expensive over time. This limits or impairs access for individuals, especially those at or near the poverty level. Minorities in North Dakota represent a disproportionate number of individuals at this level.
2. Mistrust of legal systems appears high among some minority groups, such as Native Americans.
3. Some groups within the state, particularly New Americans, may not fully understand court processes and legal rights.
4. Minorities constitute disproportionately large percentages of those using Legal Services of North Dakota (LSND) compared to the minority populations in the state.
5. Despite the efforts of the State Bar Association of North Dakota (SBAND) Volunteer Lawyer Services and LSND, there remains a large unmet need for civil legal services in North Dakota.
6. Members of minority groups residing in counties without a LSND office may be unaware, or unable to take advantage, of services provided, as fewer applications come from those counties.

7. SBAND has analyzed rules relevant to unbundling legal services and made recommendations directed toward facilitating such services.
8. The number of individuals choosing to self-represent has increased in recent years.
9. The Commission found no data on the extent of minority self-representation.

RECOMMENDATIONS

1. Courts should pursue collaborations with SBAND, the University of North Dakota School of Law, and other partners to develop programs to educate New Americans on legal issues and the legal system.
2. Courts, SBAND, and LSND should promote public awareness of materials on various legal subjects already compiled and maintained.
3. SBAND should continue to promote the expansion of pro bono resources to facilitate minority access to courts.
4. The state should increase its funding for LSND to allow greater services to minorities and extended geographic reach.
5. Courts should support the provision of unbundled legal services to the public.
6. SBAND should create training to educate attorneys and the public about unbundled services and to encourage attorneys to share experiences and information on problems and best practices for offering unbundled services.
7. Courts should attempt to gather data on minority status in civil actions.
8. Courts should provide expanded materials to facilitate self-representation and adequate notice of existing materials.
9. For ease of enforcement between state and tribal courts, courts should adopt the National Center for State Courts form of domestic violence protection order (PASSPORT).
10. Courts should recruit Native American mediators as recommended in the North Dakota Supreme Court's 2012 evaluation of the Family Mediation Pilot Program.
11. Courts should explore development of a legal services ombudsman position to provide information and guidance to members of the public regarding the court system.

12. The Supreme Court should encourage the local courts and local bar associations to develop outreach programs designed to enhance access to the courts by minority and non-English-speaking persons.

Notes

¹ NORTH DAKOTA STATE COURT ADMINISTRATOR'S OFFICE, N.D. COURT FILINGS 1999 TO 2009 (2010).

² Public Testimony, Bismarck Attorney Focus Group (Aug. 17, 2011) [hereinafter Bismarck Attorney Focus Group] (notes on file with the Commission).

³ NORTH DAKOTA PUBLIC TRUST AND CONFIDENCE IMPLEMENTATION COMMITTEE, NORTH DAKOTA SURVEY ON PUBLIC TRUST AND CONFIDENCE IN THE COURTS (1999), *available at* <http://www.ndcourts.com/court/committees/trust/Survey.htm>; NATIONAL CENTER FOR STATE COURTS, HOW THE PUBLIC VIEWS THE STATE COURTS, A 1999 NATIONAL SURVEY, 22-23 (1999), *available at* www.flcourts.org/gen_public/family/diversity/bin/publicop_natl.pdf.

⁴ Minorities in North Dakota are disproportionately represented among those earning either 100 or 125 percent of poverty level. See U.S. Census Bureau, Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months, 2007-2009 American Community Survey 3-Year Estimates: North Dakota (2009).

⁵ LEGAL SERVICES OF NORTH DAKOTA, 2010 ANNUAL REPORT 6 (2010) [hereinafter LSND 2010 REPORT]; LEGAL SERVICES OF NORTH DAKOTA, TOTAL APPLICATIONS FOR LEGAL SERVICES REPORT 2004-2009 (2010).

⁶ Bismarck Attorney Focus Group, *supra* note 2.

⁷ Bismarck Attorney Focus Group, *supra* note 2.

⁸ *Id.*

⁹ Memorandum from the Hon. Wickham Corwin, District Judge, East Central Judicial District, to the Hon. Justice Carol Kapsner, Justice, North Dakota Supreme Court, and the Hon. Donovan Foughty, Presiding Judge, Northeast Judicial District, 1 (March 18, 2011) (on file with the Commission) [hereinafter Fargo Inns of Ct. Memo].

¹⁰ Fargo Community Leaders Focus Group (Oct. 20, 2010) [hereinafter Fargo Community Leaders Focus Group] (notes on file with the Commission); Public Testimony, Bismarck Civic Center Transcript, pp. 9-11 (Sept. 10, 2010) [hereinafter Bismarck Civic Ctr. Tr.].

¹¹ Fargo Community Leaders Focus Group, *supra* note 10.

¹² Bismarck Civic Ctr. Tr., *supra* note 10 at pp. 9-11.

¹³ National Center for State Courts, Project Descriptions http://www.ncsconline.org/d_research/descriptions.html (last visited April 5, 2012); see also National Center for State Courts, Extending Project Passport, http://www.ncsconline.org/d_research/Passport/Revised_Passport_Project_Description_7_051.pdf (last visited April 5, 2012).

¹⁴ GREACEN ASSOCIATES, LLC, NORTH DAKOTA SUPREME COURT FAMILY MEDIATION PILOT PROJECT EVALUATION THIRD INTERIM REPORT 15 (2012).

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 28-29.

¹⁷ *Id.* at 55.

¹⁸ *Id.* at 101, 107.

¹⁹ *Id.* at 29, 48.

²⁰ *Id.* at 30.

²¹ LSND 2010 REPORT, *supra* note 5 at 6.

²² *Id.* at 1, 14.

²³ *Id.* at 12.

²⁴ *Id.* at 6.

²⁵ *Id.* at 15. Data regarding 2010 legal services use did not provide a “multiple race” category.

²⁶ U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), *available at* <http://quickfacts.census.gov/qfd/states/38000.html>.

²⁷ Population Data reflects the sum of the categories “Asian” and “Native Hawaiian or Pacific Islander” from 2010 Census Data. *Id.*

²⁸ LSND data collection did not include a “Multiple Race” category.

²⁹ U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), *available at* <http://quickfacts.census.gov/qfd/states/38000.html>.

³⁰ LEGAL SERVICES OF NORTH DAKOTA, TOTAL APPLICATIONS FOR LEGAL SERVICES REPORT 2004-2009 (2010).

³¹ *Id.* Around 65 to 70 percent of applications receive some form of assistance. LEGAL SERVICES OF NORTH DAKOTA, 2009 ANNUAL REPORT 3 (2010) [hereinafter LSND 2009 REPORT]; LEGAL SERVICES OF NORTH DAKOTA, 2008 ANNUAL REPORT 1 (2009).

³² *Id.*

³³ LSND 2009 REPORT, *supra* note 31 at 16; N. D. Commission to Study Racial and Ethnic Bias, Minutes (Sept. 17, 2010), *available at* http://www.ndcourts.gov/court/committees/bias_commission/MinutesSept2010.htm.

³⁴ Locations include: Bismarck, Fargo, Minot, Belcourt, and New Town.

³⁵ N.D. State Data Center, *Population by Race and Hispanic Origin in North Dakota: Census 2000 and July 1, 2008*, 25 POPULATION BULLETIN (Oct., 2009).

³⁶ See U.S. Census Bureau, Selected Characteristics of People at Specified Levels of Poverty in the Past 12 Months, 2007-2009 American Community Survey 3-Year Estimates: North Dakota (2009).

³⁷ For additional resources on the subject of unbundling of legal services, see <http://www.abanet.org/legalservices/delivery/delunbundhistory.html>.

³⁸ M. SUE TALIA, ROADMAP FOR IMPLEMENTING A SUCCESSFUL UNBUNDLING PROGRAM 1 (2005) (including essential and desirable elements from successful existing models).

³⁹ *Id.* at 4, 14.

⁴⁰ *Id.* at 15; see also CALIFORNIA COMMISSION ON ACCESS TO JUSTICE, FAMILY LAW AND LIMITED SCOPE REPRESENTATION RISK MANAGEMENT MATERIALS (2004), *available at* <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=BpsuqB0wIBM%3D&tabid=216>.

⁴¹ TALIA, *supra* note 38 at 10.

⁴² CYNTHIA CRAN STRATIOTI, FOUR PERSPECTIVES ON SELF-REPRESENTATION AND THE JUDICIAL SYSTEM IN DULUTH, MINNESOTA 12 (2002) (citing AMERICAN JUDICATURE SOCIETY, MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDE BOOK FOR JUDGES AND COURT MANAGERS (1998)); Paula Hannaford-Agor & Nicole Mott, *Research on Self-Represented Litigation: Preliminary Results and Methodological Considerations*, 24 JUST. SYS. J., 172-73 (2003) (noting substantial differences in characteristics of self-representing individuals for each of the state sites analyzed).

⁴³ STRATIOTI, *supra* note 42 at 26-27; see also Hannaford-Agor & Mott, *supra* note 42 at 172-73 (finding a variety of reasons for self-representation in addition to expense, though expense was the majority reason given by survey respondents).

⁴⁴ NEW YORK OFFICE OF THE DEPUTY CHIEF ADMINISTRATIVE JUDGE FOR JUSTICE INITIATIVES, THE RESULTS OF TWO SURVEYS: SELF-REPRESENTED LITIGANTS IN THE NEW YORK CITY FAMILY COURT AND NEW YORK CITY HOUSING COURT 3 (2005).

⁴⁵ STRATIOTI, *supra* note 42 at 27.

⁴⁶ Given the insufficient numbers returned by the Commission survey studies in other areas, such as jury pools, and the comparative rarity of self-representation, the amount of time necessary for a long-term study would likely have extended far beyond the Commission's limited time frame.

⁴⁷ STRATIOTI, *supra* note 42 at 2.

⁴⁸ NORTH DAKOTA COURTS, PRO SE REPORT (Feb. 13, 2012). Court data did not allow for an examination of self-representation by race. In addition, data contained large proportions of cases in which representation was not identified. *See id.*

⁴⁹ North Dakota Supreme Court, Website Guides, <http://www.ndcourts.gov/court/welcome.htm> (last visited Feb. 9, 2012); North Dakota Supreme Court, Legal Resources, <http://www.ndcourts.gov/research/> (last visited Feb. 9, 2012).

⁵⁰ North Dakota Supreme Court, Website Guides, <http://www.ndcourts.gov/court/welcome.htm> (last visited Feb. 9, 2012).

⁵¹ North Dakota Supreme Court, Legal Resources, <http://www.ndcourts.gov/research/> (last visited Feb. 9, 2012); Legal Services of North Dakota, Legal Topics and Educational Materials, <http://www.legalassist.org/?id=34&page=Legal+Topics+and+Education+Materials> (last visited Feb. 17, 2012).

*chapter***4**

Court Personnel and
Legal Profession
Attorneys
Court Employees

The Commission investigated demographics and perceptions of North Dakota attorneys and state court employees as a whole, but relied on the Research Committee to design original surveys and focus group questions. Efforts directed toward attorneys collected information about minority representation in the bar as well as attorney perceptions. The state bar does not track race data, therefore, the Commission relied on two separate surveys for such information. The Commission relied on a third survey to collect perceptions of fairness and representation from court employees.

Accurate data on minority representation among attorneys was surprisingly difficult to collect. Court employee demographic data, gathered directly from court administration, was more reliable. However, testimony suggested that at least some court employees opt out of providing race information to administrators.¹ Comments revealed a perception that employees “shouldn’t have to answer [a race] question [from employers], because it shouldn’t matter.”² Because of these difficulties, the exact number of minority attorneys and court employees in North Dakota remains uncertain, but available evidence suggests numbers are extremely limited.

ATTORNEYS

Ascertaining racial representation in the North Dakota bar proved difficult, despite its small size, because of the lack of race data collection from membership. Neither of the Commission survey efforts returned sufficient minority responses to allow a reliable comparison of minority and majority answers to additional perception questions. Surveys did provide general perceptions from the bar as a whole, as well as some support for the claim that minorities constitute a very small portion of North Dakota attorneys.

SBAND Survey

The Commission included a single race question in a 2010 survey conducted by the State Bar Association of North Dakota (SBAND). The question, asking for self-identification of race, received 523 responses out of a state bar numbering about 2100 members,³ or from around a quarter of the total state bar members at the time of the survey.⁴ Of these respondents, 0.8 percent identified themselves as Asian, 0.2 percent as Hispanic/Latino(a), and 0.8 percent as American Indian/Alaskan Native.⁵ No one self-identified as African American or Native Hawaiian or Pacific Islander, and 1.3 percent of respondents identified as “Other.”⁶ The remainder of respondents, 97 percent, was White.⁷

If minorities joined the bar in proportion to the state general population,⁸ the expected number of minority SBAND members would be around approximately 200.⁹ The survey returned sixteen minority respondents,¹⁰ eleven of whom indicated that they were actively practicing in North Dakota.¹¹ Perception data from public meetings, surveys, and focus groups suggests that the low numbers of minority respondents to Commission surveys may accurately reflect the actual number of minorities practicing within the state.¹²

The SBAND Survey provided some particular information about the small number of minorities in the sample. Responding minorities were somewhat younger than the majority and more likely to be female. White respondents unanimously indicated active practice within the state, while some minorities did not. Minority attorneys also reported employment in all available category choices including sole practitioner, partner in firm or PC shareholder, government attorney, and others, though most indicated that they held government employment or worked as sole practitioners.¹³ Minorities also reported at least some participation across all categories measuring different activities performed in the court system within the previous year.¹⁴

The Commission's reliance on multiple data sources produced some incongruities between the different sources, and one of these involved the SBAND data. According to state court employment data, not a single judge is a member of a minority group.¹⁵ Data from the SBAND Membership Survey, however, indicated one individual who self-identified as a judge selected the "Other" response.¹⁶

Commission Attorney Survey

The Commission implemented an original survey in the hope that it could provide additional information about minority attorneys practicing in the state. This online survey was made available at the North Dakota SBAND Annual Meeting in Fargo from June 14 to June 15, 2011. It was subsequently distributed to the entire state bar, using an email contact list provided by SBAND. A total of 318 attorneys completed the survey, a smaller proportion than those who answered the SBAND Survey, but enough to provide some useful information.¹⁷

Attorney Survey Demographic Data

Survey demographic data again indicated that 97 percent of respondents self-identified as White. Others identified themselves as Native American, except for a single

respondent who indicated Hispanic/Latino(a). No respondents self-identified as African American. Almost all responses indicated full-time employment, regardless of race.¹⁸ The rest were almost evenly split between part time and contractors, with a single individual reporting status as an intern. About 30 percent of respondents reported employment as judges or in state or federal government, and 9 percent as prosecutors. Two percent responded that they worked as public defenders and the remaining 11 percent answered either “Corporate Counsel” or “Other.” Out of the 53 percent of the sample indicating employment in a private law firm, two individuals indicated minority race or ethnicity.¹⁹ A single Native American self-identified as a prosecutor and a single Asian indicated employment in state government; no minorities identified as either public defenders or corporate counsel. The highest number of minorities in any category identified themselves as attorneys for the federal government.²⁰

Bar Table 1 presents results from two attorney questions designed to provide a picture of the length of time attorneys have served in their current positions and as members of the state bar. Out of the small number of minority responses, the largest

	0-5	6-10	11-20	21-30	Over 30
How many years have you occupied your current position?	37%	14%	24%	13%	13%
<i>Number:</i>	115	44	75	40	41
How many years have you been a member of the North Dakota Bar?	24%	10%	24%	23%	19%
<i>Number:</i>	76	31	75	74	61

Bar Table 1

proportion indicated that they had occupied their current position for 0 to 5 years, but every category included at least one minority response. Native American responses fell into all

available categories for a second question measuring length of bar membership. A single Asian attorney and a single Hispanic attorney indicated both bar membership and occupancy of their current positions for 0 to 5 years.

Attorney Survey Perception Data

The Attorney Survey presented a series of perception questions about minorities in the profession. Some questions returned very high proportions of responses indicating respondents had no basis for knowledge. Many asked for information about specific areas of the court system. This limited scope probably contributed to responses indicating lack of

knowledge, as many attorneys would not have possessed sufficient experience in these areas to form an opinion.²¹ Other reasons for such responses could include discomfort in providing an answer, limited interaction with the few minority attorneys, or a limited contact with minorities in the context described.

Perceptions Table 1 presents responses for questions about hiring issues.

In addition to the responses in Perceptions Table 1, about one-quarter of total respondents

said that their employer takes steps specifically directed at recruiting minority employees, while 30 percent said their employer did not.²³ Almost half of respondents indicated no knowledge of employer steps.

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Basis for Knowledge
Minorities are given hiring preferences over better qualified Whites.	2%	9%	34%	9%	46%
<i>Number.</i>	7	29	107	28	143
To be hired for a position with your employer, minorities need better qualifications than White applicants.	1%	2%	39%	37%	22%
<i>Number.</i>	4	6	121	115	68
Despite adequate credentials, applicants with an accent are less likely to be hired by your employer. ²²	0%	4%	41%	26%	28%
<i>Number.</i>	1	14	130	82	88

Perceptions Table 1

A relatively low portion of respondents indicated that they found their own current positions through recruiting.²⁴ About 27 percent responded that they found employment through advertisements, while a combined 35 percent indicated family, friends, or networking.²⁵ Minority respondents provided answers in all available categories, though a majority indicated advertisements.

Perceptions Table 2 presents responses for questions about opportunities within the system.

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Basis for Knowledge
Informal mentors to help with networking are more widely available for Whites than for minorities.	4%	24%	25%	9%	37%
<i>Number:</i>	14	76	79	28	117
Employees working with the North Dakota legal community have equal opportunity for professional advancement.	14%	51%	8%	2%	24%
<i>Number:</i>	45	160	26	7	77
Overall, the professional opportunities available to minorities are greater than those available to Whites.	1%	9%	50%	13%	28%
<i>Number:</i>	4	27	156	40	88
Minorities working for your employer tend to be assigned less complex tasks or duties.	1%	0%	31%	25%	43%
<i>Number:</i>	3	1	96	78	135

Perceptions Table 2

In addition to the responses recorded on the table, when asked about broad perceptions of whether trends in work environments have been improving or worsening for minorities during the past five years, almost half of all respondents indicated no knowledge.²⁶ About 31 percent thought the

situation was the same, while 22 percent thought it was improving. Only 1 percent indicated a perception that the situation was worsening for minorities. Of the few minority attorneys answering the question, nearly all indicated either that they had no basis for knowledge or that the situation was improving. Responses related to hiring, satisfaction, and other situations relating to minorities in the North Dakota system tended toward a perception of fairness. However, such perceptions must be considered in light of the low number of minority responses within the sample.²⁷

A number of questions concentrated on training issues. When asked about participation in multicultural education or other relevant training from employers, approximately 42 percent of respondents indicated that they participated either because of organizational requirements, or with organizational encouragement. Another 13 percent

responded that they completed such training for their own reasons. Fifteen percent of respondents said that they did not participate despite organizational encouragement, while 30 percent indicated they did not participate and their organizations did not encourage training. Perceptions Table 3 presents the results from other questions on education and training issues.

Responses to additional questions revealed a substantial perception that training is necessary to understand and meet the needs of		Strongly Agree	Agree	Disagree	Strongly Disagree	No Basis for Knowledge
The personnel working for your employer have sufficient education and training to provide adequate assistance to minorities.		18%	56%	9%	1%	15%
	<i>Number.</i>	57	176	29	4	46
Persons who work in the courts should be trained to understand the needs of specific minority groups.		16%	58%	14%	6%	7%
	<i>Number.</i>	49	182	43	18	22

Perceptions Table 3

specific minority groups. This result suggests that courts should maintain efforts in this area.

Overall, survey results indicated generally positive perceptions, but high levels of unawareness regarding minority issues. The few minority attorneys in the sample also appeared to hold a generally positive view of the courts, similar to overall trends for each question.

Perceptions of Diversity and Representation

The Attorney Survey presented questions asking for perceptions of diversity within respondents’ geographic area and workplace, as well as various areas of the state court system. When asked about perceptions of diversity in their current place of employment, a majority of respondents, 66 percent, characterized their workplace as “Not Diverse.” About 28 percent indicated “Somewhat Diverse” and only 6 percent answered “Diverse.” More than half of respondents, however, characterized the area in which they lived as “Somewhat Diverse,”²⁸ with 7 percent responding “Highly Diverse” and 31 percent responding “Not Diverse.”

Further questions asked whether respondents perceived that minorities were ‘adequately’ represented in a number of court system roles. Perceptions Table 4 presents the breakdown of responses.

Category	Adequate Minority Representation?		
	Strongly Agree or Agree	Strongly Disagree or Disagree	No Basis for Knowledge
Judges	25%	57%	17%
Number.	81	182	54
Public Defenders	22%	37%	41%
Number.	69	118	130
Prosecutors	23%	44%	33%
Number.	72	138	103
Private Attorneys	33%	45%	21%
Number.	105	142	67
Court Employees	26%	37%	38%
Number.	83	115	119
Jury Pools	37%	31%	32%
Number.	116	96	101
Jury Panels	35%	31%	34%
Number.	110	97	106

Perceptions Table 4

Though all categories returned considerable numbers of individual responses indicating no basis for knowledge, they also show that large portions of

responding attorneys perceive low minority representation in the many of the listed employment areas.

As indicated in the chart, survey respondents returned roughly equal proportions of positive, negative, and “no knowledge” answers when asked whether the jury process adequately represents minorities in jury pools (referring in this instance to potential jurors who appear at court) and on the final panels. Attorneys who shared more detailed comments in focus groups and through written testimony suggested that racial disproportion exists on juries in some counties, while others obtain better levels of representation.²⁹

The Research Committee included a question pertaining to peremptory strikes of minority jurors, one of the most difficult-to-reach study areas the Commission identified. The question asked whether attorneys are more likely to strike minority jurors than non-minorities without a clear reason. About 8 percent of respondents answered always or often, 16 percent answered sometimes, 28 percent seldom or never and 49 percent answered that they possessed no basis for knowledge.

The Attorney Survey attempted to gather information on potential bias within the courtroom to supplement testimony and other experiential evidence. The survey presented a series of statements describing courtroom trends and asking respondents to rate the frequency of each occurrence described in the statements on a scale from “always” to “never.” A number of statements asked directly about bias and judges. Most of the

How often does each of the following occur?

	Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
Judges base their evaluations of a defendant's/ litigant's case on minority stereotypes.	25%	25%	16%	3%	0%	31%
<i>Number.</i>	78	78	51	8	1	98
Judges are fair and honest in deciding cases.	0%	0%	8%	59%	22%	10%
<i>Number.</i>	1	1	24	186	70	32
Judges are more abrupt with minority counsel than they are with White counsel.	31%	12%	3%	1%	0%	54%
<i>Number.</i>	96	36	9	2	0	169
Judges release minority defendants on their own recognizance as often as they do White defendants.	1%	5%	12%	14%	10%	58%
<i>Number.</i>	2	16	37	44	32	182
Judges find the testimony of White lay witnesses more credible than that of minority lay witnesses.	19%	16%	10%	3%	1%	51%
<i>Number.</i>	60	50	32	8	2	161
Judges apply the same standards in deciding when they remove a child from the homes of minorities and Whites.	0%	4%	7%	11%	20%	57%
<i>Number.</i>	1	12	23	35	64	178
Judges make every reasonable effort to accommodate non-English-speaking defendants and witnesses.	0%	1%	7%	26%	31%	35%
<i>Number.</i>	0	3	21	80	98	110
Judges sentence White defendants more leniently than minority defendants convicted of the same crime.	16%	16%	11%	4%	0%	52%
<i>Number.</i>	51	51	35	12	0	164
Judges are more likely to accept the sentencing recommendation of the prosecutor when the defendant is a minority.	13%	15%	10%	4%	0%	58%
<i>Number.</i>	40	46	32	11	1	182
Judges find the testimony of White expert witnesses more credible than that of minority expert witnesses	19%	15%	5%	1%	0%	60%
<i>Number.</i>	58	48	16	2	0	189

Perceptions Table 5

questions in this section of the assessment returned a high proportion of answers indicating no knowledge.

Responses to a question regarding accommodation of non-English-speaking defendants appeared to support attorney perceptions gathered from focus groups, discussions, and public meetings that indicated generally adequate accommodation. Perceptions from all sources pointed to generally positive experiences, but testimony provided some examples of misunderstanding and difficulties providing services in some areas of the state.³⁰

Results from some attorney survey questions appear to align with perceptions of courtroom treatment from the Commission Jury Panel Survey, which were also generally positive. Responses to the Jury Panel Survey agreed almost unanimously that judges, attorneys, and court personnel treated all defendants or parties respectfully.³¹ Survey respondents also indicated that these same groups communicated effectively with defendants or parties, regardless of race.³²

Attorney Meetings

Meetings with attorneys throughout the state gave participants the chance to offer more detailed perceptions than surveys allowed. In a March 2011 meeting between Commission Members and local attorneys from the Cass County area, participant perceptions indicated no awareness of instances of biased behavior from judges or court personnel.³³ Some attorneys said that they felt judges could, at times, favor minorities in “attempts to level the playing field.”³⁴ However, there was some disagreement as to whether such conduct ultimately helped or hurt jury cases.³⁵ One attorney referenced an experience in which a judge strongly admonished the jury about the need to treat the parties equally regardless of race, which the observer thought was a very effective way to address potential bias.³⁶

A similar discussion with the Cass County Bar Association in April 2011 indicated that a number of attorneys in that area hold licenses in both Minnesota and North Dakota, and must fulfill Minnesota’s Continuing Legal Education (CLE) requirements to obtain two hours of Elimination of Bias credits every three years.³⁷ A slight majority of these attorneys felt that the CLE training was useful, while others felt it wasted time and money. When asked whether North Dakota should implement a requirement similar to Minnesota’s, the

attorneys divided evenly.³⁸ The March 2011 meeting with Cass County attorneys also revealed that many participants held licenses in both states, but the consensus during this meeting was that Elimination of Bias training was beneficial to understanding and addressing bias issues.³⁹

Both Cass County meetings discussed implicit bias, but the feedback on this topic was limited. Though some attorneys minimized concerns about implicit bias,⁴⁰ others showed interest in hearing presentations from experts and indicated that such a topic would make an effective CLE training program.⁴¹ However, some attorneys suggested that the individuals who would benefit most from CLE and additional training would probably also be the most difficult to reach, because they could be required to attend, but not to listen.⁴²

In contrast, comments from public testimony and focus groups acknowledged the existence of bias at various levels of the state system and described bias as generally implicit rather than overt.⁴³ Some focus group attorneys felt that, generally, bias in North Dakota was worse than in other states where they had lived, attributing this characteristic to the traditionally homogenous population and lack of experience with large numbers of minorities.⁴⁴ Attorneys also suggested the fact that Indian reservations tend to be concentrated and substantially separate from the rest of the population acts as a factor sustaining bias.⁴⁵ These comments suggested that broader social factors contribute to the existence and nature of bias within the courts. Focus group participants said that minority attitudes seem to split between clients grateful for minority attorneys and clients hostile toward them, holding the opinion that they “sold out” somehow.⁴⁶ However, participants agreed that they had encountered far more positive perceptions of minority attorneys than negative, and perceptions of minorities working in the state system were generally positive.⁴⁷

Attorneys participating in Bismarck and Fargo focus groups attributed many existing difficulties to gaps in understanding between courts and minority populations.⁴⁸ Consensus was that minorities who receive similar treatment as others in state courts may still perceive it differently based on cultural expectations and norms.⁴⁹ Judges can contribute to negative perceptions through their behavior, especially when they say what they think rather than closely following the law.⁵⁰ Such behavior may appear dismissive and offend minority clients, who could interpret such behavior as racial bias.⁵¹ Focus group

participants agreed that judges should be in tune with the court environment and understand the kind of cultural influences that may be present for people standing before them.⁵² An appropriate level of understanding would involve consideration of certain social differences when encountering members of minority groups, because many judges interpret behavioral differences as indications of guilt when they may be rooted in culture.⁵³

Focus groups recommended cultural education for everyone participating in the system, including a mandatory cultural CLE for attorneys.⁵⁴ Some participants emphasized that education should include clerks of court, who also have contact with clients.⁵⁵ The courts have already undertaken some efforts to train judges and employees regarding cultural issues. For instance, the National Center for State Courts (NCSC) selected North Dakota as a pilot state for the development and delivery of education programs and materials on the subject of ensuring racial and ethnic fairness.⁵⁶ This NCSC training program, focusing strongly on issues of implicit bias, took place in 2009.⁵⁷ This program could provide a model for development of future training throughout the state.

Some focus group participants discussed the relationship between tribal and state courts. They stated that certain factors, such as resistance to recognizing tribal judgments in state courts, complicate interactions between the two systems.⁵⁸ One attorney said that the effectiveness of tribal court operations appeared to be moving closer to the level of the state courts in past years, but said that this process has stalled.⁵⁹ Another said that more public support of the tribal system may help overcome obstacles and promote closer cooperation, but this would require a clear commitment from the state to the tribal system.⁶⁰ Participants noted that jurisdictional difficulties sometimes interfere with effective state and tribal cooperation and said that the lack of cooperation sometimes causes suffering for parties.⁶¹

Law School

The North Dakota legal profession depends in large part on the University of North Dakota School of Law (UND Law) to attract, educate, and help place minority attorneys in the state. The law school's effectiveness in these areas establishes an entry point for members of minority groups to the North Dakota legal profession. Self-reported law school data reveals a percentage of minority law students roughly proportional to the total proportion minorities in the state general population over the years examined.⁶² UND Law

Chart 1 displays the proportion of minority groups within law school classes from 2005 to 2010. Race categories in the table follow those in reported data rather than the Census classifications used throughout this report.

Percent JD Enrollment and Race/Ethnicity by Year⁶³

Year	African American	Amer. Indian	Asian American	Mex. American	Puerto Rican	Hispanic	Total Minority
2010	0.8%	3.7%	2.1%	0	0	2.9%	9.5%
2009	1.2%	4.4%	3.6%	0.4%	0	2.8%	12.4%
2008	0.8%	2.5%	3.8%	0	0	3%	10.2%
2007	1.8%	2.7%	3.6%	1.3%	0	0.4%	9.8%
2006	1.5%	2.0%	0.5%	2.0%	0	0	5.9%
2005	1.0%	7.0%	1.0%	2.0%	0	0	11.0%

UND Law Table 1

Though different racial and ethnic categories used by the law school and census data lead to uncertainty in

direct comparisons by race, the percentage of total minorities appears close to 10 percent for all years except 2006.⁶⁴ Percentages vary substantially from year to year, at least in part because the low number of total students is affected substantially by even a few new or graduating students. The proportion of Asian students appears higher in most years than what might be expected from looking at the total Asian population in North Dakota.⁶⁵ To the extent that a comparison can be made, the number of self-identified Hispanic/Latino(a) students appears near or above the proportion of Hispanics/Latino(a)s within the North Dakota population, especially during the years following 2008, though the school and Census data race categorizations may lead to differing patterns of self-identification.⁶⁶ If the race categories “Mexican American,” “Puerto Rican,” and “Hispanic” that appear within the self-reported data in UND Law Table 1 were combined and compared to Hispanic/Latino(a) proportions in the Census data, the proportion of Hispanics/Latino(a)s is closer to that of the general state population.⁶⁷ The percentage of Native American students at the law school varies from 7 percent in 2005 to 2 percent in 2006, but then returns to a proportion comparable to the overall state population in recent years. Reasons for such variation include varying numbers of qualified applicants applying from year-to-year as well as graduations, individuals leaving before graduation, and large variations in percentages attributable to the small real numbers.

Available data from the UND School of Law does not distinguish between students native to North Dakota and those from out of state, nor does it capture the number of students intending to stay in-state and practice in North Dakota courts. The apparent under-representation of minority attorneys as members of SBAND⁶⁸ compared to the

relatively proportional presence of minorities at UND Law suggests that some graduating minorities do not join the bar, move out of state to practice, or come from out of state and return home after graduation. The Commission received some indication that perceptions of racial and ethnic bias may contribute to minority decisions not to practice within the North Dakota state court system, but was unable to collect detailed information from UND alumni who chose not to practice in the state.⁶⁹

The UND School of Law has undertaken a number of efforts directed specifically at encouraging minorities, especially Native Americans, to pursue legal education.⁷⁰ The Commission heard testimony in Grand Forks that described some of the most recent efforts. Since 2003, limited congressional funding has existed to recruit and retain Native American students to law school.⁷¹ Funding has allowed the UND School of Law to create the Native Americans Into Law Program, which had graduated approximately 32 students as of April, 2011.⁷² These students have represented fifteen tribes, and seven Native American students participating in the program were law students at the time the Commission received testimony.⁷³ The program focuses on recruiting and retention, including outreach to tribes in North Dakota and northern Minnesota.⁷⁴ Future focus may include more contact with tribal communities to develop student interest in legal careers starting from high school.⁷⁵

Students who spoke with the Commission identified potential programs such as summer internships or two-week programs for high school students, taking place outside Indian reservations, as having an impact on decisions to join the profession.⁷⁶ Other members of the public asked whether a formal association of lawyers, judges, and other legal professionals existed with the goal of working toward greater minority participation in the system.⁷⁷ Some suggested that SBAND could create a program to help direct young students into different professions related to the law.⁷⁸

Other organizations associated with the UND School of Law work to maintain relationships with minority communities to generate interest in law school. The Native American Law Students Association (NALSA) includes undergraduate and graduate students to help connect minority communities to law school.⁷⁹ Testimony characterized the NALSA as connected to the 28 Indian-related programs available at the UND School of Law, but indicated that student participation in programs varies from year to year.⁸⁰

COURT EMPLOYEES

The Commission collected data on the state court workforce, analyzing minority representation and employee perceptions. The Commission gathered perception data through surveys of court employees, attorneys, and juries, as well as testimony from public meetings and focus groups. The Office of the Supreme Court Administrator provided data regarding demographic representation of minorities within the state system.

Employee Diversity

Public comments emphasized the need for diversity in the court system. Focus groups suggested that minority perceptions are often that “White courts are designed for White society,” and minority defendants have no chance in the system.⁸¹ One attorney compared the perception to being tried in a foreign country.⁸² Some suggested that a more diverse court system could help to counter such perceptions. Recommendations from the public suggested creating a more representative level of minority court employees to increase trust in the system for minorities participating in it.⁸³ Other comments recommended outreach to tribes for hiring.⁸⁴ Research supports these recommendations, suggesting that increasing diversity can help address existing explicit and implicit bias, in addition to increasing levels of trust and confidence for minority participants.⁸⁵ Diversity also provides individuals with counter-examples to combat the stereotypes that form the basis of implicit bias.⁸⁶

Data from the computerized system used to track human resource and payroll information for North Dakota courts allowed analysis of minority employment. Employee Table 1 presents data on court system employees from June 2010.⁸⁷ Data has been organized according to employment areas: Non-Elected Regular Employees; Administrative Support; Technicians; Professionals; and Officials and Administrators.

	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%

Employee Table 1

This information clearly shows that North Dakota State Court System employees overwhelmingly self-identify as White, with the “Professionals” category returning the highest percentage of minority employees in any category, at 2 percent. The 0 to 2 percent total minority representation in each category indicates under representation when measured against the approximately 10 percent of minorities within the North Dakota population recorded in 2010 Census.⁸⁸

This disparity does not, by itself, prove overt bias in hiring practices because hiring requires that qualified individuals apply for positions. If qualified minorities do not apply for available jobs, the overall disparity will increase even with inherently fair hiring processes. North Dakota courts rely on North Dakota Job Service for the majority of its recruitments.⁸⁹ This service includes America’s Job Exchange, general circulation newspapers, as well as the state and court system websites.⁹⁰ The courts also partner with universities and other associations representing relevant fields of study, depending on available positions, in order to provide notice to interested qualified candidates. Hiring processes do not require collection of data on race or any other protected characteristic during any step.⁹¹ Until early 2011, the application process did not include a means of race data collection at any point during the process.⁹²

In 2011, a new application system was implemented to allow applicants to provide race and ethnicity data on a voluntary basis. Application Table 1 shows this information for 13 job postings, eight external and five internal, which ran during the period from March 1, 2011 to August 9, 2011. The courts received 824 total applications for the jobs during this

Applications by Race, 2011

Race/Ethnicity	Number	Percent
American Indian or Alaskan Native	17	2 %
Asian	7	1 %
Black or African American	54	7 %
Hispanic or Latino	20	2 %
Native Hawaiian or Other Pacific Islander	3	0 %
White or Caucasian	715	88 %
Total	816	100%

Application Table 1

open period. Only eight applicants chose not to provide an answer to the race and ethnicity question, reducing the total for Application Table 1 to 816. Though the data provides no indication of job requirements and qualification data for application to

the 13 positions, it does suggest the level of awareness and interest in state court employment from minority groups. Two features immediately stand out compared to expectations based on the state population: the high proportion of African American applicants and the low proportion of applications from Native Americans.

The high level of interest from all groups, generating 63 to 64 applications per opening, probably owes its existence to the national and state economic circumstances during the period examined. The same period saw a national unemployment rate of around 9 percent.⁹³ North Dakota, in the middle of an energy boom, stood out as an exception. This situation probably created a high level of interest for out-of-state employees. The high proportion of African American applicants, a very small minority group in the total state population, most likely stems from the same factors. Analysis cannot assume these trends, including the high levels of minority application, held constant during the hiring processes that created the workforce presented in Employee Chart 1. Because the state previously lacked sufficient data collection methods to track the race of applicants, no comparison can be made. One point does stand out in both sets of data, however. Native Americans both constitute a minimal portion of current state court employees and also appear less frequently in the sample of recent applicants than would be expected from the state population.⁹⁴

The Commission’s Interim Report noted that a “utilization analysis,” analyzing 2010 Census data and community labor statistics, might be available for inclusion in the final report.⁹⁵ Such an analysis would attempt to calculate the potential pool of qualified

individuals by demographic characteristics, including race.⁹⁶ The only existing utilization analysis at the time of the Interim Report compared Census data from the year 2000 to workforce population information from 2009 and 2010, so was deemed too outdated to be included in that report. The Commission hoped that the release of 2010 Census data would be followed by an updated utilization analysis, but this did not become available in time for inclusion in this report.⁹⁷

Employee Perceptions

The Commission implemented its Employee Perceptions Survey from August 8, 2011, to September 7, 2011, and asked a total of 40 questions on general perceptions, hiring and job opportunities, and treatment of minority employees. The survey returned 180 completions from a total of approximately 455 court and county contract employees.⁹⁸ The number of answers to each question varied because the survey allowed respondents to skip questions. Despite the total number of completed surveys, most questions registered slightly fewer responses. A number of questions returned more reliable information because responses skewed almost uniformly toward a single answer choice, creating a higher likelihood that the choice represents perceptions within the examined population.⁹⁹ Questions returning equal or close responses from multiple answers did not allow determinations of which answer better represents the opinions of court employees.

Almost all respondents indicated full-time employment, with the remaining indicating either part-time status, employment as contractors, or selecting the “Other” category.¹⁰⁰ About 20 percent of the sample indicated employment with the Supreme Court and 73 percent with district courts, while the remainder indicated employment with judicial system administration and other areas.¹⁰¹

	0-5	6-10	11-20	21-30	Over 30
How many years total have you worked for North Dakota courts?	28%	18%	26%	21%	8%
<i>Number.</i>	50	32	46	37	14
How many years have you occupied your current position?	37%	19%	25%	15%	4%
<i>Number.</i>	66	33	44	27	8

Employee Perceptions Table 1

When asked about hiring and recruiting, respondents showed little awareness of the court taking any steps specifically directed at recruiting minority employees, with 79

percent of respondents reporting no knowledge of such steps.¹⁰² Most respondents, 62

percent, said that they found their current position simply from advertisements or networking and another 9 percent said they were recruited, while 15 percent said that they found their position through family or friends.¹⁰³ When asked to characterize the legal system in North Dakota regarding election, hiring, and promotion opportunities for minority judges, attorneys, and court personnel, about two-thirds of respondents indicated that they had no basis for knowledge for each category.¹⁰⁴

Employment and Professional Opportunities					
	Strongly Disagree	Disagree	Agree	Strongly Agree	No Basis for Knowledge
Minorities are given hiring preference over better qualified Whites.	5%	22%	6%	2%	65%
<i>Number.</i>	9	40	10	4	116
To be hired for a position in the court, minorities need better qualifications than White applicants.	17%	28%	2%	1%	52%
<i>Number.</i>	30	50	4	2	94
Overall, the professional opportunities available to minorities are greater than those available to Whites.	6%	33%	3%	2%	56%
<i>Number.</i>	10	59	6	3	100
Informal mentors to help with networking are more widely available for Whites than for minorities.	8%	20%	3%	0%	69%
<i>Number.</i>	15	35	6	0	123
Minorities employed in the court have equal opportunity for professional advancement.	2%	1%	32%	18%	48%
<i>Number.</i>	3	1	57	32	85
Despite adequate credentials, applicants with an accent are less likely to be hired by your court.	16%	27%	2%	1%	55%
<i>Number.</i>	28	48	3	2	98
Minorities employed in the court tend to be assigned less complex tasks or duties.	11%	24%	1%	1%	63%
<i>Number.</i>	20	42	2	1	113

Employee Perceptions Table 2

When asked to characterize opportunities available for minority court personnel, 18 percent of the sample responded none or few existed, 13 percent indicated some and 10 percent many.

The survey also attempted to collect information on perceptions of employment and professional opportunities for minorities by allowing subjects to select their level of agreement or disagreement with certain statements. Employee Perceptions Table 2 shows each statement regarding employment and professional opportunities and the proportions of answers from each available category.

Most statements returned majority proportions indicating no knowledge. Proportions in the four remaining categories tended toward perceptions of fair treatment. Though the actual cause is unknown, the high proportion of answers indicating no basis for knowledge could indicate that respondents had few references to draw upon because of the limited number of minority court employees.¹⁰⁵

The survey included questions about general perceptions of race and ethnicity, both on a broad community level, and in the workplace. A majority of respondents, 57 percent, described the area in which they lived as “Somewhat Diverse,” while only 23 percent answered “Not Diverse.”¹⁰⁶ When asked about racial and ethnic diversity in the workplace, 75 percent of respondents selected “Not Diverse” and only 19 percent “Somewhat Diverse.”¹⁰⁷ These two questions, taken together, may indicate a perception of somewhat greater diversity in communities than in workplaces, though the survey could not distinguish individuals who may have applied different criteria when judging each question.

Perceptions of minority representation in various roles throughout the court system appear on Employee Perceptions Table 3.

Racial and ethnic minorities are adequately represented:

	Strongly Disagree	Disagree	Agree	Strongly Agree	No Basis for Knowledge
among North Dakota judges	7%	26%	15%	4%	48%
<i>Number.</i>	13	47	27	7	86
among North Dakota public defenders	4%	21%	17%	3%	54%
<i>Number.</i>	8	37	31	6	97
among North Dakota prosecutors	5%	22%	16%	4%	53%
<i>Number.</i>	9	39	28	7	95
among North Dakota private attorneys	4%	19%	14%	3%	59%
<i>Number.</i>	7	35	26	5	107
among North Dakota court employees	4%	20%	20%	3%	52%
<i>Number.</i>	8	36	36	6	94
in North Dakota jury pools	2%	7%	35%	7%	50%
<i>Number.</i>	3	12	63	12	89
on North Dakota jury panels	1%	8%	36%	8%	48%
<i>Number.</i>	2	13	61	13	81

Employee Perceptions Table 3

About half of respondents to questions on minority representation indicated no basis for knowledge. Many categories returned proportions too close to allow characterization of perceptions as indicating either adequate or inadequate representation. Greater proportions of respondents perceived adequate representation in categories relating to jury selection than for other areas presented. In a related question asking if work environments had improved for minority employees over the last five years, a large majority of respondents, 83 percent, answered that they had no basis for knowledge. Only six percent of respondents answered that the situation had improved and 12 percent judged it to have remained the same, while none indicated that it had worsened.

Slightly over half of respondents indicated that they had not participated in multicultural education or training.¹⁰⁸ Eighteen percent said that their employers encouraged such programs, while 36 percent stated that they did not. In contrast, 9 percent of respondents said that they attended multicultural education or training programs because of employer requirements, while 28 percent said they attended with encouragement from their employer, but no requirement. Another eight percent answered that they undertook their education or training for their own reasons. When asked whether court personnel possessed sufficient education and training to provide adequate assistance to minorities, most respondents, 54 percent either agreed or strongly agreed that they do. Only 15 percent answered the same question in the negative, while 32 percent indicated that they had no basis for knowledge.

The survey presented respondents with a series of statements and asked them to rate how often they occur on a spectrum from “Never” to “Always.” Results appear on Employee Perceptions Table 4.

How often does each of the following occur?

	Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
Judges base their evaluations of a defendant's/litigant's case on minority stereotypes.	33%	16%	4%	1%	0%	47%
<i>Number:</i>	57	28	7	1	0	82
Judges are more abrupt with minority counsel than they are with White counsel.	38%	7%	0%	0%	0%	54%
<i>Number:</i>	67	13	0	0	0	95
Judges release minority defendants on their own recognizance as often as they do White defendants.	1%	1%	7%	12%	22%	57%
<i>Number:</i>	2	1	12	21	39	100
Judges find the testimony of White witnesses more credible than that of minority witnesses.	29%	13%	1%	0%	1%	57%
<i>Number:</i>	51	22	1	0	1	100
Judges apply the same standards in deciding when they remove a child from the homes of minorities and Whites.	0%	1%	2%	9%	37%	51%
<i>Number:</i>	0	1	3	16	64	88
Judges make every reasonable effort to accommodate non-English-speaking defendants and witnesses.	0%	1%	3%	8%	59%	30%
<i>Number:</i>	0	1	5	13	101	51
Judges sentence White defendants more leniently than minority defendants convicted of the same crime.	34%	14%	1%	1%	1%	50%
<i>Number:</i>	60	24	2	1	1	87
Judges are more likely to accept the sentencing recommendation of the prosecutor when the defendant is a minority.	29%	11%	4%	1%	0%	55%
<i>Number:</i>	51	19	7	2	0	96

Employee Perceptions Table 3

For employees who did not indicate a lack of knowledge, perceptions of judges' behavior appeared generally positive, with several categories returning no negative responses at all. These perceptions are similar to those presented in the attorney survey. However, because of the nature of the examined population, the Employee Perceptions Survey does not include significant representation of minority opinions of courtroom

treatment or other issues, which could significantly alter proportions within the responses.¹⁰⁹

Other sources of experiential evidence shared largely positive perceptions, but suggested a more complex picture than surveys provided, including a number of exceptions and problem areas. For instance, perceptions pointed to variations in patterns of release of Native Americans on their own recognizance depending on residence on a reservation.¹¹⁰ Focus group attorneys said that certain behavior from judges, such as flippant comments, sometimes occurs and they noted that such behavior is particularly damaging to minority perceptions of fairness in the state courts.¹¹¹

Testimony from one court employee indicated that an incident occurred with a Native American family in juvenile court, in which the father stated he could not attend a particular hearing.¹¹² The witnessing employee said that the judge made several comments that “made [the man] feel like nothing.”¹¹³ When the same man managed to attend on another occasion, he attempted to ask questions to understand the proceedings, but the judge responded insultingly, prompting the man to discontinue his questions and causing him obvious confusion with regard to the proceedings.¹¹⁴ The witnessing employee suggested that one potential solution to this kind of problem would be an increase in Native Americans working as attorneys or court employees in the justice system.¹¹⁵

Focus group participants said that judges should be in tune with the court environment and understand the kind of cultural influences that may be present for people standing before them.¹¹⁶ To this end, they identified cultural education for everyone in the system as a necessary recommendation.¹¹⁷ For attorneys, such education might take the form of a mandatory cultural CLE.¹¹⁸ Participants also recommended education to clerks of court, who have frequent contact with clients.¹¹⁹ Public comments, written testimony, and other sources indicated that a greater, more representative minority presence as state court employees would benefit the system not only by helping to legitimize it in the eyes of minority groups throughout the state, but also by bringing different perspectives and levels of awareness into the system.¹²⁰ One court employee recommended that the courts hire several Native Americans at once, to decrease feelings of isolation and increase the chances of new employees staying.¹²¹

Information from testimony and focus groups perspectives suggested that, though most judges treat minority individuals in the same manner as members of the White majority, perceptions may differ widely between the two groups.¹²² In addition, evidence suggested that cultural factors can influence minority perceptions of courts and court personnel in significant ways. For instance, though a judge may treat Whites in as abrupt manner as minorities, minorities may link such treatment not to the judge's behavior, but to their own race or ethnicity.¹²³ Testimony did not attribute minority treatment differences wholly to cultural factors, but rather suggested that gaps in cultural understanding contribute to perceptions of bias.

FINDINGS

1. The number of minority attorneys practicing in North Dakota appears to be significantly less than the proportion of minorities living within the state.
2. Minorities are significantly under-represented as employees at all measured levels of the court system in North Dakota.
3. Since the court employment application process has become computerized, collected data has shown the number of minority applications exceeds the proportion of minorities in the state, but applications from Native Americans are below the proportion of Native Americans in the state.
4. The University of North Dakota School of Law (UND School of Law) graduates minorities in proportions close to the state population, but not all of those graduates practice in the state.
5. Both attorneys and court employees appear to perceive that diversity in their communities is greater than diversity in their places of employment.
6. Attorney and court employee survey respondents returned generally positive perceptions of most areas of the court system. Few minority responses were received from the surveys.

RECOMMENDATIONS

1. Courts should develop outreach programs to minorities to generate interest in pursuing careers in the legal system.
2. Courts should establish partnerships with minority groups, such as tribal colleges, to find means of encouraging and developing career tracks for minority employees.

3. Courts should develop outreach programs for non-English speaking people to find means of educating them about the judicial system, and encouraging and developing career tracks in court system.
4. State and local bar associations should engage in outreach programs with leaders of Native American, local immigrant, and culturally diverse communities to help educate their members on the processes of the court system.
5. The State Bar Association of North Dakota (SBAND), along with other state and local bar associations and the UND School of Law, should establish a task force to study and implement outreach programs to encourage minority high school students to pursue legal careers.
6. Because the pool of potential minority law school students from within the state is relatively small, the UND School of Law should continue and increase efforts to attract minority applicants.
7. Courts and SBAND should work closely with the UND School of Law to consider ways to create incentives to help retain minority graduates in the state.
8. The Board of Law Examiners should determine the number of minority attorneys practicing in the state.
9. SBAND should provide Continuing Legal Education (CLE) regarding racial and ethnic bias for attorneys. This CLE should count towards the ethics requirement.
10. Courts should regularly provide racial and ethnic bias and cultural diversity training to all court employees.
11. State and local bar associations should collaborate with community groups to encourage more minority attorneys to seek appointment or election to judicial positions.
12. Tribal court judges should be included as faculty in diversity training programs and should continue to be encouraged to attend judicial education programs.
13. State and local bar associations and the Supreme Court should work closely with the UND School of Law to promote adequate clerking opportunities for minority law students.

14. The Implementation Committee should examine the feasibility for inclusion of a Federal Indian Law question on the Uniform Bar Exam.

Notes

¹ Public Testimony, North Dakota State University Transcript, pp. 69-81 (Feb. 24, 2011) [hereinafter NDSU Tr.].

² *Id.* at p. 70.

³ During the period of the Commission's study, the bar grew to approximately 2300 members.

⁴ The total number of bar members and their proportions are rough estimates as the true number of members fluctuates. Assuming 2100 bar members and a composition roughly proportional to the general population, the margin of error would be +/-1.87 percent at a 90 percent confidence interval. STATE BAR ASSOCIATION OF NORTH DAKOTA, 2010 SBAND MEMBERSHIP SURVEY: DETAILED FINDINGS 10 (2010) [hereinafter SBAND SURVEY: DETAILED FINDINGS].

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 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.; U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), available at <http://quickfacts.census.gov/qfd/states/38000.html>.

⁹ This inference assumes a 10 percent minority state population. 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; U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), available at <http://quickfacts.census.gov/qfd/states/38000.html>.

¹⁰ STATE BAR ASSOCIATION OF NORTH DAKOTA, 2010 SBAND MEMBERSHIP SURVEY: SUMMARY DATA 3 (2010) [hereinafter SBAND SURVEY: SUMMARY DATA].

¹¹ *Id.*

¹² Public Testimony, Bismarck Attorney Focus Group (Aug. 17, 2011) [hereinafter Bismarck Attorney Focus Group] (notes on file with the Commission) (indicating broad views that both the tribal and state court systems are "White," including employees and attorneys participating in them).

¹³ Categories included: Sole Practitioner; Partner in Firm or Shareholder in PC, Salaried Associate or Contract Attorney; Judge, Sole Practitioner; Full-time Government Attorney; Corporate Counsel; Retired or Inactive; Referee or Law Clerk; and Other. SBAND SURVEY: SUMMARY DATA, *supra* note 10 at 6.

¹⁴ Categories included: Jury Trial; Court Trial; Administrative Trial; Arbitration; Supreme Court Appeal; Mediation; and Other. *Id.* at 32.

¹⁵ Data excludes one seat that was not filled at the time of data collection. Memorandum from Amy Klein, Human Resource Director, North Dakota Courts, to Andrew Frank, Staff for the North Dakota Commission to Study Racial and Ethnic Bias in the Courts 6 (July 12, 2010) (on file with the Commission) [hereinafter 2010 Workforce Memo].

¹⁶ SBAND SURVEY: SUMMARY DATA, *supra* note 10 at 6.

¹⁷ Respondents could skip questions, making it possible for response totals to vary between questions. However, variation in the number of responses between each question was minimal. The margin of error for the demographic sample for the Attorney Survey was calculated at +/-2.58 percent at the 90 percent Confidence Interval, estimating 2100 bar members and 10 percent minority population. Highly skewed responses for individual questions likely indicate that the overall population is probably skewed in a similar manner.

¹⁸ Approximately 93 percent of respondents indicated full-time employment.

¹⁹ These two individuals self-identified as Native American and Hispanic.

²⁰ Four minority attorneys, all self-identifying as Native Americans, indicated employment with the Federal Government.

²¹ The Research Committee included an option indicating no basis for knowledge anticipating this situation.

²² Again, racial minorities responding to this question did not appear to diverge from the majority indicating some level of disagreement.

²³ About 23 percent of respondents indicated that employers took some kind of step. Positive answers included the categories: “Yes – and the steps are serious” and “Yes – but the steps are not serious.” Negative answers included the categories: “No – but has been discussed” and “No.”

²⁴ Approximately 17 percent of respondents indicated this answer.

²⁵ The 35 percent represents a combined total for all three categories. Approximately 5.4 percent indicated that they found their job through family, 14.6 percent through friends, and 15.9 percent through networking.

²⁶ Approximately 46 percent indicated they had no knowledge.

²⁷ A considerable amount of research indicates that members of minority groups are more likely to perceive bias. NATIONAL CENTER FOR STATE COURTS, HOW THE PUBLIC VIEWS THE STATE COURTS, A 1999 NATIONAL SURVEY, 13, 29-30, 37-39, [hereinafter NCSC SURVEY], *available at* www.flcourts.org/gen_public/family/diversity/bin/publicop_natl.pdf (showing perceptual differences of minority treatment correlating with respondents’ own minority status). This characteristic could suggest that more minority respondents could lead to a smaller proportion of positive responses, if minorities in North Dakota follow broader trends.

²⁸ About 62 percent of respondents indicated “Somewhat Diverse.”

²⁹ Bismarck Attorney Focus Group, *supra* note 12.

³⁰ Bismarck Attorney Focus Group, *supra* note 12. There is some issue of differing levels of success and understanding of interpreter needs in some areas of the state. Written Testimony to the Commission (received Sept. 29, 2010) (explaining an incident in which a judge relied on individuals who clearly could not provide interpretation instead of using telephonic translation); Public Testimony, Fargo Attorney Focus Group (October 19, 2010) [hereinafter Fargo Attorney Focus Group] (pointing to particular difficulties attorneys face in ensuring interpreter services to New American clients in the Fargo area).

³¹ One hundred percent of jury panel members agreed or strongly agreed that judges treated all defendants or parties respectfully. Ninety-eight percent of jurors agreed that attorneys did the same, with 3 individuals answering that they had no basis for knowledge, and a single individual disagreeing. Ninety-nine percent of responding jurors agreed or strongly agreed that court personnel treated all defendants or parties respectfully with one individual disagreeing and another indicating no basis for knowledge.

³² With reference to judges, 100 percent of responding jurors agreed or strongly agreed. All of the responding jurors answered the same with reference to court personnel. When asked the same question about attorneys, 97.6 percent agreed or strongly agreed, with a single individual answering “No Basis for Knowledge,” and three disagreeing. The Jury Panel Survey was subject to a number of limitations described within the Juries section of this report.

³³ Memorandum from the Hon. Wickham Corwin, District Judge, East Central Judicial District, to the Hon. Carol Kapsner, Justice, North Dakota Supreme Court, and the Hon. Donovan Foughty, Presiding Judge, Northeast Judicial District, 1 (March 18, 2011) (on file with the Commission) [hereinafter Fargo Inns of Ct. Memo].

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Memorandum from the Hon. Wickham Corwin, District Judge, East Central Judicial District, to the Hon. Carol Kapsner, Justice, North Dakota Supreme Court, and the Hon. Donovan Foughty, Presiding Judge, Northeast Judicial District, 1 (May 04, 2011) (on file with the Commission) [hereinafter Cass County Bar Ass’n Memo].

³⁸ *Id.*

³⁹ Fargo Inns of Ct. Memo, *supra* note 33 at 1.

⁴⁰ *Id.*

⁴¹ Cass County Bar Ass'n Memo, *supra* note 37 at 1.

⁴² *Id.*

⁴³ Bismarck Attorney Focus Group, *supra* note 12; Public Testimony, Fort Berthold Community College Transcript, pp. 42 (Oct. 8, 2010) [hereinafter Ft. Berthold Cmty. Coll. Tr.].

⁴⁴ Bismarck Focus Group, *supra* note 12. The Commission also received some general testimony from minorities on the level of bias or racism in North Dakota generally. Public Testimony, Bismarck Civic Center Transcript, pp. 15-17 (Sept. 10, 2010) [hereinafter Bismarck Civic Ctr. Tr.]; Ft. Berthold Cmty. Coll. Tr., *supra* note 43 at pp. 43-44; Public Testimony, Chandeska Cikana Community College, pp. 8-9 (Sept. 27, 2010) [hereinafter Chandeska Chikana Cmty. Coll. Tr.]; Public Testimony, Turtle Mountain Reservation Transcript, pp. 53-55 (Sept. 28, 2010) [hereinafter Turtle Mtn. Reservation Tr.].

⁴⁵ Bismarck Attorney Focus Group, *supra* note 12.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* This observation was supported by testimony taken throughout the state. Ft. Berthold Cmty. Coll. Tr., *supra* note 44 at pp. 6-11; Bismarck Civic Ctr. Tr., *supra* note 44 at pp. 42-43, 45-46; Public Testimony, United Tribes Technical College Transcript, p. 13 (Oct. 25, 2010) [hereinafter UTTC Tr.].

⁴⁹ Bismarck Attorney Focus Group, *supra* note 12.

⁵⁰ *Id.* Other testimony highlighted the importance of judges understanding minority contexts and situations; some stated that including minority judges in the state system would contribute to this understanding. Turtle Mtn. Reservation Tr., p. 47; Letter to the Commission (received March 9, 2012) (on file with the Commission) (including testimony pointing to the perception of bias from a judge, based on comments and demeanor).

⁵¹ Bismarck Attorney Focus Group, *supra* note 12.

⁵² *Id.*

⁵³ *Id.* Minorities who testified also pointed to cultural differences in body language and communication as factors that could contribute to bias if misunderstood. Ft. Berthold Cmty. Coll. Tr., *supra* note 43 at pp. 6-11.

⁵⁴ Bismarck Attorney Focus Group, *supra* note 12. As indicated earlier, other meetings in Cass County addressed both whether to implement race and bias CLEs and how effective such programs would be. Cass County Bar Ass'n Memo, *supra* note 37 at 1.

⁵⁵ Bismarck Attorney Focus Group, *supra* note 12.

⁵⁶ Information available at http://www.ncsconline.org/D_Research/ref/implicit.html.

⁵⁷ Agenda available at http://www.ncsconline.org/D_Research/ref/implicit.html.

⁵⁸ *Id.* Testimony also suggested that greater understanding between state and tribal courts might improve overall perceptions of the courts. Turtle Mtn. Reservation Tr., *supra* note 44 at pp. 8, 14-17.

⁵⁹ Bismarck Attorney Focus Group, *supra* note 12.

⁶⁰ *Id.*

⁶¹ *Id.* See also Turtle Mtn. Reservation Tr., *supra* note 44 at pp. 14-16 (suggesting difficulties between state and tribal courts and the advantage of greater use of and cooperation with the tribal courts).

⁶² LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 528-29 (Wendy Margolis ed., 2010); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 516-19 (Wendy Margolis ed., 2009); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 514-17 (Wendy Margolis, Bonnie Gordon, & David Rosenlieb eds., 2008); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 494-97 (Wendy Margolis, Bonnie Gordon, & Joe Puskarz eds., 2007); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 498-501 (Wendy Margolis ed., 2006); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 498-501 (Wendy Margolis, Bonnie Gordon, Joe Puskarz & David Rosenlieb eds., 2005).

⁶³ LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 528-29 (Wendy Margolis ed., 2010); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 516-19 (Wendy Margolis ed., 2009); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 514-17 (Wendy Margolis, Bonnie Gordon, & David Rosenlieb eds., 2008); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 494-97 (Wendy Margolis, Bonnie Gordon, & Joe Puskarz eds., 2007); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 498-501 (Wendy Margolis ed., 2006); LAW SCHOOL ADMISSION COUNCIL & AMERICAN BAR ASSOCIATION, OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 498-501 (Wendy Margolis, Bonnie Gordon, Joe Puskarz & David Rosenlieb eds., 2005).

⁶⁴ Census data allows self-identification as “Hispanic” as an ethnicity in addition to its race categories. Like data presented in other chapters, different categories for racial self-identification in the law school data could affect results when compared to Census data.

⁶⁵ See U.S. Census Bureau, 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 (2009).

⁶⁶ Approximately 2.3 percent as of July 1, 2009. *Id.* 2010 Census data indicated a state Hispanic population of 2 percent. U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), *available at* <http://quickfacts.census.gov/qfd/states/38000.html>.

⁶⁷ This comparison is against census “Once Race” data, meaning that this census separated out “Hispanic” rather than treating it as an overlapping category. Whether or not, given the choice of “Hispanic” as an additional race category rather than an overlapping ethnicity category, the individuals would have selected “Hispanic” rather than the other race, cannot be determined from the census data.

⁶⁸ SBAND SURVEY: SUMMARY DATA, *supra* note 10 at 3.

⁶⁹ Turtle Mtn. Reservation Tr., *supra* note 44 at p. 5 (including testimony from a Native American attorney who stated that bias in North Dakota was the reason he did not practice in the state system).

⁷⁰ Native Americans Into Law Program information is available at <http://web.law.und.edu/students/orgs/NALSA/nail.php>.

⁷¹ University of North Dakota Transcript, p. 39 (Apr. 13, 2010) [hereinafter UND Tr.].

⁷² *Id.* at 39-40.

⁷³ *Id.* at 40.

⁷⁴ *Id.* at 40.

⁷⁵ *Id.* at 42.

⁷⁶ *Id.* at 48.

⁷⁷ *Id.*

⁷⁸ *Id.* at 50-51.

⁷⁹ *Id.* at 40.

⁸⁰ *Id.* at 40-41.

⁸¹ Bismarck Attorney Focus Group, *supra* note 12.

⁸² *Id.*

⁸³ Written Testimony to the Commission (received Nov. 2, 2010); Fargo Attorney Focus Group, *supra* note 30 (indicating a need for at least a few New American court employees in the state system); Bismarck Attorney Focus Group, *supra* note 12 (discussing lack of Native Americans in the system).

⁸⁴ Written Testimony to the Commission (received Nov. 2, 2010); Public Testimony, Fargo Community Leaders Focus Group (Oct. 20, 2011) [hereinafter Fargo Community Leaders Focus Group] (notes on file with the Commission); Bismarck Attorney Focus Group, *supra* note 12.

⁸⁵ Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, HARVARD LAW SCHOOL JOHN M. OLIN CENTER FOR LAW, ECONOMICS AND BUSINESS DISCUSSION PAPER SERIES NO. 552 19-20 (2006), *available at* http://lsr.nellco.org/harvard_olin/552; JERRY KANG, IMPLICIT BIAS: A PRIMER FOR COURTS 5 (2009) (noting the role of environment in addressing both explicit and implicit bias), *available at* <http://jerrykang.net/research/2009-implicit-bias-primer-for-courts/>.

⁸⁶ Jolls & Sunstein, *supra* note 85 at 19-20; KANG, *supra* note 85 at 5 (noting the role of environment in addressing both explicit and implicit bias).

⁸⁷ 2010 Workforce Memo, *supra* note 15 at 5.

⁸⁸ U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), *available at* <http://quickfacts.census.gov/qfd/states/38000.html>.

⁸⁹ 2010 Workforce Memo, *supra* note 15 at 1. *See also* <http://www.jobsnd.com/>.

⁹⁰ 2010 Workforce Memo, *supra* note 15 at 1.

⁹¹ *Id.*

⁹² INTERIM REPORT OF THE NORTH DAKOTA SUPREME COURT COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS (2010) [hereinafter INTERIM REPORT], *available at* http://www.ndcourts.gov/court/committees/bias_commission/Commission.asp.

⁹³ U.S. Bureau of Labor Statistics, News Release: The Employment Situation – November, 2011 (Dec. 2, 2011).

⁹⁴ Data suggests that the rarity of qualified Native American applicants may lie with the high school dropout rate, 60 percent, that Native Americans face. ALLIANCE FOR EXCELLENT EDUCATION, UNDERSTANDING HIGH SCHOOL GRADUATION RATES IN NORTH DAKOTA (2009), *available at* http://www.all4ed.org/files/NorthDakota_wc.pdf.

⁹⁵ INTERIM REPORT, *supra* note 92 at 26.

⁹⁶ The difference was less than 2 percent for all categories. 2010 Workforce Memo, *supra* note 15 at 9-10.

⁹⁷ Data allowing utilization analysis will not be available until 2012. Biddle Consulting Group, “2010 EEO File Census Data Update and Release Date,” *Affirmative Action News*, <http://affirmativeactionnews.blogspot.com/2010/06/2010-census-data-update.html> (June 11, 2010) (last visited Jan. 6, 2012). An online tool allowing manipulation of data from the 2000 Census still exists and is available at <http://www.census.gov/main/www/access.html>.

⁹⁸ U.S. Census Bureau, 2010 State and County QuickFacts: North Dakota (2010), <http://quickfacts.census.gov/qfd/states/38000.html>. The number of court employees varies somewhat over time. In addition, respondents could skip questions, therefore, margins of error vary somewhat by question, though they did not vary widely. Margin of error was calculated at +/-4.77 at a 90% Confidence Level.

⁹⁹ For instance, a vast majority of respondents, 94 percent, indicated that they were full time employees. The proportions for this question fall so far out of the margin of error that it can be generalized to the total population of court employees; most work in full-time positions.

¹⁰⁰ Two responses indicated temporary positions, one of which clarified that the temporary position was full time.

¹⁰¹ A number of responses provided a unit of employment. These included: Unit 1: 39; Unit 2: 42; Unit 3: 38; Unit 4: 19. Other answers for this same question included: Administration: 3; N/A: 2.; Clerk of Court/Clerk's Office: 13; Finance: 1; Juvenile Court: 3; Law Clerk: 1. There were two answers that did not seem to indicate a unit or be otherwise employment related.

¹⁰² Only 5 percent of respondents indicated a perception that the court took serious steps while another 3 percent responded that the court took steps that were not serious. One percent of respondents answered that the court discussed steps without taking them and 8 percent answered that the court took no steps. The remaining 4 percent answered "Not Applicable."

¹⁰³ Thirty-two respondents, or 18 percent, answered "Other," which included elected positions, promotions, and internships.

¹⁰⁴ The following proportion respondents indicated that they lacked a basis for knowledge: 65 percent for minority judges; 63 percent for minority attorneys; and 57 percent for minority court personnel. About 18 percent of respondents perceived either no or few opportunities existed for minority judges, while 8 percent believed some existed and another 8 percent stated that many existed. About 16 percent of respondents indicated either no opportunities or few opportunities exist for minority attorneys, 12 percent indicated some, and 9 percent indicated many.

¹⁰⁵ Evidence regarding implicit bias would also suggest that more contact with minorities could lead to more awareness of minority situations and reduce existing implicit bias. Jolls & Sunstein, *supra* note 85 at 18-20 (2006).

¹⁰⁶ Five percent of respondents answered "Highly Diverse," and 17 percent answered "Moderately Diverse."

¹⁰⁷ Three percent of respondents answered "Highly Diverse," and 4 percent answered "Moderately Diverse."

¹⁰⁸ Approximately 56 percent of respondents indicated no participation.

¹⁰⁹ NCSC SURVEY, *supra* note 27.

¹¹⁰ Bismarck Attorney Focus Group, *supra* note 12.

¹¹¹ *Id.*; Bismarck Civic Ctr. Tr., *supra* note 44 at p.11 (sharing a Native American's perception of bias that was based on comments from the judge during a particular case).

¹¹² Public Testimony, Transcript of Interview (Jan. 24, 2011) [hereinafter Transcript of Interview, Jan. 2011] (on file with the Commission).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Bismarck Focus Group, *supra* note 12.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Fargo Community Leaders Focus Group, *supra* note 84; Public Testimony, Fargo Public Library 17 (June 22, 2010) (detailing the need for adequate education to begin to create a pool of potential applicants to positions in the court system); UTTC Tr., *supra* note 48 at pp. 22-25 (sharing advantages of a program providing in-court liaisons to Native American court participants in Canada). Public testimony also pointed to the need for sufficient cultural sensitivity training for current employees. Public Testimony, Sitting Bull College Transcript, pp. 79-80 (Oct. 28, 2010).

¹²¹ Transcript of Interview, Jan. 2011, *supra* note 112.

¹²² Bismarck Attorney Focus Group, *supra* note 12; *see also* UND Tr., *supra* note 71 at p. 15, 53 (indicating perceptions of fairness from individual judges and attorneys, but noting problem areas).

¹²³ Bismarck Attorney Focus Group, *supra* note 12.

*chapter*5

Conclusions

Findings

Recommendations

COMPILED RECOMMENDATIONS FOR ALL CHAPTERS

GENERAL RECOMMENDATIONS

1. The Commission study and other relevant materials from the study should be placed online and made accessible to the public.
2. The Supreme Court should establish an implementation committee or another appropriate group to ensure implementation of Commission recommendations.
3. The courts should publicize existing methods of reporting perceived bias, such as the Informal Complaint Panel, internal complaints, and methods for providing feedback on judges.
4. The Commission on Judicial Branch Education should provide diversity and cultural training, including training on the history of minority groups in North Dakota, for all judges and court employees, both at the time of their hiring and at regular periods. Comparable training should also be made available for law enforcement and correctional officers.
5. The implementation committee should partner with State Bar Association of North Dakota, the University of North Dakota School of Law, law enforcement, tribal, state, and county governments, and community groups to develop community outreach initiatives to broaden access to and improve public understanding of legal issues and the legal system, especially for Native Americans and other minorities in the state.
6. The implementation committee should develop court- and bar-sponsored programs to make courts more accessible to citizens from all cultures and should concentrate on using technology to improve public understanding and participation in the court system.
7. The Implementation Committee should study ways to advance the protection and recognition of human rights, including the establishment of an independent human rights commission in North Dakota.
8. The Implementation Committee should monitor demographic changes in North Dakota to with the goal of ensuring the continued effectiveness of efforts introduced to eliminate racial and ethnic bias.

JURIES: FINDINGS

1. The lack of racial and ethnic information on master lists makes jury composition challenges difficult.
2. Jury source-list expansion poses fewer problems than it has in the past with improvements in technology.
3. Limited data on minority representation in jury source lists has been generated from the Commission's Jury Master List Survey. Further study is necessary to accurately assess representation.
4. North Dakota juror qualifications appear sufficiently broad to prevent discrimination and the grounds for disqualification appear to be adequate.
5. Counties with the largest concentrations of minority populations in the state are not the same as those with the highest percentages of undeliverable summonses.
6. Non-response rates to jury summons measured from 2008 to 2010 appear to show several counties consistently higher than the state average. Counties showing high rates for all years examined overlapped with Indian reservations. This correlation calls for further study.
7. Minorities in North Dakota occupy a disproportionate percentage of individuals at or near the poverty level. Factors associated with poverty may make it difficult to appear for jury service.
8. While North Dakota juror compensation and travel reimbursement is above average for states, it is below the minimum wage and below the North Dakota average wage.
9. Limited survey information suggests that jurors who have completed service have a positive perception of the experience.
10. Based on the data collected, more minorities than Whites believe that juries are not representative of the community.
11. A substantial proportion, though not a majority, of attorneys perceive that juries in some areas of the state do not adequately represent minorities.

JURIES: RECOMMENDATIONS

1. A long-term or permanent study on jury panels must be undertaken before firm statistical conclusions on minority representation can be reached. Such study would

provide information for the review of jury source lists. Courts should be required to request racial and ethnic information from all persons summoned, selected for, or granted excuses and deferrals from jury duty. This data must be collected, preserved, and reported yearly to the State Court Administrator.

2. Courts should pursue a dialogue with the Indian tribes for access to sources of information which may be useful to supplement jury lists.
3. Jury lists should be refreshed at least once per year to reduce undeliverable mailings.
4. Courts should ensure uniform treatment and adequate follow-up for undeliverable addresses in jury summonses throughout the state.
5. Courts should pursue uniform treatment of non-response throughout the state. Further study should concentrate on counties with consistent, high rates of non-response.
6. Courts should increase compensation for jury service.
7. Reimbursement should be paid to jurors for dependent care expenses incurred because of jury service.
8. A pilot project should be conducted to pay jurors by debit card immediately upon completion of jury service.
9. Public education programs should be promoted to increase awareness about the purpose, operation, and importance of juries.
10. Jury challenges based on Batson v. Kentucky, 476 U.S. 79 (1986), should be a topic for continuing research and education.

INTERPRETERS: FINDINGS

1. North Dakota faces many problems typical of interpreter services in other states such as scarcity of qualified interpreters and unpredictable workloads for specialists in particular languages.
2. North Dakota courts need interpreters in a considerable number of languages and dialects.
3. Problems arise when judges, court personnel, or interpreters fail to understand the need for effective interpretation, standards of adequate interpretation, role boundaries in the courtroom, or adequate accommodation for interpreters to work.

4. Interpreters are needed at all stages of a person's contact with the legal system.
5. North Dakota does not have a certification process for interpreters.

INTERPRETERS: RECOMMENDATIONS

1. Judges, attorneys, and law enforcement should be educated on the importance, necessity, and functional requirements of interpreters at all stages of a person's contact with the justice system. Administrative Unit 2 efforts provide a model of education programs that can be developed throughout the state.
2. The courts should develop a court-approved voir dire, such as the one developed by the National Center for State Courts, to determine the qualifications of an uncertified interpreter.
3. Court Administrators should compile a list of interpreter resources and the languages they provide, and make this list accessible throughout the state, including it on the North Dakota Supreme Court website.
4. Courts should hire qualified multilingual court personnel.
5. Courts should provide a periodic statewide training program for interpreters, covering court processes and the role of interpreters. Administrative Unit 2 can provide a model training program.
6. The Courts should explore translating judicial forms and documents commonly used in court proceedings into frequently spoken foreign languages.
7. Courts should publish and encourage discussion of existing policies regarding payment for interpreter services outside of court.
8. Courts should investigate and improve outreach and communication with New American communities.
9. The State Bar Association of North Dakota and courts should engage in outreach programs with leaders of local immigrant and culturally diverse communities to educate their members on the role and processes of the court system.
10. Courts should use an interpreter certified by the National Center for State Courts Consortium for State Court Interpreter Certification, whenever available.

11. Courts should explore the development of an interpreter certification program utilizing models provided by the National Center for State Courts Consortium for State Court Interpreter Certification.

CRIMINAL: FINDINGS

1. Available statistics on arrest show that minorities, especially African Americans and Native Americans, are arrested at a rate higher than their percentages in the state population.
2. Testimony reveals a perception that police stops occur more often in certain areas of North Dakota if vehicle occupants are visibly minorities.
3. Testimony reveals a perception that Indian tribes often lack sufficient resources to deal with juvenile delinquency occurring on Indian reservations and that lack of consequences leads to patterns of behavior that can increase contact with state courts when individuals leave Indian reservations.
4. Differing bond schedules may contribute to actual or perceived bias throughout the state. Treatment of Native Americans living on Indian reservations as out-of-state residents contributes to actual or perceived bias.
5. A perception exists among attorneys, court employees, others working with the courts, and Native Americans that minorities are more likely than Whites to plead guilty for cultural reasons or to avoid lengthy court processes.
6. Minorities perceive that minority defendants receive longer sentences than Whites for the same crimes.
7. Minorities are under-represented in adult drug courts.
8. Minorities are over-represented in the state prison population.
9. The proportion of minorities in the system appears higher at the incarceration stage than at arrests for Index Crimes, especially for Native Americans.
10. Testimony suggests that minorities face difficulties with housing, transportation, child support, and finding adequate employment after release from incarceration.
11. Analysis of parole and probation revocations does not reveal significant racial disparities except for a greater proportion of revocations for Native Americans occurring because of absconding violations.

12. Minority participation in North Dakota Department of Corrections and Rehabilitation education and transitional service programs designed to reduce recidivism appears to be proportional to minority populations in the state prison system.
13. The Commission was unable to gather information about minority incarcerations in the county system.

CRIMINAL: RECOMMENDATIONS

1. More detailed and long-term studies on race and the criminal justice system should be undertaken at all levels, especially in the areas of arrests, recidivism, and sentencing disparities.
2. The court should encourage the state to develop a retrieval mechanism for race and other data collected at the county and regional jail level.
3. Courts and law enforcement should establish and expand cultural liaisons to minority communities to provide education on the courts, police, and legal issues.
4. Courts should establish an objective screening tool for determining bail and should standardize bond schedules to ensure the equal treatment of Native Americans living on Indian reservations.
5. Courts should gather data on dispositions for all criminal defendants and juveniles. Such information should be maintained by racial and ethnic category.
6. Along with the sentencing factors of N.D.C.C. § 12.1-32-04, evidence-based sentencing practices and risk-assessment tools should be used.
7. Courts should provide training to judges in the use of researched-based tools to incorporate in sentencing practices.
8. Drug Courts should be expanded throughout the state, and minority participation should be increased. Experience and methods learned from existing drug court programs should be shared throughout the state.
9. Driving under suspension penalties should be reviewed because these penalties compound difficulties in obtaining or maintaining employment.
10. All law enforcement officers, including police and highway patrol, should receive cultural diversity training at regular intervals.

11. All law enforcement officers should receive training on tribal, state, and federal jurisdiction at regular intervals.
12. Efforts should be made for collaboration between the state and the Indian tribes on honoring court orders and warrants.

JUVENILE: FINDINGS

1. Juvenile justice processes in North Dakota have benefited from continued studies and data collection on Native American and other minority youth in accordance with federal requirements.
2. Public testimony supports previous findings that tribes often have insufficient resources for law enforcement, including facilities to hold offending juveniles, and lack means to deal with delinquency, all of which contribute to later offending.
3. North Dakota minority youth, especially Native Americans and African Americans, tend to be over-represented in arrests and detention when compared to White youth.
4. Hispanic/ Latino(a) youth in North Dakota tend to be over-represented in secured detention, but tend not to show similarly high relative rates of arrest compared to Native Americans and African Americans.
5. Minority youth were less likely to have their cases diverted from the formal court process and more likely to have their cases formally petitioned in the years examined.
6. Demographic data suggests that Burleigh, Cass, Grand Forks, and Ward counties are appropriate targets for concentrating state resources to address problems with race-based disparities in the juvenile system.
7. Data from juvenile drug courts shows that the number of Native American drug court participants is proportional to the number of Native American juveniles arrested.
8. Though limited relevant data exists for youth drug courts, general drug court data indicates that high-risk individuals benefit more from intensive drug court programs. The youngest high-risk individuals benefit the most from such programs.

9. North Dakota has piloted additional efforts to address racial disproportion in the juvenile system, including the Youth Cultural Achievement Program and a detention screening tool.

JUVENILE: RECOMMENDATIONS

1. An assessment should be conducted to investigate causes of the high minority juvenile arrest rates.
2. A single statewide tool should be implemented to guide the decision to detain. The tool should include criteria that are related to the purpose of detention, measure objectively, and apply uniformly.
3. The Court should explore establishing a juvenile minority liaison program in counties demonstrating a need, similar to the program in Burleigh County.
4. The State Court Administrator's Office should develop a list of services available for minority youth and their families. This list should be made available in the offices of clerks of district court.
5. Courts should develop and fund culturally sensitive programs for minority youth, which emphasize the skills needed to give minority youth the best chance at rehabilitation and prevent reentry to the juvenile justice system.
6. Youth drug courts should offer intensive services to high-risk youth in order to generate the greatest overall benefit. Such services should be culturally sensitive.
7. Efforts should be made by the state to work out reciprocal juvenile probation agreements with the Indian tribes so that Native American juveniles who leave, or return to, an Indian reservation can receive supervision.
8. The state should continue efforts to identify and reduce the barriers to full and equal access to juvenile diversion.
9. All state and local agencies should make significant efforts in the recruitment, training, retention, and promotion of qualified minority personnel within the juvenile justice system. These efforts should be directed toward providing personnel in proportion to the client community, and not be based solely upon demographic representation of communities of color in the population at large.

10. Judges, attorneys, social workers, guardians ad litem, and court personnel should receive education and training to increase their sensitivity to cultural and racial issues.
11. The State should continue to provide annual training on the provisions of Indian Child Welfare Act.
12. The Court should support agencies' efforts to increase recruitment and licensure of minority foster care parents.
13. The courts should support efforts to identify experts as required by the Indian Child Welfare Act for purposes of testifying under the Act.

CIVIL: FINDINGS

1. Civil proceedings have tended to become increasingly expensive over time. This limits or impairs access for individuals, especially those at or near the poverty level. Minorities in North Dakota represent a disproportionate number of individuals at this level.
2. Mistrust of legal systems appears high among some minority groups, such as Native Americans.
3. Some groups within the state, particularly New Americans, may not fully understand court processes and legal rights.
4. Minorities constitute disproportionately large percentages of those using Legal Services of North Dakota (LSND) compared to the minority populations in the state.
5. Despite the efforts of the State Bar Association of North Dakota (SBAND) Volunteer Lawyer Services and LSND, there remains a large unmet need for civil legal services in North Dakota.
6. Members of minority groups residing in counties without a LSND office may be unaware, or unable to take advantage, of services provided, as fewer applications come from those counties.
7. SBAND has analyzed rules relevant to unbundling legal services and made recommendations directed toward facilitating such services.
8. The number of individuals choosing to self-represent has increased in recent years.

9. The Commission found no data on the extent of minority self-representation.

CIVIL: RECOMMENDATIONS

1. Courts should pursue collaborations with SBAND, the UND School of Law, and other partners to develop programs to educate New Americans on legal issues and the legal system.
2. Courts, SBAND, and LSND should promote public awareness of materials on various legal subjects already compiled and maintained.
3. SBAND should continue to promote the expansion of pro bono resources to facilitate minority access to courts.
4. The state should increase its funding for LSND to allow greater services to minorities and extended geographic reach.
5. Courts should support the provision of unbundled legal services to the public.
6. SBAND should create training to educate attorneys and the public about unbundled services and to encourage attorneys to share experiences and information on problems and best practices for offering unbundled services.
7. Courts should attempt to gather data on minority status in civil actions.
8. Courts should provide expanded materials to facilitate self-representation and adequate notice of existing materials.
9. For ease of enforcement between state and tribal courts, courts should adopt the National Center for State Courts form of domestic violence protection order (PASSPORT).
10. Courts should recruit Native American mediators as recommended in the North Dakota Supreme Court's 2012 evaluation of the Family Mediation Pilot Program.
11. Courts should explore development of a legal services ombudsman position to provide information and guidance to members of the public regarding the court system.

12. The Supreme Court should encourage the local courts and local bar associations to develop outreach programs designed to enhance access to the courts by minority and non-English-speaking persons.

ATTORNEYS AND COURT EMPLOYEES: FINDINGS

1. The number of minority attorneys practicing in North Dakota appears to be significantly less than the proportion of minorities living within the state.
2. Minorities are significantly under-represented as employees at all measured levels of the court system in North Dakota.
3. Since the court employment application process has become computerized, collected data has shown the number of minority applications exceeds the proportion of minorities in the state, but applications from Native Americans are below the proportion of Native Americans in the state.
4. The University of North Dakota School of Law (UND School of Law) graduates minorities in proportions close to the state population, but not all of those graduates practice in the state.
5. Both attorneys and court employees appear to perceive that diversity in their communities is greater than diversity in their places of employment.
6. Attorney and court employee survey respondents returned generally positive perceptions of most areas of the court system. Few minority responses were received from the surveys.

ATTORNEYS AND COURT EMPLOYEES: RECOMMENDATIONS

1. Courts should develop outreach programs to minorities to generate interest in pursuing careers in the legal system.
2. Courts should establish partnerships with minority groups, such as tribal colleges, to find means of encouraging and developing career tracks for minority employees.
3. Courts should develop outreach programs for non-English speaking people to find means of educating them about the judicial system, and encouraging and developing career tracks in court system.

4. State and local bar associations should engage in outreach programs with leaders of Native American, local immigrant, and culturally diverse communities to help educate their members on the processes of the court system.
5. SBAND, along with other state and local bar associations and the UND School of Law, should establish a task force to study and implement outreach programs to encourage minority high school students to pursue legal careers.
6. Because the pool of potential minority law school students from within the state is relatively small, the UND School of Law should continue and increase efforts to attract minority applicants.
7. Courts and SBAND should work closely with the UND School of Law to consider ways to create incentives to help retain minority graduates in the state.
8. The Board of Law Examiners should determine the number of minority attorneys practicing in the state.
9. SBAND should provide Continuing Legal Education (CLE) regarding racial and ethnic bias for attorneys. This CLE should count towards the ethics requirement.
10. Courts should regularly provide racial and ethnic bias and cultural diversity training to all court employees.
11. State and local bar associations should collaborate with community groups to encourage more minority attorneys to seek appointment or election to judicial positions.
12. Tribal court judges should be included as faculty in diversity training programs and should continue to be encouraged to attend judicial education programs.
13. State and local bar associations and the Supreme Court should work closely with the UND School of Law to promote adequate clerking opportunities for minority law students.
14. The Implementation Committee should examine the feasibility for inclusion of a Federal Indian Law question on the Uniform Bar Exam.

Appendix **A**

Commission Surveys
Jury Master List and Panel
Attorney and Employee
Perceptions and Court User

Jury Pool Questionnaire

A Commission to Study Racial and Ethnic Bias in the Courts is doing a study of the court system, including the jury selection process in an attempt to ensure that jury lists and jury panels adequately represent all race and ethnic groups in North Dakota. The Commission requests that you fill out this survey to assist in this study.

Your participation in this survey does NOT affect your eligibility for jury service. This questionnaire will NOT be given to the attorneys involved in the cases on which you might serve as a juror. The clerk of court will separate this Jury Pool Questionnaire from the separate _____ which you are required to answer. The clerk of court will send this separate Jury Pool Questionnaire to the commission.

Please return this completed Jury Pool Questionnaire with the _____.

What is your race/ethnicity?

- American/Alaskan Native
- Asian
- Black
- Hispanic/Latino(a)
- Native Hawaiian or Pacific Islander
- White
- Other

NORTH DAKOTA STATE COURTS JUROR SURVEY

North Dakota State Courts seek to better understand experiences of trial participants. Specifically, we would like to know more about your jury service experience. Our objective in this survey is to determine how jurors feel about the court process.

Please read each question completely. Answer each question candidly and to the best of your ability.

In this survey, racial and ethnic minorities are defined as one identified as: Asian or Pacific Islander; Black/African-American; Hispanic or Latino(a); or Native American. For questions asking you to identify any jury panel members as a racial and ethnic minority, please answer based on your own observations – actual knowledge of race is irrelevant for purposes of this survey.

Please seal the completed survey in the envelope provided, and return to the bailiff or Clerk of Court.

SECTION I: DEMOGRAPHICS

First, we would like to know about you. Your responses will assist us in obtaining a clearer picture of jurors completing the survey. We will not be able to identify you from your responses

1. What is your gender?

- female male

2. What is your age? _____

3. What is your race?

- American/Alaskan Native Asian
 Black Hispanic/Latino(a) Native Hawaiian or Pacific Islander
 Other _____ White

4. What is your marital status? (Check one)

- married single/never married single/divorced
 single/domestic partner widowed

5. How long have you lived in North Dakota? _____ (in years)

6. What is your county of residence? _____

7. What is your state (or country, if outside the U.S.) of birth? _____

If outside the U.S

↓

How long have you lived in the U.S.?

_____ (in years)

In what year did you become a naturalized citizen? _____

8. What is your native language? (i.e. English, Spanish, German, etc.). _____

9. What is your employment status?

- full-time part-time full-time student
 homemaker retired unemployed

10. What is your highest level of education? (Check one)

- some high school high school diploma GED
 some vocational school vocational school some college associate's degree
 bachelor's degree college some graduate school some professional school
 master's degree professional degree doctorate

SECTION II: JURY EXPERIENCE

We would like to know about your experience as a juror. Please check the response that best reflects your experience for each question.

11. What kind of trial did you serve on as a juror?

- Civil Criminal Don't know

12. How many jurors were on the jury panel?

- 6 9 12 Don't know

13. Of those who served on your jury panel (including yourself), how many do you believe were racial or ethnic minorities? _____

14. Before the trial began, the attorneys and/or the judge questioned potential jurors (voir dire). In your opinion, was the process fair?

- Yes No Don't know

↓
If no, why? _____

15. During voir dire, were any ethnic or racial minorities eliminated as potential jurors?

- Yes No Don't know

↓
If yes, how many? _____

↓
Of those, how many were eliminated without being questioned? _____

↓
How many were eliminated after being questioned? _____

16. If a racial or ethnic minority was eliminated as a potential juror, in your opinion was that person eliminated due to his or her race or ethnicity?

- Yes No Don't know
 There were no racial or ethnic minorities eliminated

17. Was an interpreter used at any point during the trial?

- | | |
|---|--|
| <p><input type="checkbox"/> Yes</p> <p>↓</p> <p>If yes, was it helpful for you as a juror to understand testimony?</p> <p>↓</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know</p> | <p><input type="checkbox"/> No</p> <p>↓</p> <p>If no, should an interpreter have been utilized?</p> <p>↓</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know</p> |
|---|--|

18. Did you take off work for jury duty?

Yes No

↓

If yes, did your employer pay your normal salary while you served?

↓

Yes No

19. How long did your trial last? (from the time the attorneys and judge started the jury selection process, to when the jury returned its verdict).

_____ days

_____ hours (if the whole trial lasted less than a full day, indicate number of hours only)

20. How long did you have to wait before jury selection started for the trial on which you ended up serving as a juror?

_____ days

_____ hours (if you waited less than one (1) full day)

21. Were you the jury leader?

Yes No

22. Was your jury sequestered? (isolated during the course of the trial)

Yes No

23. Have you served previously on a jury in North Dakota?

Yes No

↓

If yes, what kind of trial (check all that apply)?

↓

criminal civil Don't know

↓

number of times _____

↓

number of times _____

SECTION III: TRIAL PARTICIPATION

We would like to know more about the trial in which you just participated. Please indicate whether you **strongly agree, agree, disagree, strongly disagree, or do not know**.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
24. The defendant (criminal) or parties (civil) in your case received a fair trial.	<input type="checkbox"/>				
25. The judge communicated effectively with the defendant (criminal) or parties (civil).	<input type="checkbox"/>				
26. The attorneys communicated effectively with the defendant (criminal) or parties (civil).	<input type="checkbox"/>				
27. The court personnel communicated effectively with the defendant (criminal) or parties (civil).	<input type="checkbox"/>				
28. The judge was respectful and courteous to the defendant (criminal) or parties (civil).	<input type="checkbox"/>				
29. The attorneys were respectful and courteous to the defendant (criminal) or parties (civil).	<input type="checkbox"/>				

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
30. The court personnel were respectful and courteous to the defendant (criminal) or parties (civil).	<input type="checkbox"/>				
31. Your jury reflected the racial and ethnic mix of the community.	<input type="checkbox"/>				
32. The judge reflected the racial and ethnic mix of the community.	<input type="checkbox"/>				
33. The attorneys reflected the racial and ethnic mix of the community.	<input type="checkbox"/>				
34. The court personnel reflected the racial and ethnic mix of the community.	<input type="checkbox"/>				
35. I am proud of what I accomplished during jury duty.	<input type="checkbox"/>				
36. Jury duty was a waste of my time.	<input type="checkbox"/>				
37. I experienced stress as a result of my jury duty.	<input type="checkbox"/>				
38. I think other jurors experienced stress during jury duty.	<input type="checkbox"/>				
39. Reporting for jury duty was stressful.	<input type="checkbox"/>				
40. It was difficult to understand the complex testimony.	<input type="checkbox"/>				
41. It was difficult to understand and apply the law.	<input type="checkbox"/>				
42. It was difficult to decide whether the defendant was guilty or not guilty (liable or not liable, for a civil trial).	<input type="checkbox"/>				

43. Compared to other members of your jury, how much did you participate during deliberations?

- much less somewhat less the same somewhat more much more no opinion

44. On the whole, how seriously do you feel the jury take its job?

- not at all seriously somewhat seriously very seriously no opinion

45. Compared to how you felt before your jury service, how do you feel *now* about how our justice system works?

- much better somewhat better the same somewhat worse much worse no opinion

SECTION IV: PERCEPTIONS

We would like to know more about your opinions regarding the North Dakota State Justice System. Please indicate whether you **strongly agree**, **agree**, **disagree**, **strongly disagree**, or **do not know**.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Do Not Know
46. In North Dakota, personal income affects quality of legal representation.	<input type="checkbox"/>				
47. My community is racially and ethnically diverse.	<input type="checkbox"/>				

Racial and Ethnic Bias Attorney Survey

The Commission to Study Racial and Ethnic Bias in the Courts seeks to better understand your experiences and observations as an attorney in North Dakota. The objective of this survey is to determine what attorneys throughout the state feel about the present structure and practices within the legal community and state courts in North Dakota. Data from this survey will help the Commission gain a more complete picture of the court system.

We will not be able to identify you from your responses.

Background Information

What is your current employment status?

- Full time employee
- Part time employee
- Full time student
- Contractor
- Intern/volunteer

What is your race?

- African American
- Native American
- Asian
- White
- Hispanic/Latino(a)
- Hawaiian/Pacific Islander

Where do you work?

- Private Law Firm
- Prosecutor
- Public Defender
- Corporate Counsel
- Judge
- State Government
- Federal Government
- Other, please specify

How many years have you occupied your current position?

- 0-5
- 6-10
- 11-20
- 21-30
- Over 30

How many years total have you been a member of the North Dakota Bar?

- 0-5
- 6-10
- 11-20
- 21-30
- Over 30

Please describe the racial and ethnic diversity of your workplace.

- Highly Diverse
- Somewhat Diverse
- Not Diverse

Please describe the racial and ethnic diversity of the area in which you live.

- Highly Diverse
- Somewhat Diverse
- Not Diverse

In general, how satisfied are you in your present professional situation?

Very Satisfied

1

Satisfied

2

Somewhat Satisfied

3

Dissatisfied

4

In general, how satisfied are you in your opportunities for professional advancement?

Very Satisfied

1

Satisfied

2

Somewhat Satisfied

3

Dissatisfied

4

In general, how satisfied are you in your access to networks important for your career?

Very Satisfied

1

Satisfied

2

Somewhat Satisfied

3

Dissatisfied

4

Hiring Practices/ Employment Opportunities

Does your employer take steps specifically directed at recruiting minority employees?

- Yes - and the steps are serious
- Yes - but the steps are not serious
- No - but has been discussed
- No
- Don't know
- Not applicable

How did you find out about the current position you occupy?

- Family
- Friend
- Networking
- Advertisement
- Recruited
- Other, please explain

While working for your employer, have you participated in multicultural education or training?

- Yes - my organization requires it
- Yes - my organization encourages it
- Yes - I did it for my own reasons
- No - but my organization encourages it
- No - and my organization does nothing to encourage it

Thinking about the past five years, how would you characterize the work environment for minority employees?

- Situation is getting better
- Situation is about the same
- Situation is getting worse
- No basis for knowledge

Please read the following series of statements and select the response that best represents how strongly you agree or disagree with each statement.

Perceptions and Experiences

The personnel in court have sufficient education and training to provide adequate assistance to minorities.

- | | | | | |
|-------------------------|-------------------------|-------------------------|--------------------------|-------------------------------|
| Strongly Agree | Agree | Disagree | Strongly Disagree | No Basis for Knowledge |
| <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 | <input type="radio"/> 5 |

Minorities are given hiring preferences over better qualified whites.

- | | | | | |
|-------------------------|-------------------------|-------------------------|--------------------------|-------------------------------|
| Strongly Agree | Agree | Disagree | Strongly Disagree | No Basis for Knowledge |
| <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 | <input type="radio"/> 5 |

The personnel working for your employer have sufficient education and training to provide adequate assistance to minorities.

- | | | | | |
|-------------------------|-------------------------|-------------------------|--------------------------|-------------------------------|
| Strongly Agree | Agree | Disagree | Strongly Disagree | No Basis for Knowledge |
| <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 | <input type="radio"/> 5 |

To be hired for a position with your employer, minorities need better qualifications than white applicants.

- | | | | | |
|-------------------------|-------------------------|-------------------------|--------------------------|-------------------------------|
| Strongly Agree | Agree | Disagree | Strongly Disagree | No Basis for Knowledge |
| <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 | <input type="radio"/> 5 |

Persons who work in the courts should be trained to understand the needs of specific minority groups.

- | | | | | |
|-------------------------|-------------------------|-------------------------|--------------------------|-------------------------------|
| Strongly Agree | Agree | Disagree | Strongly Disagree | No Basis for Knowledge |
| <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 | <input type="radio"/> 5 |

Informal mentors to help with networking are more widely available for whites than for minorities.

- | | | | | |
|-------------------------|-------------------------|-------------------------|--------------------------|-------------------------------|
| Strongly Agree | Agree | Disagree | Strongly Disagree | No Basis for Knowledge |
| <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 | <input type="radio"/> 5 |

Overall, the professional opportunities available to minorities are greater than those available to whites.

- | | | | | |
|-------------------------|-------------------------|-------------------------|--------------------------|-------------------------------|
| Strongly Agree | Agree | Disagree | Strongly Disagree | No Basis for Knowledge |
| <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 | <input type="radio"/> 5 |

Minorities working for your employer have equal opportunity for professional advancement.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

Despite adequate credentials, applicants with an accent are less likely to be hired by your employer.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

Minorities working for your employer tend to be assigned less complex tasks or duties.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

Employees working within the North Dakota legal community have equal opportunity for professional advancement.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

Please read the following statements and select the response that best represents how strongly you agree or disagree with each statement.

(questions 26-30) Racial and ethnic minorities are adequately represented:

among North Dakota judges.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

among North Dakota public defenders.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

among North Dakota prosecutors.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

among North Dakota private attorneys.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

among North Dakota court employees.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

(questions 31-32) Racial and ethnic minorities are adequately represented:

among North Dakota jury pools.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

among North Dakota jury panels.

Strongly Agree

1

Agree

2

Disagree

3

Strongly Disagree

4

No Basis for Knowledge

5

The final questions on this survey concern courtroom conduct. Please select the response that best describes your experience or observations while working in the North Dakota court system over the past five years. (questions 33-43) How often does each of the following occur?

Judges base their evaluations of a defendant's/litigant's case on minority stereotypes.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges are fair and honest in deciding cases.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges are more abrupt with minority counsel than they are with white counsel.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges release minority defendants on their own recognizance as often as they do white defendants.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges find the testimony of white lay witnesses more credible than that of minority lay witnesses.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges apply the same standards when deciding to remove a child from the homes of minorities and whites.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges find the testimony of white expert witnesses more credible than that of minority expert witnesses.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges make every effort to accommodate non-English-speaking defendants and witnesses.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges sentence white defendants more leniently than minority defendants convicted of the same crime.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Attorneys are more likely to strike minority jurors during jury selection without a clear reason.

Always	Often	Sometimes	Seldom	Never	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges are more likely to accept the sentencing recommendation of the prosecutor when the defendant is a minority.

Always

Often

Sometimes

Seldom

Never

**No Basis for
Knowledge**

1

2

3

4

5

6

NORTH DAKOTA STATE COURTS EMPLOYEE SURVEY

The Commission to Study Racial and Ethnic Bias in the Courts seeks to better understand experiences and observations of North Dakota court employees and county contract employees. The following survey contains 40 questions that will require you to check one response from a series of possible choices. Some questions also provide an "Other" blank to allow you to enter information not covered in the available choices.

Data from this survey will contribute to findings and recommendations in the Commission's final report. We will not be able to identify you from your responses.

Background Information

What is your current employment status?

- Full time employee
 - Part time employee
 - Full time student
 - Contractor
 - Intern/volunteer
 - Other, please specify
-

In what area of the court system do you work?

- Supreme Court
- District Court
- Municipal Court
- Judicial System Administration
- Other, please specify

In what unit are you employed?

How many years have you occupied your current position?

- 0-5
- 6-10
- 11-20
- 21-30
- Over 30

How many years total have you worked for North Dakota courts?

- 0-5
- 6-10
- 11-20
- 21-30
- Over 30

Please describe the racial and ethnic diversity of your workplace.

- Highly Diverse
- Moderately Diverse
- Somewhat Diverse
- Not Diverse

Please describe the racial and ethnic diversity of the area in which you live.

- Highly Diverse
- Moderately Diverse
- Somewhat Diverse
- Not Diverse

Hiring Practices/ Employment Opportunities

Does the court take steps specifically directed at recruiting minority employees?

- Yes - and the steps are serious
- Yes - but the steps are not serious
- No - but has been discussed
- No
- Don't Know
- Not Applicable

How did you find the position you currently occupy?

- Family
- Friend
- Networking
- Advertisement
- Recruited
- Other, please explain

While working for your court, have you participated in multicultural education or training?

- Yes - my organization requires it
- Yes - my organization encourages it
- Yes - I did it for my own reasons
- No - but my organization encourages it
- No - and my organization does nothing to encourage it

Thinking about the past five years, how would you characterize the work environment for minority court employees?

- Situation is getting better
- Situation is about the same
- Situation is getting worse
- No basis for knowledge

(questions 12-13) How satisfied are you with each of the following:

Your present professional situation?

Dissatisfied **Somewhat Satisfied** **Satisfied** **Very Satisfied**
 1 2 3 4

Your opportunities for advancement?

Dissatisfied **Somewhat Satisfied** **Satisfied** **Very Satisfied**
 1 2 3 4

(questions 14-16) How would you characterize the legal system in North Dakota regarding election, hiring, and promotion opportunities for:

Minority judges

None **Few** **Some** **Many** **No basis for knowledge**
 1 2 3 4 5

Minority attorneys

None **Few** **Some** **Many** **No basis for knowledge**
 1 2 3 4 5

Minority court personnel

None **Few** **Some** **Many** **No basis for knowledge**
 1 2 3 4 5

Please read the following series of statements and select the response that best represents your opinion concerning employment and professional opportunities available to employees of North Dakota's court system.

(questions 17-24) How strongly do you agree or disagree with the following statements?

The personnel in the court have sufficient education and training to provide adequate assistance to minorities.

Strongly Disagree **Disagree** **Agree** **Strongly Agree** **No basis for knowledge**
 1 2 3 4 5

Minorities are given hiring preference over better qualified whites.

Strongly Disagree **Disagree** **Agree** **Strongly Agree** **No basis for knowledge**
 1 2 3 4 5

To be hired for a position in the court, minorities need better qualifications than white applicants.

Strongly Disagree **Disagree** **Agree** **Strongly Agree** **No basis for knowledge**
 1 2 3 4 5

Overall, the professional opportunities available to minorities are greater than those available to whites.

Strongly Disagree **Disagree** **Agree** **Strongly Agree** **No basis for knowledge**
 1 2 3 4 5

Informal mentors to help with networking are more widely available for whites than for minorities.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

Minorities employed in the court have equal opportunity for professional advancement.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

Despite adequate credentials, applicants with an accent are less likely to be hired by your court.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

Minorities employed in the court tend to be assigned less complex tasks or duties.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

(questions 25-30) Racial and ethnic minorities are adequately represented:

among North Dakota judges.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

among North Dakota public defenders.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

among North Dakota prosecutors.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

among North Dakota private attorneys.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

among North Dakota court employees.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

in North Dakota jury pools.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

(question 31) Racial and ethnic minorities are adequately represented:

on North Dakota jury panels.

Strongly Disagree

1

Disagree

2

Agree

3

Strongly Agree

4

No basis for knowledge

5

The following questions specifically concern courtroom conduct. Please choose the response that best describes your experiences or observations while working in the North Dakota court system over the past five years.

(questions 32-40) How often does each of the following occur?

Judges base their evaluations of a defendant's/ litigant's case on minority stereotypes.

Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges are fair and honest in deciding cases.

Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges are more abrupt with minority counsel than they are with white counsel.

Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges release minority defendants on their own recognizance as often as they do white defendants.

Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges find the testimony of white witnesses more credible than that of minority witnesses.

Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges apply the same standards in deciding when they remove a child from the homes of minorities and whites.

Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges make every reasonable effort to accommodate non-English-speaking defendants and witnesses.

Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges sentence white defendants more leniently than minority defendants convicted of the same crime.

Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

Judges are more likely to accept the sentencing recommendation of the prosecutor when the defendant is a minority.

Never	Seldom	Sometimes	Often	Always	No Basis for Knowledge
<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6

NORTH DAKOTA STATE COURTS SURVEY

The North Dakota State Court System seeks to better understand your experiences with the system. Specifically, we would like to know your more about your perceptions of the North Dakota State Court System. The objective of this survey is to determine how participants feel about the present structure and practices of the state courts in North Dakota.

Please read each question carefully and completely. Answer each question candidly and to the best of your ability.

Upon completion, please return the survey to the research personnel. We will not be able to identify you from your responses.

SECTION I: DEMOGRAPHICS AND GENERAL INFORMATION

First, we would like to know about you. Your responses will assist us in obtaining a clearer picture of persons completing the survey. We will not be able to identify you from your responses.

1. Are you a resident of North Dakota?

Yes



If yes, what is your county of residence? _____

No

Don't know



If no, what is your state or country of residence?

IF YOU ARE NOT A NORTH DAKOTA RESIDENT, PLEASE INFORM ONE OF THE RESEACH PERSONNEL. THIS SURVEY DOES NOT APPLY TO YOU UNLESS YOU HAVE HAD PREVIOUS EXPERIENCE WITH THE NORTH DAKOTA STATE COURT SYSTEM.

2. What is your age? _____

3. What is your gender?

female male

4. What is your race?

American/Alaskan Native Asian Black Hispanic/Latino(a)
 Native Hawaiian or Pacific Islander Other White

5. What is your marital status? (Check one)

married single/never married single/divorced
 single/domestic partner widowed

6. What is the primary language you use? (i.e. English, Spanish, German, etc.). _____

7. What is your state (or country, if outside the U.S.) of birth? _____

If outside the U.S



How long have you lived in the U.S.?

_____ (in years)

In what year did you become a naturalized citizen? _____

8. What is your employment status?

- full-time part-time full-time student
 homemaker retired unemployed

9. What is your highest level of education? (Check one)

- some high school high school GED
 some vocational school vocational school some college associate's degree
 bachelor's degree college some graduate school some professional school
 master's degree professional degree doctorate

SECTION II: COURT EXPERIENCE

We would like to know about your experience in the North Dakota State Court System. Please check the response that best reflects your experience for each question.

10. Have you ever been a litigant, witness or defendant in the North Dakota State Court System?

- Yes No Don't know
↓
If yes, which best describes your involvement? (*check all that apply*)
 litigant witness defendant

11. Have you ever been involved in the North Dakota Juvenile Court System?

- Yes No Don't know
↓
If yes, which best describes your involvement? (*check all that apply*)
 petitioner witness respondent a child
 child abuse/neglect termination of parental rights adoption
 child in need of supervision (*unruly, delinquent or deprived*)

12. Have you ever been involved in the North Dakota State Court System to resolve family issues?

- Yes No Don't know
↓
If yes, which best describes your involvement? (*check all that apply*)
 petitioner witness respondent a child
 divorce child custody child visitation child support
 paternity domestic violence protection order

13. Have you ever been involved in the North Dakota State Court System to resolve mental health issues?

- Yes No Don't know
↓
If yes, which best describes your involvement? (*check all that apply*)
 petitioner witness respondent
 mental health alcohol treatment drug treatment
 involuntary commitment

14. Have you ever been involved in the North Dakota State Court System to resolve probate issues?

- Yes No Don't know



If yes, which best describes your involvement? (*check all that apply*)

- petitioner witness respondent
 will estate trust
 name change guardianship conservatorship

SECTION III: PERCEPTIONS

For the following questions, please check the box corresponding to your answer. Please check only one box per question.

15. 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
a. The public schools	<input type="checkbox"/>					
b. The office of Governor	<input type="checkbox"/>					
c. Local law enforcement	<input type="checkbox"/>					
d. The media	<input type="checkbox"/>					
e. North Dakota Supreme Court	<input type="checkbox"/>					
f. Medical profession	<input type="checkbox"/>					
g. State legislature	<input type="checkbox"/>					
h. U.S. Supreme Court	<input type="checkbox"/>					
i. The courts in your area	<input type="checkbox"/>					

16. 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
a. People like you	<input type="checkbox"/>						
b. Men	<input type="checkbox"/>						
c. Women	<input type="checkbox"/>						
d. African-Americans	<input type="checkbox"/>						
e. Hispanics	<input type="checkbox"/>						
f. Native-Americans	<input type="checkbox"/>						
g. Non-English speaking people	<input type="checkbox"/>						
h. Middle class people	<input type="checkbox"/>						
i. Working class people	<input type="checkbox"/>						
j. Wealthy people	<input type="checkbox"/>						

NORTH DAKOTA STATE COURTS SURVEY

The North Dakota State Courts seek to understand your experiences with the criminal justice system. The objective of this survey is to determine how participants in the system feel about the present structure and practices of the state court system in North Dakota.

Please DO NOT include your name or other identifying information anywhere on this survey. The information you provide is confidential. Please return the completed survey to the inmate mailbox no later than Thursday, April 28, 2011 to ensure collection.

I. DEMOGRAPHIC INFORMATION

1. What is your gender?

- female male

2. What is your age?

- 18-25 26-35 36-45 46-55 56-65 Over 65

3. What is your race?

- American/Alaskan Native Asian Black Hispanic/Latino(a)
 Native Hawaiian or Pacific Islander Other White

4. What is your marital status? (Check one)

- married single/never married single/divorced
 single/domestic partner widowed

5. Are you a resident of North Dakota?

- Yes No Don't know

6. What is the primary language you speak? (Check one)

- English African Languages¹ Native American Languages²
 German Arabic French
 Spanish Scandinavian languages³ Other _____

7. What is your employment status?

- full-time part-time full-time student
 unemployed homemaker retired

If unemployed, how long have you been waiting to be employed? _____

8. What is your highest level of education? (Check one)

- some high school high school GED
 some vocational school vocational school some college
 associate's degree bachelor's degree college some graduate school
 some professional school master's degree professional degree
 doctorate

¹ Example: Amharic, Dinka, Kurundi, Somali

² Example: Arikara, Assiniboine, Chippewa, Dakota, Hidatsa, Lakota

³ Example: Danish, Norwegian, Swedish

II. COURTROOM

Please tell us how much you agree or disagree with the following statements with regard to your courtroom experience. For each one, please choose a score between 1 and 5 where 1 means "strongly disagree," 5 means "strongly agree," and 3 means "neutral/no opinion." Please check only one box per question.

	Strongly disagree 1	2	Neutral 3	4	Strongly agree 5
9. Overall, I feel that I got a fair trial.	<input type="checkbox"/>				
10. The prosecuting attorney(s) treated me respectfully	<input type="checkbox"/>				
11. The defense attorneys treated me respectfully	<input type="checkbox"/>				
12. Court workers treated me respectfully	<input type="checkbox"/>				

	Negatively 1	2	Not at all 3	4	Positively 5
13. The race of the attorneys influenced the trial outcome	<input type="checkbox"/>				
14. My race influenced the trial outcome.	<input type="checkbox"/>				

15. Were any attorneys members of minority groups?

Defense Attorney(s) <input type="checkbox"/>	Prosecuting Attorney(s) <input type="checkbox"/>	None <input type="checkbox"/>
--	--	-------------------------------

16. Do you think that the judge and court workers treated minority attorneys better or worse than non-minority attorneys, or were they treated the same?

Better <input type="checkbox"/>	Worse <input type="checkbox"/>	Same <input type="checkbox"/>	No Minority Attorneys <input type="checkbox"/>
---------------------------------	--------------------------------	-------------------------------	--

17. Were there any minority court personnel (Court Clerks, bailiffs, translators, court reporters, etc.) present during your trial?

Yes <input type="checkbox"/>	No <input type="checkbox"/>
------------------------------	-----------------------------

18. Did you plead guilty?

Yes <input type="checkbox"/>	No <input type="checkbox"/>
------------------------------	-----------------------------

III. JURY

Please tell us how much you agree or disagree with the following statements with regard to your jury. If you did not have a jury please indicate this fact in the box below and skip to question #29. For each question, please choose a score between 1 and 5 where 1 means "strongly disagree," 5 means "strongly agree," and 3 means "neutral/no opinion." Please check only one box per question.

<input type="checkbox"/> I DID NOT HAVE A JURY Please skip to question #27	Strongly disagree 1	2	Neutral 3	4	Strongly agree 5
19. My jury was representative of the community at large	<input type="checkbox"/>				
20. My jury was representative of minority groups within the community	<input type="checkbox"/>				
21. Members of the jury took their jobs seriously	<input type="checkbox"/>				
22. Members of minority groups were eliminated as potential jurors before trial because of their race	<input type="checkbox"/>				
23. Jurors were treated respectfully by the court	<input type="checkbox"/>				
24. The race of the jurors influenced the trial outcome	<input type="checkbox"/>				

25. If you are a member of a minority group, were you aware of any members of the same or other minority groups on the jury?

Yes – Same Group <input type="checkbox"/>	Yes - Other Group <input type="checkbox"/>	No Minorities <input type="checkbox"/>	N/A - Not minority or not aware <input type="checkbox"/>
---	--	--	--

26. If you are a member of a minority group and your jury did NOT contain another member of the same group, do you feel that affected the outcome of your case?

Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A - Not minority or no minorities on jury <input type="checkbox"/>
------------------------------	-----------------------------	--

IV. JUDGES

Please tell us how much you agree or disagree with the following statements with regard to your judge. For each one, please choose a score between 1 and 5 where 1 means "strongly disagree," 5 means "strongly agree," and 3 means "neutral/no opinion." Please check only one box per question.

	Strongly disagree 1	2	Neutral 3	4	Strongly agree 5
27. The judge gave enough time for my case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
28. The judge helped me understand my options.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
29. The judge made inappropriate comments or jokes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30. The judge gave reasons for his or her decisions.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
31. The judge spoke clearly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
32. The judge did not seem like he or she paid attention to what I had to say.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
33. The judge treated me with respect.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
34. The judge treated me fairly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
35. The judge listened carefully to what I had to say.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
36. I understand what the judge told me to do.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
37. I am satisfied with the judge's decision on my case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
38. Overall, I am satisfied with how the judge treated me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IV. PERCEPTIONS

For the following questions, please check the box corresponding to your answer. Please check only one box per question.

39. 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
a. The public schools	<input type="checkbox"/>					
b. The office of Governor	<input type="checkbox"/>					
c. Local law enforcement	<input type="checkbox"/>					
d. The media	<input type="checkbox"/>					
e. North Dakota Supreme Court	<input type="checkbox"/>					
f. Medical profession	<input type="checkbox"/>					
g. State legislature	<input type="checkbox"/>					
h. U.S. Supreme Court	<input type="checkbox"/>					
i. The courts in your area	<input type="checkbox"/>					

40. 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
a. People like you	<input type="checkbox"/>						
b. Men	<input type="checkbox"/>						
c. Women	<input type="checkbox"/>						
d. African-Americans	<input type="checkbox"/>						
e. Hispanics	<input type="checkbox"/>						
f. Native-Americans	<input type="checkbox"/>						
g. Non-English speaking people	<input type="checkbox"/>						
h. Middle class people	<input type="checkbox"/>						
i. Working class people	<input type="checkbox"/>						
j. Wealthy people	<input type="checkbox"/>						

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

	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	Don't Know	NA
a. Most juries are not representative of the community	<input type="checkbox"/>					
b. Judges are generally honest and fair in deciding cases	<input type="checkbox"/>					
c. I would prefer that a judge ignore the law to ensure that a person who committed a crime is convicted	<input type="checkbox"/>					

V. INCARCERATION

For the following questions, please check the box corresponding to your answer. Please check only one box per question.

42. What is the length of your sentence?

- 0-5 6-10 11-20 21-30 Over 30 Other _____

43. Do you have to serve 85%? Yes No Don't Know

44. Are you court ordered for alcohol and/or drug treatment?

- Yes No Don't Know

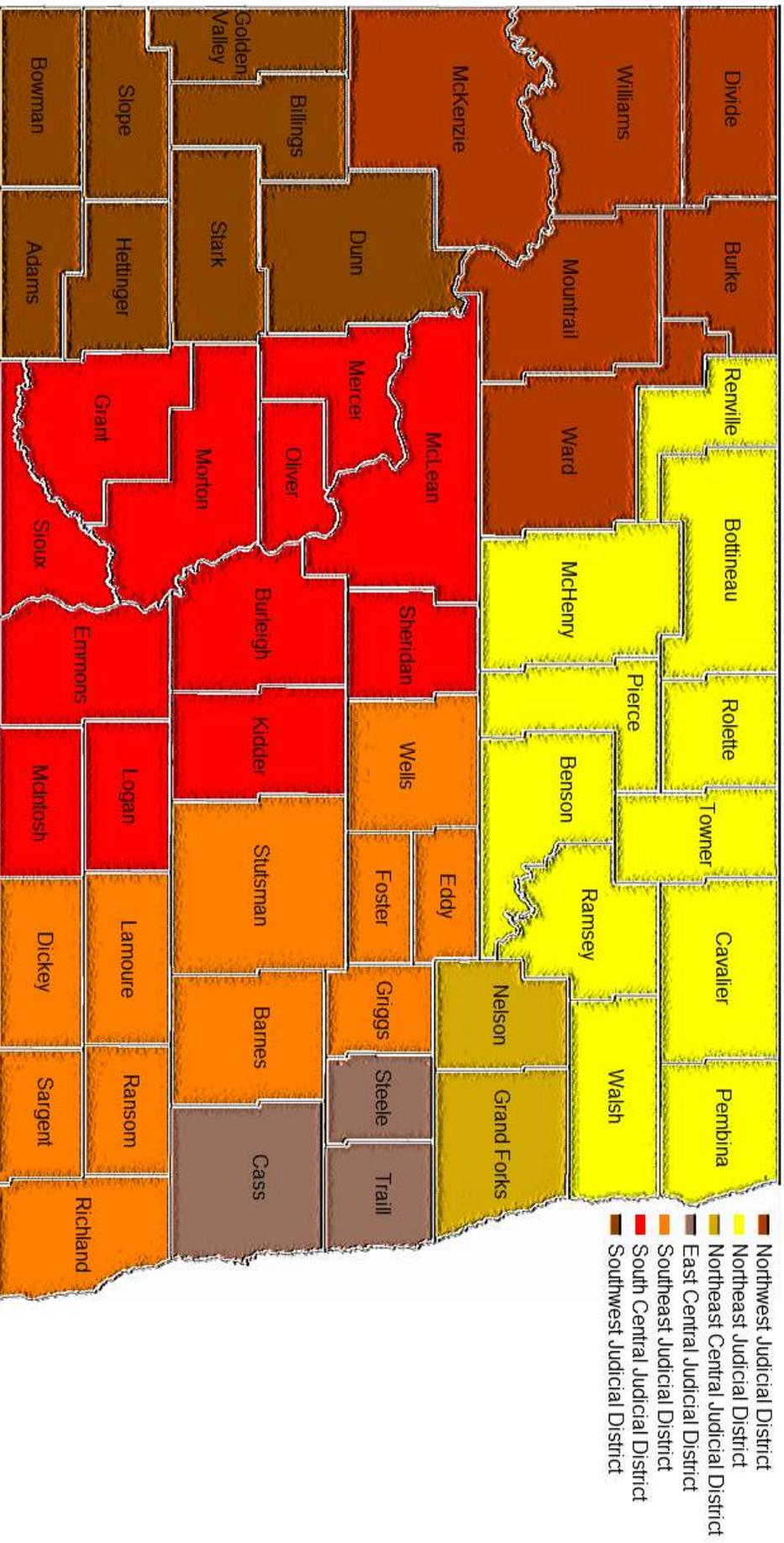
45. Are you required to pay restitution, fines, or child support?

- Yes No Don't Know

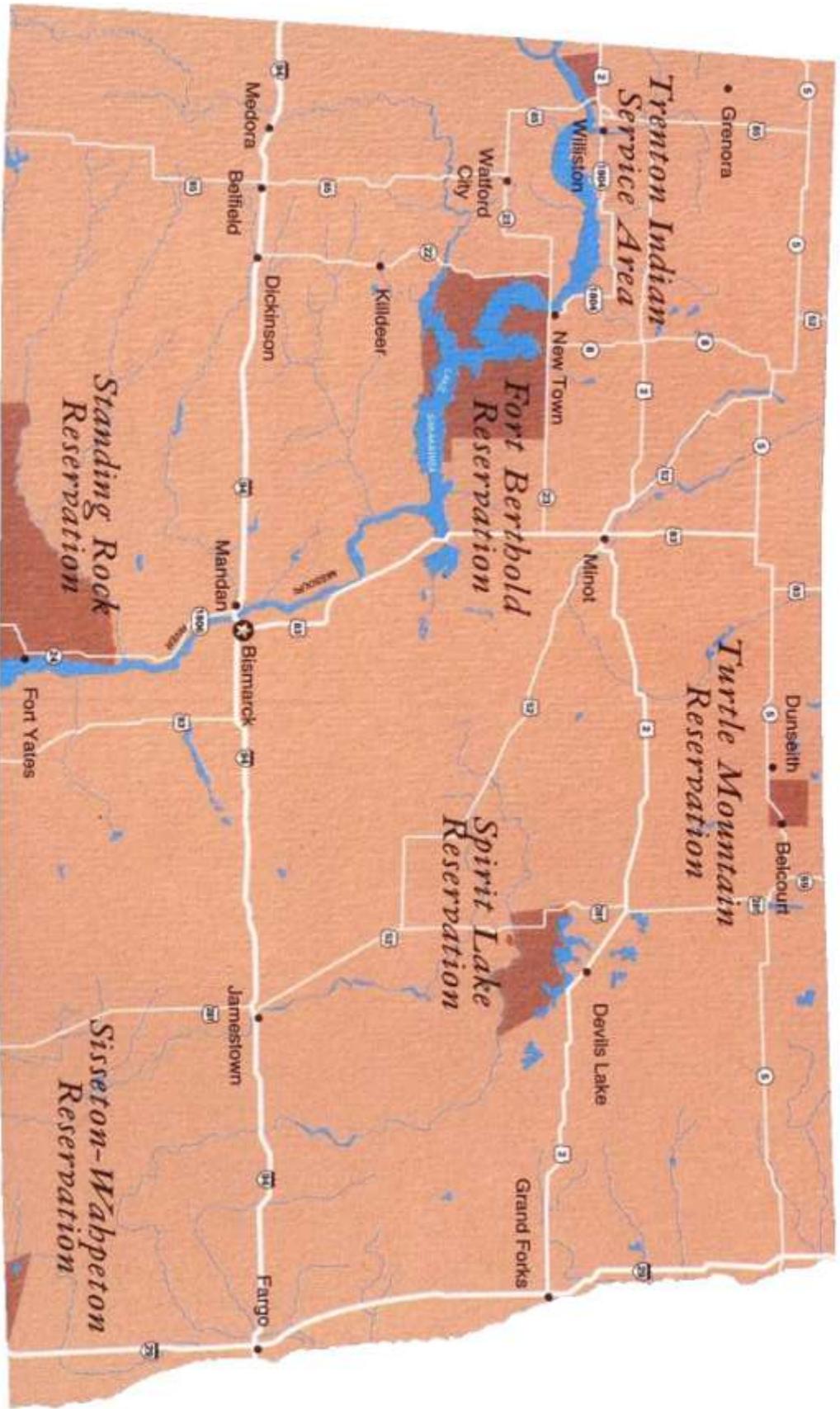
Appendix **B**

Maps and Jury Yield Reports
Counties and Court Districts Map
Indian Reservations Map
Jury Yield Reports 2008-2010

North Dakota Counties and Judicial Districts



North Dakota Indian Reservations and Cities



Yield Report for All Locations
From : 01/01/2008 to 12/31/2008

Date : 4/11/2012

Adams County

Total Summoned : **291**

Total Confirmed : 48 16.49 %	Total Non Responded : 16 5.50 %	Total Deferred : 0 0.00 %
Total Undeliverable : 14 4.81 %	Total Disqualified : 79 27.15 %	Total Excused : 34 11.68 %
Total Jurors : 25 8.59 %	Total Panel Members : 75 25.77 %	

Barnes County processed by Richland County

Total Summoned : **333**

Total Confirmed : 55 16.52 %	Total Non Responded : 3 0.90 %	Total Deferred : 5 1.50 %
Total Undeliverable : 42 12.61 %	Total Disqualified : 116 34.83 %	Total Excused : 15 4.50 %
Total Jurors : 29 8.71 %	Total Panel Members : 68 20.42 %	

Benson County

Total Summoned : **364**

Total Confirmed : 77 21.15 %	Total Non Responded : 57 15.66 %	Total Deferred : 0 0.00 %
Total Undeliverable : 69 18.96 %	Total Disqualified : 85 23.35 %	Total Excused : 3 0.82 %
Total Jurors : 0 0.00 %	Total Panel Members : 73 20.05 %	

Billings County

Total Summoned : **69**

Total Confirmed : 41 59.42 %	Total Non Responded : 1 1.45 %	Total Deferred : 0 0.00 %
Total Undeliverable : 7 10.14 %	Total Disqualified : 16 23.19 %	Total Excused : 4 5.80 %
Total Jurors : 0 0.00 %	Total Panel Members : 0 0.00 %	

Bottineau County

Total Summoned : **187**

Total Confirmed : 97 51.87 %	Total Non Responded : 4 2.14 %	Total Deferred : 0 0.00 %
Total Undeliverable : 5 2.67 %	Total Disqualified : 43 22.99 %	Total Excused : 9 4.81 %
Total Jurors : 15 8.02 %	Total Panel Members : 14 7.49 %	

Bowman County

Total Summoned : **155**

Total Confirmed : 42 27.10 %	Total Non Responded : 74 47.74 %	Total Deferred : 0 0.00 %
Total Undeliverable : 3 1.94 %	Total Disqualified : 15 9.68 %	Total Excused : 21 13.55 %
Total Jurors : 0 0.00 %	Total Panel Members : 0 0.00 %	

Burke County

Total Summoned : **158**

Total Confirmed : 65 41.14 %	Total Non Responded : 55 34.81 %	Total Deferred : 0 0.00 %
Total Undeliverable : 5 3.16 %	Total Disqualified : 19 12.03 %	Total Excused : 14 8.86 %
Total Jurors : 0 0.00 %	Total Panel Members : 0 0.00 %	

Burleigh County

Total Summoned : **4,598**

Total Confirmed : 1215 26.42 %	Total Non Responded : 236 5.13 %	Total Deferred : 0 0.00 %
Total Undeliverable : 633 13.77 %	Total Disqualified : 883 19.20 %	Total Excused : 290 6.31 %
Total Jurors : 318 6.92 %	Total Panel Members : 1023 22.25 %	

Cass Co. processed by Richland Co.

Date : 4/11/2012

Total Summoned : **7,603**

Total Confirmed : 2163 28.45 %

Total Undeliverable : 1679 22.08 %

Total Jurors : 227 2.99 %

Total Non Responded : 525 6.91 %

Total Disqualified : 1259 16.56 %

Total Panel Members : 776 10.21 %

Total Deferred : 0 0.00 %

Total Excused : 974 12.81 %

Dickey County processed by Richland County

Total Summoned : **155**

Total Confirmed : 43 27.74 %

Total Undeliverable : 7 4.52 %

Total Jurors : 9 5.81 %

Total Non Responded : 11 7.10 %

Total Disqualified : 23 14.84 %

Total Panel Members : 41 26.45 %

Total Deferred : 10 6.45 %

Total Excused : 11 7.10 %

Divide County

Total Summoned : **58**

Total Confirmed : 21 36.21 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 19 32.76 %

Total Disqualified : 4 6.90 %

Total Panel Members : 14 24.14 %

Total Deferred : 0 0.00 %

Total Excused : 0 0.00 %

Dunn County

Total Summoned : **157**

Total Confirmed : 10 6.37 %

Total Undeliverable : 5 3.18 %

Total Jurors : 0 0.00 %

Total Non Responded : 109 69.43 %

Total Disqualified : 9 5.73 %

Total Panel Members : 18 11.46 %

Total Deferred : 0 0.00 %

Total Excused : 6 3.82 %

Eddy County processed by Richland County

Total Summoned : **84**

Total Confirmed : 53 63.10 %

Total Undeliverable : 2 2.38 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 1.19 %

Total Disqualified : 26 30.95 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 2 2.38 %

Emmons County

Total Summoned : **70**

Total Confirmed : 6 8.57 %

Total Undeliverable : 2 2.86 %

Total Jurors : 6 8.57 %

Total Non Responded : 1 1.43 %

Total Disqualified : 10 14.29 %

Total Panel Members : 30 42.86 %

Total Deferred : 0 0.00 %

Total Excused : 15 21.43 %

Foster County processed by Richland County

Total Summoned : **259**

Total Confirmed : 144 55.60 %

Total Undeliverable : 13 5.02 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 77 29.73 %

Total Panel Members : 0 0.00 %

Total Deferred : 10 3.86 %

Total Excused : 15 5.79 %

Golden Valley County

Total Summoned : **143**

Total Confirmed : 41 28.67 %

Total Undeliverable : 13 9.09 %

Total Jurors : 0 0.00 %

Total Non Responded : 9 6.29 %

Total Disqualified : 54 37.76 %

Total Panel Members : 9 6.29 %

Total Deferred : 0 0.00 %

Total Excused : 17 11.89 %

Grand Forks County

Total Summoned : **4,543**

Total Confirmed : 875 19.26 %

Total Undeliverable : 1267 27.89 %

Total Jurors : 216 4.75 %

Total Non Responded : 440 9.69 %

Total Disqualified : 818 18.01 %

Total Panel Members : 643 14.15 %

Total Deferred : 0 0.00 %

Total Excused : 284 6.25 %

Grant County

Date : 4/11/2012

Total Summoned : 209

Total Confirmed : 21 10.05 %

Total Undeliverable : 1 0.48 %

Total Jurors : 24 11.48 %

Total Non Responded : 5 2.39 %

Total Disqualified : 75 35.89 %

Total Panel Members : 49 23.44 %

Total Deferred : 18 8.61 %

Total Excused : 16 7.66 %

Griggs County processed by Richland County

Total Summoned : 306

Total Confirmed : 100 32.68 %

Total Undeliverable : 17 5.56 %

Total Jurors : 13 4.25 %

Total Non Responded : 0 0.00 %

Total Disqualified : 106 34.64 %

Total Panel Members : 39 12.75 %

Total Deferred : 6 1.96 %

Total Excused : 25 8.17 %

Hettinger County

Total Summoned : 146

Total Confirmed : 47 32.19 %

Total Undeliverable : 14 9.59 %

Total Jurors : 6 4.11 %

Total Non Responded : 1 0.68 %

Total Disqualified : 66 45.21 %

Total Panel Members : 10 6.85 %

Total Deferred : 0 0.00 %

Total Excused : 2 1.37 %

Kidder County

Total Summoned : 151

Total Confirmed : 69 45.70 %

Total Undeliverable : 14 9.27 %

Total Jurors : 3 1.99 %

Total Non Responded : 5 3.31 %

Total Disqualified : 46 30.46 %

Total Panel Members : 9 5.96 %

Total Deferred : 2 1.32 %

Total Excused : 3 1.99 %

LaMoure County processed by Richland County

Total Summoned : 45

Total Confirmed : 0 0.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 6 13.33 %

Total Non Responded : 1 2.22 %

Total Disqualified : 21 46.67 %

Total Panel Members : 15 33.33 %

Total Deferred : 0 0.00 %

Total Excused : 2 4.44 %

Logan County

Total Summoned : 145

Total Confirmed : 16 11.03 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 29 20.00 %

Total Disqualified : 50 34.48 %

Total Panel Members : 35 24.14 %

Total Deferred : 0 0.00 %

Total Excused : 15 10.34 %

McHenry County

Total Summoned : 332

Total Confirmed : 174 52.41 %

Total Undeliverable : 26 7.83 %

Total Jurors : 0 0.00 %

Total Non Responded : 2 0.60 %

Total Disqualified : 89 26.81 %

Total Panel Members : 30 9.04 %

Total Deferred : 0 0.00 %

Total Excused : 11 3.31 %

McIntosh County

Total Summoned : 252

Total Confirmed : 88 34.92 %

Total Undeliverable : 14 5.56 %

Total Jurors : 9 3.57 %

Total Non Responded : 6 2.38 %

Total Disqualified : 70 27.78 %

Total Panel Members : 11 4.37 %

Total Deferred : 0 0.00 %

Total Excused : 54 21.43 %

McKenzie County

Total Summoned : 167

Total Confirmed : 147 88.02 %

Total Undeliverable : 1 0.60 %

Total Jurors : 0 0.00 %

Total Non Responded : 3 1.80 %

Total Disqualified : 12 7.19 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 4 2.40 %

MCLEAN COUNTY

Date : 4/11/2012

Total Summoned : **637**

Total Confirmed : 174 27.32 %

Total Undeliverable : 29 4.55 %

Total Jurors : 25 3.92 %

Total Non Responded : 37 5.81 %

Total Disqualified : 225 35.32 %

Total Panel Members : 84 13.19 %

Total Deferred : 11 1.73 %

Total Excused : 52 8.16 %

Mercer County

Total Summoned : **259**

Total Confirmed : 36 13.90 %

Total Undeliverable : 6 2.32 %

Total Jurors : 39 15.06 %

Total Non Responded : 0 0.00 %

Total Disqualified : 81 31.27 %

Total Panel Members : 75 28.96 %

Total Deferred : 0 0.00 %

Total Excused : 22 8.49 %

Morton County

Total Summoned : **2,667**

Total Confirmed : 906 33.97 %

Total Undeliverable : 276 10.35 %

Total Jurors : 136 5.10 %

Total Non Responded : 98 3.67 %

Total Disqualified : 758 28.42 %

Total Panel Members : 253 9.49 %

Total Deferred : 0 0.00 %

Total Excused : 240 9.00 %

Mountrail County

Total Summoned : **235**

Total Confirmed : 59 25.11 %

Total Undeliverable : 8 3.40 %

Total Jurors : 14 5.96 %

Total Non Responded : 37 15.74 %

Total Disqualified : 61 25.96 %

Total Panel Members : 45 19.15 %

Total Deferred : 0 0.00 %

Total Excused : 11 4.68 %

Nelson County

Total Summoned : **63**

Total Confirmed : 13 20.63 %

Total Undeliverable : 8 12.70 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 1.59 %

Total Disqualified : 26 41.27 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 15 23.81 %

Oliver County

Total Summoned : **188**

Total Confirmed : 67 35.64 %

Total Undeliverable : 0 0.00 %

Total Jurors : 18 9.57 %

Total Non Responded : 0 0.00 %

Total Disqualified : 53 28.19 %

Total Panel Members : 39 20.74 %

Total Deferred : 3 1.60 %

Total Excused : 8 4.26 %

Pembina County

Total Summoned : **252**

Total Confirmed : 36 14.29 %

Total Undeliverable : 23 9.13 %

Total Jurors : 20 7.94 %

Total Non Responded : 3 1.19 %

Total Disqualified : 66 26.19 %

Total Panel Members : 84 33.33 %

Total Deferred : 1 0.40 %

Total Excused : 19 7.54 %

Pierce County

Total Summoned : **137**

Total Confirmed : 47 34.31 %

Total Undeliverable : 4 2.92 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 54 39.42 %

Total Panel Members : 29 21.17 %

Total Deferred : 2 1.46 %

Total Excused : 1 0.73 %

Ramsey County

Total Summoned : **627**

Total Confirmed : 138 22.01 %

Total Undeliverable : 64 10.21 %

Total Jurors : 24 3.83 %

Total Non Responded : 26 4.15 %

Total Disqualified : 194 30.94 %

Total Panel Members : 146 23.29 %

Total Deferred : 2 0.32 %

Total Excused : 33 5.26 %

Ransom County processed by Richland County

Date : 4/11/2012

Total Summoned : 277

Total Confirmed : 44 15.88 %

Total Undeliverable : 4 1.44 %

Total Jurors : 2 0.72 %

Total Non Responded : 42 15.16 %

Total Disqualified : 98 35.38 %

Total Panel Members : 73 26.35 %

Total Deferred : 1 0.36 %

Total Excused : 13 4.69 %

Renville County

Total Summoned : 75

Total Confirmed : 20 26.67 %

Total Undeliverable : 2 2.67 %

Total Jurors : 0 0.00 %

Total Non Responded : 33 44.00 %

Total Disqualified : 13 17.33 %

Total Panel Members : 0 0.00 %

Total Deferred : 2 2.67 %

Total Excused : 5 6.67 %

Richland County

Total Summoned : 361

Total Confirmed : 131 36.29 %

Total Undeliverable : 45 12.47 %

Total Jurors : 5 1.39 %

Total Non Responded : 47 13.02 %

Total Disqualified : 72 19.94 %

Total Panel Members : 34 9.42 %

Total Deferred : 0 0.00 %

Total Excused : 27 7.48 %

Rolette County

Total Summoned : 192

Total Confirmed : 68 35.42 %

Total Undeliverable : 19 9.90 %

Total Jurors : 0 0.00 %

Total Non Responded : 64 33.33 %

Total Disqualified : 38 19.79 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 3 1.56 %

Sheridan County

Total Summoned : 49

Total Confirmed : 17 34.69 %

Total Undeliverable : 1 2.04 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 2.04 %

Total Disqualified : 14 28.57 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 16 32.65 %

Sioux County

Total Summoned : 61

Total Confirmed : 4 6.56 %

Total Undeliverable : 4 6.56 %

Total Jurors : 5 8.20 %

Total Non Responded : 18 29.51 %

Total Disqualified : 13 21.31 %

Total Panel Members : 17 27.87 %

Total Deferred : 0 0.00 %

Total Excused : 0 0.00 %

Slope County

Total Summoned : 65

Total Confirmed : 36 55.38 %

Total Undeliverable : 7 10.77 %

Total Jurors : 0 0.00 %

Total Non Responded : 3 4.62 %

Total Disqualified : 18 27.69 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 1 1.54 %

Stark County

Total Summoned : 1,433

Total Confirmed : 488 34.05 %

Total Undeliverable : 201 14.03 %

Total Jurors : 53 3.70 %

Total Non Responded : 92 6.42 %

Total Disqualified : 301 21.00 %

Total Panel Members : 159 11.10 %

Total Deferred : 9 0.63 %

Total Excused : 130 9.07 %

Steele County processed by Richland County

Total Summoned : 146

Total Confirmed : 28 19.18 %

Total Undeliverable : 8 5.48 %

Total Jurors : 3 2.05 %

Total Non Responded : 4 2.74 %

Total Disqualified : 54 36.99 %

Total Panel Members : 44 30.14 %

Total Deferred : 2 1.37 %

Total Excused : 3 2.05 %

Stutsman County processed by Richland County

Date : 4/11/2012

Total Summoned : **1,789**

Total Confirmed : 597 33.37 %

Total Undeliverable : 221 12.35 %

Total Jurors : 31 1.73 %

Total Non Responded : 153 8.55 %

Total Disqualified : 533 29.79 %

Total Panel Members : 128 7.15 %

Total Deferred : 1 0.06 %

Total Excused : 125 6.99 %

Towner County

Total Summoned : **146**

Total Confirmed : 3 2.05 %

Total Undeliverable : 6 4.11 %

Total Jurors : 9 6.16 %

Total Non Responded : 0 0.00 %

Total Disqualified : 52 35.62 %

Total Panel Members : 56 38.36 %

Total Deferred : 9 6.16 %

Total Excused : 11 7.53 %

Trail County Processed by Richland County

Total Summoned : **119**

Total Confirmed : 27 22.69 %

Total Undeliverable : 5 4.20 %

Total Jurors : 12 10.08 %

Total Non Responded : 3 2.52 %

Total Disqualified : 45 37.82 %

Total Panel Members : 24 20.17 %

Total Deferred : 3 2.52 %

Total Excused : 0 0.00 %

Walsh County

Total Summoned : **1,026**

Total Confirmed : 342 33.33 %

Total Undeliverable : 152 14.81 %

Total Jurors : 37 3.61 %

Total Non Responded : 9 0.88 %

Total Disqualified : 313 30.51 %

Total Panel Members : 90 8.77 %

Total Deferred : 7 0.68 %

Total Excused : 76 7.41 %

Ward County

Total Summoned : **2,749**

Total Confirmed : 16 0.58 %

Total Undeliverable : 514 18.70 %

Total Jurors : 347 12.62 %

Total Non Responded : 281 10.22 %

Total Disqualified : 535 19.46 %

Total Panel Members : 755 27.46 %

Total Deferred : 0 0.00 %

Total Excused : 301 10.95 %

Wells County processed by Richland County

Total Summoned : **277**

Total Confirmed : 99 35.74 %

Total Undeliverable : 38 13.72 %

Total Jurors : 4 1.44 %

Total Non Responded : 1 0.36 %

Total Disqualified : 112 40.43 %

Total Panel Members : 0 0.00 %

Total Deferred : 1 0.36 %

Total Excused : 22 7.94 %

Williams County

Total Summoned : **1,112**

Total Confirmed : 109 9.80 %

Total Undeliverable : 123 11.06 %

Total Jurors : 63 5.67 %

Total Non Responded : 164 14.75 %

Total Disqualified : 270 24.28 %

Total Panel Members : 340 30.58 %

Total Deferred : 3 0.27 %

Total Excused : 40 3.60 %

Grand Total : 35,922

Yield Report for All Locations
From : 01/01/2009 to 12/31/2009

Date : 6/10/2010

Adams County

Total Summoned : **200**

Total Confirmed : 0 0.00 %	Total Non Responded : 180 90.00 %	Total Deferred : 0 0.00 %
Total Undeliverable : 0 0.00 %	Total Disqualified : 20 10.00 %	Total Excused : 0 0.00 %
Total Jurors : 0 0.00 %	Total Panel Members : 0 0.00 %	

Barnes County

Total Summoned : **1,372**

Total Confirmed : 631 45.99 %	Total Non Responded : 30 2.19 %	Total Deferred : 0 0.00 %
Total Undeliverable : 99 7.22 %	Total Disqualified : 322 23.47 %	Total Excused : 145 10.57 %
Total Jurors : 42 3.06 %	Total Panel Members : 103 7.51 %	

Benson County

Total Summoned : **200**

Total Confirmed : 58 29.00 %	Total Non Responded : 84 42.00 %	Total Deferred : 0 0.00 %
Total Undeliverable : 10 5.00 %	Total Disqualified : 24 12.00 %	Total Excused : 1 0.50 %
Total Jurors : 6 3.00 %	Total Panel Members : 17 8.50 %	

Bottineau County

Total Summoned : **250**

Total Confirmed : 158 63.20 %	Total Non Responded : 5 2.00 %	Total Deferred : 0 0.00 %
Total Undeliverable : 3 1.20 %	Total Disqualified : 60 24.00 %	Total Excused : 24 9.60 %
Total Jurors : 0 0.00 %	Total Panel Members : 0 0.00 %	

Bowman County

Total Summoned : **150**

Total Confirmed : 89 59.33 %	Total Non Responded : 11 7.33 %	Total Deferred : 0 0.00 %
Total Undeliverable : 0 0.00 %	Total Disqualified : 35 23.33 %	Total Excused : 15 10.00 %
Total Jurors : 0 0.00 %	Total Panel Members : 0 0.00 %	

Burke County

Total Summoned : **90**

Total Confirmed : 41 45.56 %	Total Non Responded : 6 6.67 %	Total Deferred : 0 0.00 %
Total Undeliverable : 3 3.33 %	Total Disqualified : 25 27.78 %	Total Excused : 15 16.67 %
Total Jurors : 0 0.00 %	Total Panel Members : 0 0.00 %	

Burleigh County

Total Summoned : **14,021**

Total Confirmed : 6902 49.23 %	Total Non Responded : 1342 9.57 %	Total Deferred : 0 0.00 %
Total Undeliverable : 1006 7.17 %	Total Disqualified : 2240 15.98 %	Total Excused : 804 5.73 %
Total Jurors : 500 3.57 %	Total Panel Members : 1227 8.75 %	

Cass County

Total Summoned : **10,758**

Total Confirmed : 4690 43.60 %	Total Non Responded : 613 5.70 %	Total Deferred : 37 0.34 %
Total Undeliverable : 1697 15.77 %	Total Disqualified : 1676 15.58 %	Total Excused : 1170 10.88 %
Total Jurors : 220 2.04 %	Total Panel Members : 655 6.09 %	

Cavalier County

Date : 6/10/2010

Total Summoned : 130

Total Confirmed : 59 45.38 %

Total Undeliverable : 10 7.69 %

Total Jurors : 0 0.00 %

Total Non Responded : 5 3.85 %

Total Disqualified : 42 32.31 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 14 10.77 %

Dickey County

Total Summoned : 313

Total Confirmed : 158 50.48 %

Total Undeliverable : 19 6.07 %

Total Jurors : 0 0.00 %

Total Non Responded : 53 16.93 %

Total Disqualified : 62 19.81 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 21 6.71 %

Divide County

Total Summoned : 125

Total Confirmed : 60 48.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 0.80 %

Total Disqualified : 52 41.60 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 12 9.60 %

Dunn County

Total Summoned : 50

Total Confirmed : 0 0.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 50 100.00 %

Total Disqualified : 0 0.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 0 0.00 %

Eddy County

Total Summoned : 145

Total Confirmed : 86 59.31 %

Total Undeliverable : 8 5.52 %

Total Jurors : 0 0.00 %

Total Non Responded : 5 3.45 %

Total Disqualified : 30 20.69 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 16 11.03 %

Emmons County

Total Summoned : 150

Total Confirmed : 7 4.67 %

Total Undeliverable : 3 2.00 %

Total Jurors : 6 4.00 %

Total Non Responded : 1 0.67 %

Total Disqualified : 47 31.33 %

Total Panel Members : 71 47.33 %

Total Deferred : 0 0.00 %

Total Excused : 15 10.00 %

Foster County

Total Summoned : 208

Total Confirmed : 74 35.58 %

Total Undeliverable : 6 2.88 %

Total Jurors : 11 5.29 %

Total Non Responded : 0 0.00 %

Total Disqualified : 57 27.40 %

Total Panel Members : 23 11.06 %

Total Deferred : 0 0.00 %

Total Excused : 37 17.79 %

Golden Valley County

Total Summoned : 275

Total Confirmed : 111 40.36 %

Total Undeliverable : 4 1.45 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 64 23.27 %

Total Panel Members : 30 10.91 %

Total Deferred : 0 0.00 %

Total Excused : 66 24.00 %

Grand Forks County

Total Summoned : 6,250

Total Confirmed : 2364 37.82 %

Total Undeliverable : 1296 20.74 %

Total Jurors : 122 1.95 %

Total Non Responded : 535 8.56 %

Total Disqualified : 1016 16.26 %

Total Panel Members : 398 6.37 %

Total Deferred : 13 0.21 %

Total Excused : 506 8.10 %

Grant County

Date : 6/10/2010

Total Summoned : 91

Total Confirmed : 3 3.30 %

Total Undeliverable : 0 0.00 %

Total Jurors : 12 13.19 %

Total Non Responded : 0 0.00 %

Total Disqualified : 21 23.08 %

Total Panel Members : 29 31.87 %

Total Deferred : 0 0.00 %

Total Excused : 26 28.57 %

Hettinger County

Total Summoned : 200

Total Confirmed : 129 64.50 %

Total Undeliverable : 2 1.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 0.50 %

Total Disqualified : 59 29.50 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 9 4.50 %

Kidder County

Total Summoned : 155

Total Confirmed : 58 37.42 %

Total Undeliverable : 3 1.94 %

Total Jurors : 6 3.87 %

Total Non Responded : 0 0.00 %

Total Disqualified : 35 22.58 %

Total Panel Members : 34 21.94 %

Total Deferred : 10 6.45 %

Total Excused : 9 5.81 %

LaMoure County

Total Summoned : 228

Total Confirmed : 91 39.91 %

Total Undeliverable : 3 1.32 %

Total Jurors : 0 0.00 %

Total Non Responded : 72 31.58 %

Total Disqualified : 49 21.49 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 13 5.70 %

Logan County

Total Summoned : 75

Total Confirmed : 41 54.67 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 24 32.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 10 13.33 %

McHenry County

Total Summoned : 171

Total Confirmed : 69 40.35 %

Total Undeliverable : 1 0.58 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 47 27.49 %

Total Panel Members : 35 20.47 %

Total Deferred : 0 0.00 %

Total Excused : 19 11.11 %

McIntosh County

Total Summoned : 169

Total Confirmed : 21 12.43 %

Total Undeliverable : 3 1.78 %

Total Jurors : 24 14.20 %

Total Non Responded : 1 0.59 %

Total Disqualified : 38 22.49 %

Total Panel Members : 55 32.54 %

Total Deferred : 2 1.18 %

Total Excused : 25 14.79 %

McKenzie County

Total Summoned : 180

Total Confirmed : 71 39.44 %

Total Undeliverable : 5 2.78 %

Total Jurors : 0 0.00 %

Total Non Responded : 20 11.11 %

Total Disqualified : 31 17.22 %

Total Panel Members : 36 20.00 %

Total Deferred : 0 0.00 %

Total Excused : 17 9.44 %

MCLEAN COUNTY

Total Summoned : 410

Total Confirmed : 195 47.56 %

Total Undeliverable : 16 3.90 %

Total Jurors : 19 4.63 %

Total Non Responded : 18 4.39 %

Total Disqualified : 111 27.07 %

Total Panel Members : 26 6.34 %

Total Deferred : 8 1.95 %

Total Excused : 17 4.15 %

Mercer County

Date : 6/10/2010

Total Summoned : 400

Total Confirmed : 68 17.00 %

Total Undeliverable : 13 3.25 %

Total Jurors : 60 15.00 %

Total Non Responded : 2 0.50 %

Total Disqualified : 99 24.75 %

Total Panel Members : 121 30.25 %

Total Deferred : 0 0.00 %

Total Excused : 37 9.25 %

Morton County

Total Summoned : 3,092

Total Confirmed : 1031 33.34 %

Total Undeliverable : 163 5.27 %

Total Jurors : 230 7.44 %

Total Non Responded : 138 4.46 %

Total Disqualified : 693 22.41 %

Total Panel Members : 470 15.20 %

Total Deferred : 0 0.00 %

Total Excused : 367 11.87 %

Mountrail County

Total Summoned : 601

Total Confirmed : 173 28.79 %

Total Undeliverable : 33 5.49 %

Total Jurors : 23 3.83 %

Total Non Responded : 181 30.12 %

Total Disqualified : 92 15.31 %

Total Panel Members : 52 8.65 %

Total Deferred : 0 0.00 %

Total Excused : 47 7.82 %

Nelson County

Total Summoned : 121

Total Confirmed : 47 38.84 %

Total Undeliverable : 4 3.31 %

Total Jurors : 6 4.96 %

Total Non Responded : 1 0.83 %

Total Disqualified : 39 32.23 %

Total Panel Members : 14 11.57 %

Total Deferred : 0 0.00 %

Total Excused : 10 8.26 %

Oliver County

Total Summoned : 401

Total Confirmed : 104 25.94 %

Total Undeliverable : 0 0.00 %

Total Jurors : 5 1.25 %

Total Non Responded : 0 0.00 %

Total Disqualified : 114 28.43 %

Total Panel Members : 121 30.17 %

Total Deferred : 14 3.49 %

Total Excused : 43 10.72 %

Pembina County

Total Summoned : 180

Total Confirmed : 107 59.44 %

Total Undeliverable : 6 3.33 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 0.56 %

Total Disqualified : 47 26.11 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 19 10.56 %

Pierce County

Total Summoned : 388

Total Confirmed : 65 16.75 %

Total Undeliverable : 25 6.44 %

Total Jurors : 13 3.35 %

Total Non Responded : 5 1.29 %

Total Disqualified : 109 28.09 %

Total Panel Members : 109 28.09 %

Total Deferred : 8 2.06 %

Total Excused : 54 13.92 %

Ramsey County

Total Summoned : 300

Total Confirmed : 143 47.67 %

Total Undeliverable : 13 4.33 %

Total Jurors : 12 4.00 %

Total Non Responded : 22 7.33 %

Total Disqualified : 63 21.00 %

Total Panel Members : 34 11.33 %

Total Deferred : 0 0.00 %

Total Excused : 13 4.33 %

Ransom County

Total Summoned : 613

Total Confirmed : 307 50.08 %

Total Undeliverable : 28 4.57 %

Total Jurors : 24 3.92 %

Total Non Responded : 12 1.96 %

Total Disqualified : 165 26.92 %

Total Panel Members : 37 6.04 %

Total Deferred : 1 0.16 %

Total Excused : 39 6.36 %

Renville County

Date : 6/10/2010

Total Summoned : 34

Total Confirmed : 13 38.24 %

Total Undeliverable : 4 11.76 %

Total Jurors : 0 0.00 %

Total Non Responded : 6 17.65 %

Total Disqualified : 8 23.53 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 3 8.82 %

Richland County

Total Summoned : 268

Total Confirmed : 84 31.34 %

Total Undeliverable : 31 11.57 %

Total Jurors : 15 5.60 %

Total Non Responded : 5 1.87 %

Total Disqualified : 61 22.76 %

Total Panel Members : 36 13.43 %

Total Deferred : 0 0.00 %

Total Excused : 36 13.43 %

Rolette County

Total Summoned : 70

Total Confirmed : 37 52.86 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 25 35.71 %

Total Disqualified : 8 11.43 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 0 0.00 %

Sargent County

Total Summoned : 191

Total Confirmed : 123 64.40 %

Total Undeliverable : 7 3.66 %

Total Jurors : 0 0.00 %

Total Non Responded : 2 1.05 %

Total Disqualified : 47 24.61 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 12 6.28 %

Sheridan County

Total Summoned : 100

Total Confirmed : 2 2.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 6 6.00 %

Total Non Responded : 7 7.00 %

Total Disqualified : 27 27.00 %

Total Panel Members : 42 42.00 %

Total Deferred : 4 4.00 %

Total Excused : 12 12.00 %

Sioux County

Total Summoned : 100

Total Confirmed : 2 2.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 97 97.00 %

Total Disqualified : 1 1.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 0 0.00 %

Slope County

Total Summoned : 60

Total Confirmed : 11 18.33 %

Total Undeliverable : 3 5.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 1.67 %

Total Disqualified : 22 36.67 %

Total Panel Members : 19 31.67 %

Total Deferred : 1 1.67 %

Total Excused : 3 5.00 %

Stark County

Total Summoned : 1,754

Total Confirmed : 854 48.69 %

Total Undeliverable : 175 9.98 %

Total Jurors : 29 1.65 %

Total Non Responded : 152 8.67 %

Total Disqualified : 289 16.48 %

Total Panel Members : 75 4.28 %

Total Deferred : 9 0.51 %

Total Excused : 171 9.75 %

Steele County

Total Summoned : 200

Total Confirmed : 74 37.00 %

Total Undeliverable : 2 1.00 %

Total Jurors : 10 5.00 %

Total Non Responded : 10 5.00 %

Total Disqualified : 56 28.00 %

Total Panel Members : 38 19.00 %

Total Deferred : 0 0.00 %

Total Excused : 10 5.00 %

Stutsman County

Date : 6/10/2010

Total Summoned : **2,642**

Total Confirmed : 1238 46.86 %

Total Undeliverable : 208 7.87 %

Total Jurors : 72 2.73 %

Total Non Responded : 155 5.87 %

Total Disqualified : 577 21.84 %

Total Panel Members : 153 5.79 %

Total Deferred : 0 0.00 %

Total Excused : 239 9.05 %

Towner County

Total Summoned : **25**

Total Confirmed : 0 0.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 9 36.00 %

Total Panel Members : 15 60.00 %

Total Deferred : 0 0.00 %

Total Excused : 1 4.00 %

Trail County

Total Summoned : **267**

Total Confirmed : 81 30.34 %

Total Undeliverable : 26 9.74 %

Total Jurors : 7 2.62 %

Total Non Responded : 6 2.25 %

Total Disqualified : 86 32.21 %

Total Panel Members : 34 12.73 %

Total Deferred : 14 5.24 %

Total Excused : 13 4.87 %

Walsh County

Total Summoned : **1,811**

Total Confirmed : 612 33.79 %

Total Undeliverable : 252 13.91 %

Total Jurors : 55 3.04 %

Total Non Responded : 2 0.11 %

Total Disqualified : 467 25.79 %

Total Panel Members : 199 10.99 %

Total Deferred : 0 0.00 %

Total Excused : 224 12.37 %

Ward County

Total Summoned : **2,468**

Total Confirmed : 1 0.04 %

Total Undeliverable : 308 12.48 %

Total Jurors : 328 13.29 %

Total Non Responded : 327 13.25 %

Total Disqualified : 424 17.18 %

Total Panel Members : 803 32.54 %

Total Deferred : 0 0.00 %

Total Excused : 277 11.22 %

Wells county

Total Summoned : **571**

Total Confirmed : 261 45.71 %

Total Undeliverable : 22 3.85 %

Total Jurors : 18 3.15 %

Total Non Responded : 6 1.05 %

Total Disqualified : 176 30.82 %

Total Panel Members : 32 5.60 %

Total Deferred : 0 0.00 %

Total Excused : 56 9.81 %

Williams County

Total Summoned : **500**

Total Confirmed : 113 22.60 %

Total Undeliverable : 32 6.40 %

Total Jurors : 20 4.00 %

Total Non Responded : 91 18.20 %

Total Disqualified : 125 25.00 %

Total Panel Members : 89 17.80 %

Total Deferred : 2 0.40 %

Total Excused : 28 5.60 %

Grand Total : 53,523

Yield Report for All Locations
From : 01/01/2010 to 06/10/2010

Date : 6/10/2010

Adams County

Total Summoned : **200**

Total Confirmed : 111	55.50 %	Total Non Responded : 30	15.00 %	Total Deferred : 0	0.00 %
Total Undeliverable : 8	4.00 %	Total Disqualified : 22	11.00 %	Total Excused : 29	14.50 %
Total Jurors : 0	0.00 %	Total Panel Members : 0	0.00 %		

Barnes County

Total Summoned : **720**

Total Confirmed : 337	46.81 %	Total Non Responded : 10	1.39 %	Total Deferred : 0	0.00 %
Total Undeliverable : 38	5.28 %	Total Disqualified : 182	25.28 %	Total Excused : 87	12.08 %
Total Jurors : 22	3.06 %	Total Panel Members : 44	6.11 %		

Benson County

Total Summoned : **150**

Total Confirmed : 36	24.00 %	Total Non Responded : 17	11.33 %	Total Deferred : 0	0.00 %
Total Undeliverable : 16	10.67 %	Total Disqualified : 29	19.33 %	Total Excused : 9	6.00 %
Total Jurors : 14	9.33 %	Total Panel Members : 29	19.33 %		

Burleigh County

Total Summoned : **6,350**

Total Confirmed : 3229	50.85 %	Total Non Responded : 744	11.72 %	Total Deferred : 185	2.91 %
Total Undeliverable : 393	6.19 %	Total Disqualified : 914	14.39 %	Total Excused : 299	4.71 %
Total Jurors : 192	3.02 %	Total Panel Members : 394	6.20 %		

Cass County

Total Summoned : **5,693**

Total Confirmed : 2408	42.30 %	Total Non Responded : 186	3.27 %	Total Deferred : 111	1.95 %
Total Undeliverable : 740	13.00 %	Total Disqualified : 858	15.07 %	Total Excused : 680	11.94 %
Total Jurors : 162	2.85 %	Total Panel Members : 548	9.63 %		

Cavalier County

Total Summoned : **125**

Total Confirmed : 0	0.00 %	Total Non Responded : 125	100.00 %	Total Deferred : 0	0.00 %
Total Undeliverable : 0	0.00 %	Total Disqualified : 0	0.00 %	Total Excused : 0	0.00 %
Total Jurors : 0	0.00 %	Total Panel Members : 0	0.00 %		

Dickey County

Total Summoned : **100**

Total Confirmed : 35	35.00 %	Total Non Responded : 4	4.00 %	Total Deferred : 0	0.00 %
Total Undeliverable : 3	3.00 %	Total Disqualified : 22	22.00 %	Total Excused : 5	5.00 %
Total Jurors : 12	12.00 %	Total Panel Members : 19	19.00 %		

Divide County

Total Summoned : **172**

Total Confirmed : 115	66.86 %	Total Non Responded : 0	0.00 %	Total Deferred : 0	0.00 %
Total Undeliverable : 5	2.91 %	Total Disqualified : 40	23.26 %	Total Excused : 12	6.98 %
Total Jurors : 0	0.00 %	Total Panel Members : 0	0.00 %		

Dunn County

Date : 6/10/2010

Total Summoned : 100

Total Confirmed : 76 76.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 1.00 %

Total Disqualified : 16 16.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 7 7.00 %

Eddy County

Total Summoned : 50

Total Confirmed : 35 70.00 %

Total Undeliverable : 4 8.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 11 22.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 0 0.00 %

Emmons County

Total Summoned : 45

Total Confirmed : 31 68.89 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 11 24.44 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 3 6.67 %

Foster County

Total Summoned : 60

Total Confirmed : 41 68.33 %

Total Undeliverable : 2 3.33 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 1.67 %

Total Disqualified : 12 20.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 4 6.67 %

Golden Valley County

Total Summoned : 150

Total Confirmed : 79 52.67 %

Total Undeliverable : 3 2.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 25 16.67 %

Total Disqualified : 36 24.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 7 4.67 %

Grand Forks County

Total Summoned : 2,536

Total Confirmed : 940 37.07 %

Total Undeliverable : 352 13.88 %

Total Jurors : 105 4.14 %

Total Non Responded : 190 7.49 %

Total Disqualified : 395 15.58 %

Total Panel Members : 246 9.70 %

Total Deferred : 98 3.86 %

Total Excused : 210 8.28 %

Grant County

Total Summoned : 60

Total Confirmed : 0 0.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 1.67 %

Total Disqualified : 17 28.33 %

Total Panel Members : 31 51.67 %

Total Deferred : 0 0.00 %

Total Excused : 11 18.33 %

Hettinger County

Total Summoned : 100

Total Confirmed : 60 60.00 %

Total Undeliverable : 5 5.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 2 2.00 %

Total Disqualified : 31 31.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 2 2.00 %

Kidder County

Total Summoned : 200

Total Confirmed : 132 66.00 %

Total Undeliverable : 2 1.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 12 6.00 %

Total Disqualified : 44 22.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 5 2.50 %

Total Excused : 5 2.50 %

LaMoure County

Date : 6/10/2010

Total Summoned : 258

Total Confirmed : 167 64.73 %

Total Undeliverable : 5 1.94 %

Total Jurors : 0 0.00 %

Total Non Responded : 3 1.16 %

Total Disqualified : 66 25.58 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 17 6.59 %

McHenry County

Total Summoned : 275

Total Confirmed : 1 0.36 %

Total Undeliverable : 11 4.00 %

Total Jurors : 7 2.55 %

Total Non Responded : 0 0.00 %

Total Disqualified : 78 28.36 %

Total Panel Members : 143 52.00 %

Total Deferred : 0 0.00 %

Total Excused : 35 12.73 %

McIntosh County

Total Summoned : 86

Total Confirmed : 31 36.05 %

Total Undeliverable : 0 0.00 %

Total Jurors : 6 6.98 %

Total Non Responded : 0 0.00 %

Total Disqualified : 24 27.91 %

Total Panel Members : 14 16.28 %

Total Deferred : 3 3.49 %

Total Excused : 8 9.30 %

MCLEAN COUNTY

Total Summoned : 375

Total Confirmed : 135 36.00 %

Total Undeliverable : 11 2.93 %

Total Jurors : 31 8.27 %

Total Non Responded : 36 9.60 %

Total Disqualified : 83 22.13 %

Total Panel Members : 46 12.27 %

Total Deferred : 13 3.47 %

Total Excused : 20 5.33 %

Mercer County

Total Summoned : 100

Total Confirmed : 67 67.00 %

Total Undeliverable : 3 3.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 19 19.00 %

Total Panel Members : 3 3.00 %

Total Deferred : 0 0.00 %

Total Excused : 8 8.00 %

Morton County

Total Summoned : 1,825

Total Confirmed : 648 35.51 %

Total Undeliverable : 86 4.71 %

Total Jurors : 60 3.29 %

Total Non Responded : 65 3.56 %

Total Disqualified : 419 22.96 %

Total Panel Members : 295 16.16 %

Total Deferred : 16 0.88 %

Total Excused : 236 12.93 %

Mountrail County

Total Summoned : 300

Total Confirmed : 31 10.33 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 269 89.67 %

Total Disqualified : 0 0.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 0 0.00 %

Nelson County

Total Summoned : 145

Total Confirmed : 40 27.59 %

Total Undeliverable : 4 2.76 %

Total Jurors : 0 0.00 %

Total Non Responded : 12 8.28 %

Total Disqualified : 39 26.90 %

Total Panel Members : 32 22.07 %

Total Deferred : 0 0.00 %

Total Excused : 18 12.41 %

Pembina County

Total Summoned : 135

Total Confirmed : 82 60.74 %

Total Undeliverable : 6 4.44 %

Total Jurors : 0 0.00 %

Total Non Responded : 5 3.70 %

Total Disqualified : 34 25.19 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 8 5.93 %

Pierce County

Date : 6/10/2010

Total Summoned : 88

Total Confirmed : 43 48.86 %

Total Undeliverable : 3 3.41 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 27 30.68 %

Total Panel Members : 0 0.00 %

Total Deferred : 2 2.27 %

Total Excused : 13 14.77 %

Ramsey County

Total Summoned : 400

Total Confirmed : 211 52.75 %

Total Undeliverable : 32 8.00 %

Total Jurors : 6 1.50 %

Total Non Responded : 33 8.25 %

Total Disqualified : 89 22.25 %

Total Panel Members : 22 5.50 %

Total Deferred : 0 0.00 %

Total Excused : 7 1.75 %

Ransom County

Total Summoned : 48

Total Confirmed : 2 4.17 %

Total Undeliverable : 1 2.08 %

Total Jurors : 6 12.50 %

Total Non Responded : 0 0.00 %

Total Disqualified : 12 25.00 %

Total Panel Members : 19 39.58 %

Total Deferred : 0 0.00 %

Total Excused : 8 16.67 %

Renville County

Total Summoned : 50

Total Confirmed : 20 40.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 3 6.00 %

Total Disqualified : 16 32.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 11 22.00 %

Richland County

Total Summoned : 60

Total Confirmed : 40 66.67 %

Total Undeliverable : 4 6.67 %

Total Jurors : 0 0.00 %

Total Non Responded : 0 0.00 %

Total Disqualified : 11 18.33 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 5 8.33 %

Rolette County

Total Summoned : 100

Total Confirmed : 62 62.00 %

Total Undeliverable : 6 6.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 16 16.00 %

Total Disqualified : 13 13.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 3 3.00 %

Sargent County

Total Summoned : 44

Total Confirmed : 0 0.00 %

Total Undeliverable : 1 2.27 %

Total Jurors : 6 13.64 %

Total Non Responded : 0 0.00 %

Total Disqualified : 10 22.73 %

Total Panel Members : 24 54.55 %

Total Deferred : 0 0.00 %

Total Excused : 3 6.82 %

Sheridan County

Total Summoned : 25

Total Confirmed : 4 16.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 8 32.00 %

Total Disqualified : 1 4.00 %

Total Panel Members : 11 44.00 %

Total Deferred : 0 0.00 %

Total Excused : 1 4.00 %

Slope County

Total Summoned : 80

Total Confirmed : 23 28.75 %

Total Undeliverable : 0 0.00 %

Total Jurors : 13 16.25 %

Total Non Responded : 7 8.75 %

Total Disqualified : 12 15.00 %

Total Panel Members : 20 25.00 %

Total Deferred : 0 0.00 %

Total Excused : 5 6.25 %

Stark County

Date : 6/10/2010

Total Summoned : 1,377

Total Confirmed : 497 36.09 %

Total Undeliverable : 129 9.37 %

Total Jurors : 47 3.41 %

Total Non Responded : 89 6.46 %

Total Disqualified : 265 19.24 %

Total Panel Members : 184 13.36 %

Total Deferred : 32 2.32 %

Total Excused : 134 9.73 %

Steele County

Total Summoned : 50

Total Confirmed : 29 58.00 %

Total Undeliverable : 2 4.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 1 2.00 %

Total Disqualified : 13 26.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 5 10.00 %

Stutsman County

Total Summoned : 1,456

Total Confirmed : 784 53.85 %

Total Undeliverable : 113 7.76 %

Total Jurors : 24 1.65 %

Total Non Responded : 39 2.68 %

Total Disqualified : 297 20.40 %

Total Panel Members : 70 4.81 %

Total Deferred : 0 0.00 %

Total Excused : 129 8.86 %

Towner County

Total Summoned : 137

Total Confirmed : 0 0.00 %

Total Undeliverable : 0 0.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 137 100.00 %

Total Disqualified : 0 0.00 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 0 0.00 %

Trail County

Total Summoned : 42

Total Confirmed : 0 0.00 %

Total Undeliverable : 7 16.67 %

Total Jurors : 0 0.00 %

Total Non Responded : 4 9.52 %

Total Disqualified : 5 11.90 %

Total Panel Members : 23 54.76 %

Total Deferred : 0 0.00 %

Total Excused : 3 7.14 %

Walsh County

Total Summoned : 757

Total Confirmed : 438 57.86 %

Total Undeliverable : 68 8.98 %

Total Jurors : 0 0.00 %

Total Non Responded : 30 3.96 %

Total Disqualified : 164 21.66 %

Total Panel Members : 0 0.00 %

Total Deferred : 0 0.00 %

Total Excused : 57 7.53 %

Ward County

Total Summoned : 1,027

Total Confirmed : 53 5.16 %

Total Undeliverable : 83 8.08 %

Total Jurors : 156 15.19 %

Total Non Responded : 110 10.71 %

Total Disqualified : 180 17.53 %

Total Panel Members : 312 30.38 %

Total Deferred : 13 1.27 %

Total Excused : 120 11.68 %

Wells county

Total Summoned : 196

Total Confirmed : 77 39.29 %

Total Undeliverable : 5 2.55 %

Total Jurors : 6 3.06 %

Total Non Responded : 4 2.04 %

Total Disqualified : 48 24.49 %

Total Panel Members : 24 12.24 %

Total Deferred : 0 0.00 %

Total Excused : 32 16.33 %

Williams County

Total Summoned : 250

Total Confirmed : 87 34.80 %

Total Undeliverable : 15 6.00 %

Total Jurors : 0 0.00 %

Total Non Responded : 52 20.80 %

Total Disqualified : 58 23.20 %

Total Panel Members : 28 11.20 %

Total Deferred : 0 0.00 %

Total Excused : 10 4.00 %

Grand Total : 26,497

Appendix **C**

Criminal and Juvenile Justice
Materials

Example Sources for Youth Services

Available Sources for Juvenile Services Lists

Commission recommendations in the area of juvenile justice call for the development of a resource list of services available for minority youth and their families. Commission members noted that existing online services could provide information in this area. This appendix includes information on the Job Service North Dakota SHARE Network and Firstlink directories.

SHARE Network

North Dakota

nd.gov Official Portal for
North Dakota State Government



SHARE Network

▸ [Search by County](#)
▸ [Search by Service](#)
▸ [Search by Provider](#)
▸ [Become a SHARE Network Member](#)
▸ [Member Login](#)

Members: Remember to update your email address and program information regularly.

SHARE Network

Job Service North Dakota's SHARE Network...

your community service connection.

SHARE Network is a unique resource to help customers become self-sufficient. It is a network like no other. It brings together...

Faith-based organizations

- Workforce development partners
- Community organizations
- Businesses
- Government agencies

SHARE Network consists of:

- Hundreds of Service Providers; and
- Over 100 Services ranging from Adult Employment and Training Services to Youth Services.

Use **SHARE Network** to:

- Access North Dakota's jobsnd.com;
- Link to service provider information including address, hours of operation, a list of services they offer as well as a point of contact;
- Search statewide, county, or by service provider;
- Create an online referral; and/or
- Print a map to the service provider.

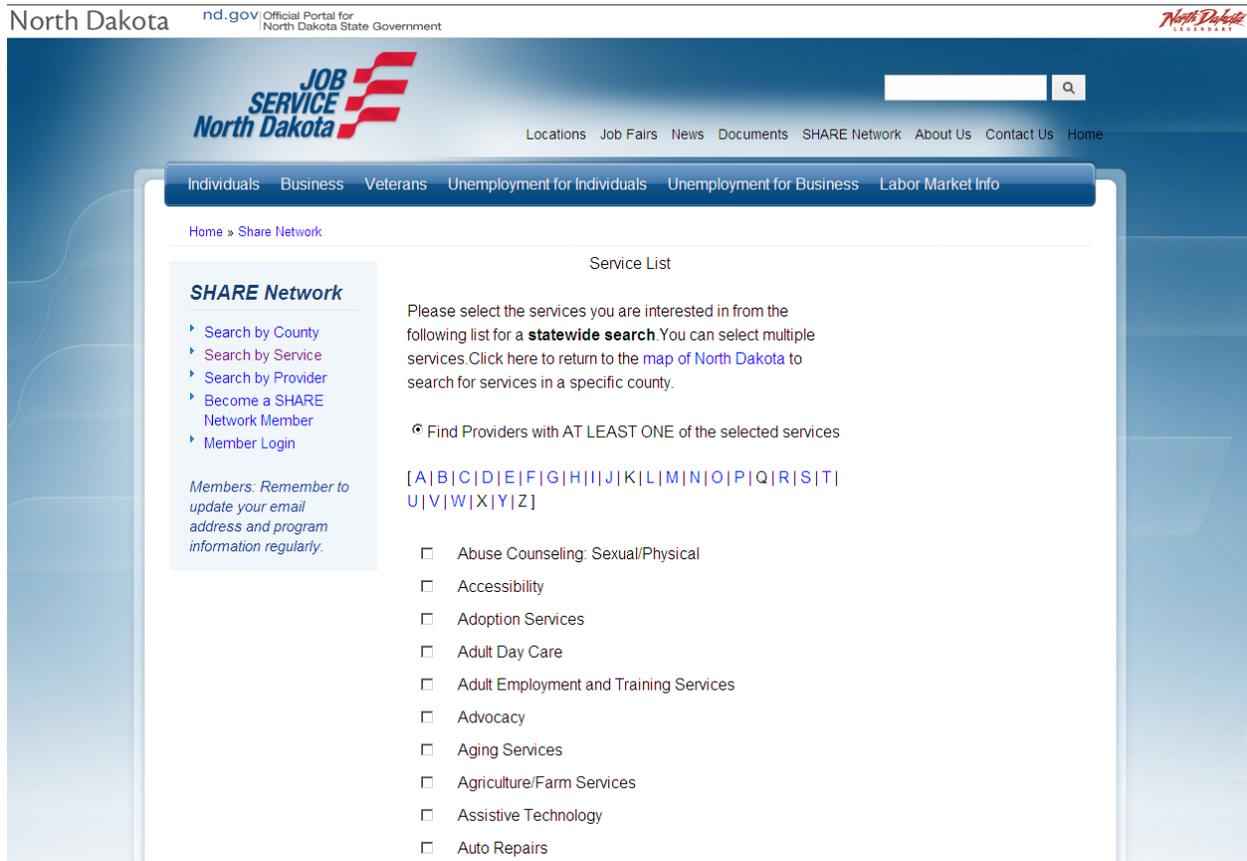
Find a Job
Create a resume and more.

□ Copyright 2011 Job Service North Dakota, All Rights Reserved.
Job Service North Dakota is an equal opportunity employer/program provider.

Veterans Priority of Service

Share Network Main Page

Available at <http://sharenetworknd.org/>, Job Service North Dakota SHARE Network compiles information on available community services in North Dakota. The database is searchable statewide, by county, or by service provider. Use of compiled information could allow courts more insight into resources available for juvenile offenders.



Search by Service Page, allowing searches statewide or by county

The SHARE Network’s “Search by Service” function contains options for a wide variety of services, including Juvenile or Adult Justice/Court, Youth Employment and Training Services, and Youth Services. The scope of searches can be modified by selecting different service categories, geographic areas, or by searching by providers.

Below is an example result from a statewide search of the Juvenile or Adult Justice/Court, Youth Employment and Training Services, and Youth Services categories.



The screenshot shows the JOB SERVICE North Dakota website. At the top left is the logo with the text "JOB SERVICE North Dakota" and a red graphic. To the right is a search bar. Below the logo is a navigation menu with links: "Locations", "Job Fairs", "News", "Documents", "SHARE Network", "About Us", "Contact Us", and "Home". A secondary menu below that includes "Individuals", "Business", "Veterans", "Unemployment for Individuals", "Unemployment for Business", and "Labor Market Info". The main content area is titled "List of Providers" and includes a sub-header "SHARE Network". A sidebar on the left contains links: "Search by County", "Search by Service", "Search by Provider", "Become a SHARE Network Member", and "Member Login". Below these links is a note: "Members: Remember to update your email address and program information regularly." The main content area displays a search result for "Abused Persons Outreach Center, Inc." with the following details: "Service: Juvenile or Adult Justice/Court", "Address: PO Box 508, Valley City, ND 58072", "Description: The Abused Persons Outreach Center exists to eliminate domestic violence, sexual assault, child abuse, and elder abuse, which is prevalent and increasing in our society. The Abused Persons Outreach Center is committed to providing crisis intervention, support and counseling services to victims of personal violence and to promoting educational and prevention programs that are the catalyst in facilitating change in societal attitudes and behaviors.", "Hours: Office hours 8-4 Monday-Friday. 24-hr Crisis Line 701.845.0072 or 1.866.845.0072", and "Contact: Virginia Svenningsen, Phone: (701) 845-0078, Fax: (701) 845-1897, E-Mail: apoc@ictc.com".

Example Search Result

The search result displays the category or categories of services provided, the title and address of the relevant organization, a description of purpose and available services, office hours, and contact information.

Firstlink

Firstlink connects the public to information about health and human services and is available through <http://www.myfirstlink.org/211.shtml>, or by phone at 2-1-1. The 2-1-1 help line provides information and referral services, as well as confidential listening and support.



Firstlink Main Page

Information on available services can be found by selecting “Community Resources” link on the bottom of the Firstlink main web page.

FirstLink
Hope Begins Here
PEOPLE • RESOURCES

Search Events Help [advanced search](#) | [translate](#) | [contact us](#) | [admin](#)

Welcome to Community Resources On-Line!
1 - 2 - 3 ... Find the Help you Need!

1. In what area are you looking for services?

All Areas

City(ies)

Zip Code(s)

County

2. Select a service from the following list:

- Workers' Compensation
- Youth, Advocacy
- Youth, Dev. Assessment
- Youth, Disability
- Youth, Juvenile Delinquency
- Youth, Medical
- Youth, Mental Health
- Youth, Recreation
- Youth, Residential
- Youth, Substance Abuse

3. Click the Search Now! button to begin your search.

 The contents of this website are copyright (c) 2006 FirstLink.
powered by: IRis for the Web 

Firstlink Search Page

The Firstlink search page, <http://www.irissoft.com/cr11/>, allows searches by city, zip code, and county, and provides a list of service categories to narrow results. The resource also allows general searches of available services in all areas.

The advanced search allows several additional search options, including by: keyword, taxonomy, text within agency records, and program record (agency service).



Search

Events

Help

[map](#) | [translate](#) | [contact us](#) | [admin](#)

Cass County Juvenile Detention Center (Fargo)

Contact Information

Referral Name: Cass County Juvenile Detention Center (Fargo)
1019 3rd Ave S
PO Box 2806
Fargo, ND 58103
Main: (701) 241-5845
(701) 241-5938 Resident's Line
Fax number:
E-Mail address:
Internet Site: www.gospeltruthministry.org/cassjuvenile.html

Program Information

Person in charge: Paul Laney
In-charge title: Sheriff
Area served: Cass County, ND
Controlling agency: ND DEPT OF CORRECTIONS & REHABILITATION- FACILITIES
AKA:
Hours of operation: Monday-Friday, 8am-5pm
Fees charged: Telephone for fees
Intake procedure: Telephone
Eligibility requirements: Juveniles between the ages of 12-17 who are placed at the detention center by the courts or by law enforcement
Languages spoken or available: English
Election Date:

Service Description

Services include:
* Liaison with other agencies which provide counseling, education, psychological services, resident evaluations for residents in detention.
* Recreational programs for residents in detention.

Firstlink Example Results

When selected, search results display a referral name, address, and contact information for the relevant organization. Results also display program information, including the individual in charge, area served, fees, eligibility requirements, hours of operation. Results include a short description of available services. Links also provide a map indicating the office location for each result.

Appendix **D**

Education Program Material
*LSND Materials for Non-Citizen
Education*
*Example Outline Material: Family
Law Basics*

TOP 3 THINGS TO REMEMBER ABOUT LEGAL PROBLEMS

- 1. READ IMMEDIATELY AND COMPLETELY ANY DOCUMENTS YOU GET. CHECK TO SEE IF YOU HAVE TO SIGN YOUR NAME. CHECK TO SEE IF THERE IS A DEADLINE OR ACTION YOU NEED TO TAKE.**

Read the documents carefully. If you do not clearly understand everything, take them to a lawyer or a trusted friend or counselor who understands and reads English very well to make sure you understand what the papers mean and what, if any, action is needed. If the papers are court papers, make sure you understand them and know what to do with them. It is usually a mistake to ignore court papers. If papers are legal court papers, make sure the person you talk to really knows legal language and the law. Some people think they know about legal papers, but many times they don't know enough to help you, only enough to make it more difficult for you.

- 2. IF YOU GET PAPERS THAT TELL YOU TO GO TO COURT OR A "HEARING" ASK FOR AN INTERPRETER IMMEDIATELY.**

If you get a notice to go to court. Make sure you know which court and which courthouse. Contact the court and ask for an interpreter if you don't speak or understand English really well. You may not get approved for an interpreter, but you should ask for one. If you do not get an interpreter, go to a lawyer or some you trust to help you and make sure that the court or whoever is doing the "hearing" knows you don't understand exactly what's going on without an interpreter.

- 3. IF YOU GET A NOTICE TO GO TO COURT - GO TO COURT**

The court will usually not cancel a hearing if one of the parties, plaintiff or defendant, does not show up or shows up very late. If you miss the court date, the court can, and many times will order something you may not like because you were not there to explain your side of the story and you may have no idea what will happen next. If you cannot attend, you can call the attorney who prepared the legal documents you received or call the clerk of court to tell them that you can not be in court at the date and time scheduled and you would like it postponed to a time and day when you can be at the hearing. It can not be harmful , and could be helpful.

أهم ثلاثة أشياء يجب تذكرها عند التعامل مع أي مشاكل قانونية

١. اقرأ على الفور و بشكل كامل كل ما تحتويه اي وثائق تحصل عليها. تفحص هذه الوثائق جيدا لمعرفة ما إذا كان هناك موعدا محددًا لتقديم هذه الوثائق و ما إذا كان مطلوبًا منك التوقيع عليها أو إذا كان مطلوبًا منك إتخاذ أي إجراءات بخصوصها.

اقرأ هذه الوثائق بعناية و إنتباه. إذا لم تفهم كل شيء بوضوح خذ الأوراق لحامي أو لصديق تثق به أو أي مرشد إجتماعي يفهم و يقرأ اللغة الإنجليزية بشكل جيد حتى تتأكد من فهم المقصود من هذه الأوراق وما هي الإجراءات التي يجب عليك إتخاذها إذا كان مطلوبًا منك إتخاذها. إذا كانت الأوراق أوراق محكمة فعليك أن تتأكد بأنك فهمتها و عرفت ما هو المطلوب منك أن تفعله بخصوصها. و إذا كانت الأوراق أوراق محكمة تشرح أمور قانونية فعليك أن تتأكد في حال طلبت المساعدة من شخص أن يكون هذا الشخص يعرف القانون و المفردات القانونية المستخدمة في هذه الأوراق. يظن بعض الأشخاص أنهم على معرفة بأمور القانون و لكن يحصل في أحيان كثيرة أن هؤلاء الأشخاص لا يعرفون ما هو كافي لمساعدتك بل ما يكفي لجعل الأمر أكثر صعوبة لك.

٢. إطلب مترجما على الفور إذا حصلت على أوراق تطلب منك الذهاب إلى المحكمة أو لحضور " جلسة سماع " (إجتماع مبدئي أمام القاضي بحضور محامي لإتمام بعض الإجراءات القانونية بخصوص القضية)

إذا وصلت رسالة تطلب منك الحضور إلى المحكمة فعليك أن تعرف إلى أي محكمة ستذهب وفي أي مبنى تقع هذه المحكمة. إتصل بالمحكمة و إطلب مترجم إذا لم تكن تتكلم أو تفهم اللغة الإنجليزية بشكل جيد. من المحتمل أن لا يوافق على طلبك لمترجم ولكن يجب عليك أن تطلب مترجما. إذا لم تحصل على مترجم إذهب إلى محامي أو إلى شخص تثق به حتى يساعدوك. وبتأكد من أن تخبر المحكمة و المحامي الموكل للقيام بجلستك القانونية بأنك لن تفهم ما يجري في القضية بشكل كامل من دون مساعدة المترجم.

٣. إذا وصلتك تبليغ للحضور إلى المحكمة- إذهب إلى المحكمة.

من غير المعتاد أن تقوم المحكمة بإلغاء جلسة السماع في حال تغيب أحد الطرفين محامي الدفاع أو المدعي العام أو تغيب المتهم أو الشخص الرافع للدعوة أو الحضور متأخرًا جدًا. في حالة تغيبك و عدم حضورك إلى المحكمة بالتاريخ المحدد فمن الممكن أن تقرر المحكمة شيئًا لا ترغبه لأنك لم تكن هناك لعرض و شرح القضية من طرفك وإن يكون لديك أي فكرة عما سيجري لاحقًا. إذا كنت لا تستطيع الحضور في الوقت المحدد فبإمكانك الإتصال بالمحامي الموكل بقضيتك أو بموظف المحكمة لتخبرهم بأنك لا تستطيع الحضور و تريد أن تأجل الجلسة لوقت و يوم آخر تستطيع الحضور فيه. هذا الشيء لن يضرك بل يمكن أن يكون مساعدًا.

LES 3 CHOSES PRIMORDIALES DONT SE RAPPELER A PROPOS DES PROBLEMES JURIDIQUES.

1. **LISEZ IMMEDIATEMENT ET A FOND TOUT DOCUMENT QUE VOUS RECEVEZ. VERIFIEZ SI VOUS DEVEZ SIGNER / ECRIRE VOTRE NOM. VERIFIEZ S'IL YA UNE DATE LIMITE OU DES MESURES QUE VOUS DEVEZ PRENDRE.**

Lisez attentivement le document. Si vous ne comprenez pas bien l'entièreté du contenu, amenez le document chez un avocat ou une personne de confiance ou un conseiller qui comprend et parle couramment l'anglais, afin de vous rassurer que vous comprenez ce que les documents contiennent et les mesures à prendre, s'il y en a. Si les documents proviennent du tribunal, rassurez-vous que vous comprenez le contenu et que vous savez quoi en faire. En général, ignorer des documents en provenance du tribunal est une erreur. Si les documents sont des documents juridiques envoyés par tribunal, rassurez-vous que la personne à qui vous parlez connaît bien le langage juridique et la loi. Certaines personnes pensent qu'elles connaissent de quoi les documents juridiques s'agissent. Cependant, dans la plupart des cas, ces personnes n'en savent pas assez. Leur peu de connaissances ne peut que vous créer des difficultés.

2. **SI VOUS RECEVEZ DES DOCUMENTS QUI VOUS DISENT D'ALLER AU TRIBUNAL OU A UNE « AUDIENCE » (HEARING), DEMANDEZ IMMEDIATEMENT A AVOIR UN INTERPRETE.**

Si vous recevez un document vous demandant d'aller au tribunal, rassurez-vous de quel tribunal ou palais de justice dont il s'agit. Si vous ne parlez ni ne comprenez l'anglais très bien, contactez le tribunal et demandez à avoir un interprète. Il se pourrait qu'un interprète ne puisse être mis à votre disposition, mais vous devriez, quand même, demander à en avoir un. Si un interprète n'est pas mis à votre disposition, voyez un avocat ou une personne de confiance pour vous aider. Aussi, rassurez-vous du fait que le tribunal ou la personne chargée de votre audience sache que, sans l'aide d'un interprète, vous ne comprenez pas exactement ce qui est entrain de se dérouler.

3. **SI VOUS RECEVEZ UN DOCUMENT QUI VOUS DIT D'ALLER AU TRIBUNAL-ALLEZ AU TRIBUNAL**

D'habitude, le tribunal ne va pas annuler une audience, si l'une des parties, plaignant ou accusé n'apparaît pas ou arrive en retard. Si vous ratez la date de l'audience, le tribunal peut, et dans la plupart des cas, va ordonner quelque chose qui pourrait ne pas vous plaire parce-que vous n'étiez pas présent pour expliquer votre version de l'histoire, et vous ne connaîtrez pas l'étape suivante. Si vous ne pouvez pas apparaître, vous pouvez téléphoner l'avocat qui a préparé les documents juridiques que vous avez reçus, ou le greffier du tribunal et les informer que vous ne pourrez pas être au tribunal au jour et à la date prévus, et que vous aimeriez reporter l'audience à une date et un jour où vous pourrez être présent. Cela ne causerait aucun mal et pourrait vous être utile.

IBINTU BITATU (3) NYAMUKURU BIJANYE N'INGORANE Z'UWARENZE AMATEGEKO

- 1. SOMA WONGERE WUZUZE IBIPAPURO VYOSE URONSE UTARINZE KUBITEBANA. RABA NEZA KO BIKENEWE KO UTERA UMUKONO MU KWANDIKA IZINA RYAWE. RABA NEZA NIBA HARI ITARIKI IDASHOBORA KURENGWA CANKE KO IVYO BIPAPURO HARI ICO BIGUSABA GUKURIKIRANA.**

Soma ibipapuro witonze. Mu gihe hari ico udasobankiwe neza, bishire umu polisi yitwa Jacobsen, canke umuntu ashobora kukuburanira (ariwe bita umu avoka) canke umugenzi w'umwizigirwa , canke umuhanuzi yumva kandi avuga icongereza neza cane, kugira ngo bagusigurire ico ivyo bipapuro bivuga, hamwe n'icoba gikenewe gukorwa.

- 2. URAMUTSE URONSE IBIPAPURO BIGUSABA KWITABA MURI SENTARE, CANKE KUGENDA MURI "HEARING", UCE USABA UMUSIGUZI UTARINZE GUTEBA.**

Birashobora gushika ntibaguhe umusiguzi kubera utabifitiye uburenganzira, ariko n'ukwama wagerageje gusaba ko bakuronderera umusiguzi. Mu gihe ata musiguzi uronse, rondera uwukuburanira (avoka), canke umuntu w'umwizigirwa yoshobora kugufasha.

- 3. URAMUTSE URONSE IBIPAPURO BIGUSABA KUJA KURI SENTARE-GENDA KURI SENTARE.**

Mu gihe uramutse usivye kwitaba kuri Sentare, umucamaza ashobora kugucira urubanza rutagushimisha, kubera utitavye ngo wisigure canke wiregure kuvyo wagirizwa.

Linda Catalano, Managing Attorney

Legal Services of North Dakota

Fargo Law Office

8/3/2009 - Kurundi

Tan

XASUUSNOW 3 QODOB OO UGU SAREEYSO DHIBAATOYINKA SHARCIGA

1. AKHRISO WARAAQAHA DUKUMIINTIGA SIDA DHAQSAHA BADAN OONA DHAMAYSTIRAN MARKAAD HESHO. FIIRI IN LOO BAAHAN YAHAY SAXIIXAADA IYO INKALE. FIIRI IN AY JIRTO TAARIIKHDA LAGAA RABO WARAAQAHA AMA WAX TILAABO AH OO LAGAAGA BAAHAN YAHAY IN AAD QAADO. U akhriso waraaqaha dukumiintigi si taxadar leh. Hadii aadan fahmin wax walbo oo ku qoran waraaqda, u geeso sarkaalka sare ee Jacobsen, ama qareen ama saaxiib aad aaminsantahay ama la taliye guud oo fahmi karo, akhrin karo luuqada Ingiriiska si fiican si aad adiga u fahanto ujeedada waraaqaha iyo tilaabooyinka lagaa rabo in aad qaado.

2. HADII AAD HESHO WARAAQO KUU SHEEGAYO IN AAD IMAADO MAXKAMAD AMA "DHAGEYSI" MAXKAMADEED, DALBO TURJUMAAN SI DHAQSO AH. Waxaa dhici karto in aan lagu ogolaan turjumaan, laakiin waa in aad weydiisataa mid. Hadii aadan helin turjumaan, u tag qareen ama qof aad aaminsantahay in uu ku caawin karo adiga.

3. HADII AAD HESHO OGEYSIIS IMAANSHO MAXKAMADEED - AAD MAXKAMADA Hadii aadan imaanin balanta maxkamada, waxaa dhici karto in ay maxkamada kugu amarto go'aan aadan jecleysan, maadaama aadan imaanin maxkamada si aad u sharaxdo sheekada dhinacaada.

Linda Catalano, Managing Attorney
Legal Services of North Dakota
Fargo Law Office
8/3/2009
SOMALI

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. _____

123 Collection Company,)

Plaintiff,)

vs.)

Evert Brown,)

Defendant.)

SUMMONS

THE STATE OF NORTH DAKOTA TO ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to appear and defend against the COMPLAINT in the above-entitled action, which is herewith served upon you, by serving upon the undersigned an answer or other proper response within twenty (20) days after service of this SUMMONS upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the COMPLAINT.

Dated this 31 day of February, 2010.

Red Napoli
Attorney for Plaintiff/Defendant
ND Bar ID No. _____
1111 Busy Lawyer St.
Fargo, ND 58102
Tel:(701) 232-XXXX
Fax: (701) 232-YYYY

STATE OF NORTH DAKOTA
COUNTY OF CASS

IN DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT

CIVIL NO. _____

123 Collection Company)
)
 Plaintiff,)
)
 vs.)
)
 Evert Brown,)
)
 Defendant.)

COMPLAINT

COMES NOW, Plaintiff, and for its Complaint against the defendant(s) alleges and states as follows:

I.

That plaintiff is 123 Collection Company, Inc., a corporation organized under the laws of the state of North Dakota.

II.

That ABC Medical Place assigned all its rights, title, and interest in the following account receivable to 123 Collection Company, Inc.

III.

As requested and agreed to by the Defendant(s), ABC Medical Place provided to Defendant(s) services and/or supplies, which resulted in the Defendant(s) becoming indebted to ABC Medical Place in the amount of \$4,567.89 after all credits due are applied.

IV.

Defendant(s) and/or members of his/her family received said services and/or supplies.

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

V.

That payment in the amount of \$4,567.89 for the services and/or supplies is past due and owing. Despite frequent demands, defendant(s) has/have failed and neglected to pay said amount. That the Defendant(s) owes/owe interest at 6.00% per annum upon said unpaid principal debt, pursuant to N.D.C.C.

WHEREFORE, Plaintiff demands judgment against the defendant(s) in the principal amount of \$4,567.89 plus 6% interest per annum thereon from 01/02/2009, in the amount of \$ _____ together with the plaintiff's mailing and/or services fees to date of \$12.34 for a total due of \$ _____ as of 1/30/09, plus sheriff milage costs.

Plaintiff demands judgment to include its costs and disbursements herein and for such other further relief as the Court deems just and equitable.

Dated this 6th day of January 1, 2009.

Red Napoli,(ND ID #00000)
Attorney for the Plaintiff
111 Busy Lawyer St.
Fargo, ND 58102
Tel: 701-232-XXXX

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

SAMPLE

COUNTRYSIDE PARK

Three (3) days NOTICE OF INTENTION TO EVICT

TO [REDACTED]
[REDACTED]
[REDACTED]

YOU ARE HEREBY NOTIFIED in writing by the Manager of these premises indicated at [REDACTED], City of Fargo, County of Cass, State of North Dakota, that you must vacate said premises on or before three (3) days from the service of this notice.

YOU ARE FURTHER NOTIFIED that this notice of intention to evict is given for your failure to pay the rent as agreed upon, excessive police calls to your residence and having unregistered tenants living in the home and pursuant to the laws of the State of North Dakota and that the Manager gives notice to vacate and of the termination of tenancy in accordance with law.

YOU ARE FURTHER NOTIFIED that in the event you fail to vacate said premises and remove your personal property within three (3) days after the service of this notice, action shall be commenced in accordance with law to recover the possession of said property.

Where your failure to pay rent for three (3) days after it is due, excessive police calls and having unregistered tenants living in the premises is the basis for this notice.

\$184.00 plus \$25.00 service charge = \$209.00 in unpaid rent and applicable charges is due and owing.

Dated this 19th day of November, 2007.

CP
[REDACTED]
[REDACTED], General Manager

Yellow

Countryside Park

Memo on the three (3) days notice of intention to evict

The three (3) days notice of intention to evict is the first step in the process of eviction for unpaid rent or violation of a provision of the Rental Agreement.

If you have been served a three (3) day notice,

I recommend that you call the office immediately.

Three days after the notice has been served, we can:

- 1) file court papers and set a hearing date; and
- 2) go to court and ask for restitution of the premises; a judgment for unpaid rent and late fees; an award of statutory costs (generally \$150.00); and attorney fees (generally \$275.00). Our attorney charges the attorney fees at the time of preparation of the paperwork for court. This cost is passed onto you.

Once a judgment has been obtained, you will be required to remove your home from the lot.

COURT PAPERS ARE FILED AT LEAST 24 HOURS PRIOR TO HEARING DATE.

NO PAYMENTS WILL BE TAKEN AFTER THE FILING OF COURT PAPERS.

PLEASE DO NOT CALL OUR ATTORNEY.

If you do, our attorney will bill us, and we will pass this bill to you.

[REDACTED]
General Manager

or

[REDACTED]
Office Manager

SAMPLE

NOTICE OF INTENTION TO EVICT

TO: [REDACTED]

To: [REDACTED]

YOU ARE HEREBY NOTIFIED to vacate and surrender possession to [REDACTED] Rental Service, Inc., as representative of the owner thereof, the following described premises, to-wit:

[REDACTED]

For the reasons:

1. That you are continuing in the possession of the said premises after the failure to pay the monthly rental of \$515.00 per month due the 1st of each month for a total past due balance of \$539.00.
2. The lessee violated a material term of the written lease agreement between the lessor and lessee. Specifically, PAGE 1, 2A & PAGE 3, #16, which states that any additions in household size must be reported to and approved by Valley Rental Service, Inc. Also, any additions will require income certification.

You are Hereby further notified and requested to surrender the possession of said premises to the undersigned within three days from and after service of this notice upon you.

You are further notified that this notice is your three day written notice of intention to evict as required by Sections 33-06-01 (4) and 33-06-02 of the North Dakota Century Code; and in the event that you do not comply with this notice, proceedings will be commenced and instituted according to law to remove you from, and to recover possession of, said premises, and said action and proceedings will also seek recovery of all past due rents and profits and any damages arising from your possession of said premises.

Dated this 10th Day of March, 2008

[REDACTED] Rental Service, Inc.

BY [REDACTED]

Yellow

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

Property Management, LLP,

Plaintiff,

vs.

and all others in possession,

Defendant.

Civil No.

SUMMONS IN FORCIBLE
DETAINER

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT:

WHEREAS, the Plaintiff, through its attorney has filed with the undersigned Judge of District Court, a Complaint against you, a copy of which is hereo attached, alleging that you have failed to pay your rent and have an authorized occupant pursuant to the terms of your Lease Agreement with the Plaintiff and you have failed to vacate the premises described in the Complaint, although a Notice to Quit has been served upon you pursuant to statute.

THEREFORE, YOU ARE HEREBY COMMANDED to appear before the Honorable one of the judges of the above court, and answer the Complaint of the Plaintiff on the day of 2010, at 3:00 p.m., at the County Courthouse in the City of Fargo, Cass County, North Dakota, then and there to make answer to and defend against the Complaint aforesaid. Should you fail to so appear and answer Plaintiff's Complaint, judgment will be taken against you for the relief demanded in the Complaint.

Yellow

[REDACTED]

Dated this [REDACTED] day of [REDACTED] 2010.

[REDACTED]

ATTORNEYS FOR PLAINTIFF

[REDACTED]

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

[REDACTED] Property Management, LLP,
Plaintiff,

Civil No.

COMPLAINT IN FORCIBLE
DETAINER

vs.

[REDACTED] and all others in
possession,

Defendant.

Plaintiff, for its Complaint against [REDACTED] Defendant above named, states and
alleges as follows:

1.

Plaintiff has demised and leased by written Lease Agreement, effective February
15, 2010, on an initial one (1) year and one-half month term, to Defendant, [REDACTED]
the premises located at [REDACTED] Fargo, North Dakota.

2.

That the Defendant has been and is now currently residing at [REDACTED]
[REDACTED] Fargo, North Dakota, pursuant to the provisions of said Lease Agreement.

3.

That pursuant to the terms of said Lease Agreement, Defendant was to pay rent in
the monthly amount of Five Hundred Five and No/100ths Dollars (\$505.00).

4.

That the Defendant has failed and refused to pay the rent and late fees due and
payable in the amount of One Thousand Ten and No/100ths Dollars (\$1,010.00). That
despite repeated demands for payment, Defendant still fails and refuses to pay said
amounts and is still in possession of said premises, unlawfully detaining possession from
the Plaintiff.

5.

That the Defendant has violated a material term of the Lease Agreement by allowing an unauthorized occupant to reside on said premises.

6.

That pursuant to N.D. CENT. CODE § 47-32-02, Plaintiff has served Defendant with a Notice to Quit and that Defendant has failed to comply with that Notice and continues in possession of said premises.

WHEREFORE, the Plaintiff prays for the following relief:

1. For a judgment of eviction against the Defendant, restoring Plaintiff to the restitution of the premises;
2. For a money judgment against the Defendant in the amount of One Thousand Ten and No/100ths Dollars (\$1,010.00); plus any additional rent owed by the date of the hearing;
2. For Plaintiff's costs and disbursements incurred herein;
3. For attorney's fees in the amount of Four Hundred and No/100ths Dollars (\$400.00); and
4. For such other and further relief as to the court may seem just and equitable.

**Example Outline for Education Program:
Family Law Basics**

North Dakota courts have developed several outlines of materials for use in education programs for groups throughout the state. One of these outlines, titled “Family Law Basics,” contains a collection of materials and a workable format for future education programs on racial and ethnic bias in the courts.

The “Family Law Basics” course outline concentrates on providing information on topics in the area of post-judgment issues, including:

- Change of Primary Residential Responsibility
- Move Out of State
- Parenting Coordinators – Including Statewide Directory of Coordinators
- Child Support
- Sample discovery documents
- Family Mediation Project presentation slides
- Relevant academic articles on attorneys and on ethical communications in the area of family law
- Case history providing short summaries of relevant cases
- Table of Cases

The course outline also includes a section titled “Judicial Ethics in Family Law: Assorted Materials,” which contains citations and summaries of ethical guidelines, ethics opinions, supporting case law, and law review articles relevant to issues in family law. For reasons of length, this section has been excerpted from the broader course outline and is included as an example of content similar to what might be produced for an education program on racial and ethnic bias in courts.

Family Law Basics POST JUDGMENT ISSUES

April 26, 2011

**Suzanne M. Schweigert
SMITH BAKKE PORSBORG SCHWEIGERT & ARMSTRONG
122 East Broadway Avenue
P.O. Box 460
Bismarck, ND 58502-0460
Phone: (701) 258-0630
Fax: (701) 258-6498
Website: www.smithbakke.com**

Judicial Ethics in Family Law. Assorted materials.

A sweep of relevant cases and other materials with the relevant canons from the model code of judicial conduct reflects that, overall, the main ethical violations committed by judges center on rude treatment of the parties and bias. The major ethical issue for judges in the family law setting is to stay removed from the emotionally charged atmosphere. In turn: 1) Be forceful, but treat all parties with respect and dignity; and 2) Make sure that all decisions are made in accordance with the law and facts, not any personal distaste or bias.

Here are six broad headings of issues that various courts and other bodies have confronted regarding judges in family law cases:

- 1) Fairness and Absence of Bias in Custody Decisions
- 2) Personal Relationship Bias in Family Law Cases
- 3) Professional Relationship Bias in Family Law Cases
- 4A) Judicial Patience, Open-Mindedness, and Restraint in Family Law Proceedings
- 4B) Judicial Patience, Open-Mindedness, and Restraint with Pro Se Litigants
- 5) Personal Investigation into a Custody Dispute and Threatening Statements
- 6) Judge's Private Mediation of Divorce Case

Each of these topics is explained below, through means such as cases, law review articles, and judicial advisory opinions.

1) Fairness and Absence of Bias in Custody Decisions

ABA Model Code of Judicial Conduct Canon 2(A)

- A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Kathryn L. Mercer, *The Ethics of Judicial Decision-Making Regarding Custody of Minor Children: Looking at the "Best Interests of the Child" and the "Primary Caretaker" Standards as Utility Rules*, 33 Idaho L. Rev. 389 (1996)

- This article describes, in-depth, the operation and perceived problems with the "best interests of the child" analysis of courts.

- The main concerns about judicial ethics are gender bias in favor of certain parents (usually the mother) as well as the reliance on other factors outside of the law in reaching the decision.

- One of the author's proposed methods for mitigating these concerns is to define a test to assist the judge in the "best interests" analysis. North Dakota has adopted such a test in N.D.C.C. § 14-09-06.2(1).

- It may be worthwhile to discuss the enactment of the statutory "best interests" factors and how they assist judges in keeping personal bias or peripheral information from affecting their custody decisions.

In re Brown, 662 N.W.2d 733 (Mich. 2003)

- Judge censured in part because she used a coin flip to decide issue of where children would spend holiday in custody dispute.

2) Personal Relationship Bias in Family Law Cases

ABA Model Code of Judicial Conduct Canon 2(B)

- A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. . . .

Inquiry into Conduct of Blakely, 772 N.W.2d 516 (Minn. 2009)

- Family law judge was suspended by Minnesota Supreme Court after he steered divorcing couples into mediation with his personal divorce attorney. In return for this court-ordered mediation, the judge's lawyer gave him a discount on his own fees.

- Newspaper Articles on the Blakely case:

http://www.rivertowns.net/event/article/id/61652/publisher_ID/16/

<http://www.startribune.com/local/south/59620827.html>

3) Professional Relationship Bias in Family Law Cases

ABA Model Code of Judicial Conduct Canon 2(B)

- A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. . . .

Oklahoma Judicial Ethics Advisory Panel Opinion 2003-6

- Family law judge who had previously been a member of a large firm asked for opinion on how long he had to continue to disclose past professional relationships.

- Opinion advised that judge who had been on the bench two years did not have to disclose past relationships unless the case met any one of the following criteria it gleaned from other state advisory opinions:

- the length of the judge's association with the other attorney or firm;
- the closeness of the association;
- the amount of time since the association ended;
- the size of the firm;
- whether the court is located in a non-metropolitan area;
- any financial dealings the judge has with former partners;
- the duration and closeness of personal relationships between the judge and former partners and associates;
- whether the judge has a personal bias or prejudice toward the former partner or firm;
- whether the judge is still receiving money from the firm or lawyer;
- any continuing social relationship with the attorney.

4A) Judicial Patience, Open-Mindedness, and Restraint in Family Law Proceedings

ABA Model Code of Judicial Conduct Canon 3(B)(4)

- A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

In re McDonough, 296 N.W.2d 648 (Minn. 1980)

- In a divorce case, judge was censured after falsely accusing an attorney of fabricating an affidavit of the couple's 19-year-old son.

- The attorney testified that the judge shouted and hollered at him when he argued that the matter before the court was not a question of one spouse's alcoholism, but rather a question of temporary custody, temporary alimony, and temporary support. The court stated that it was quite clear from the

record that the judge's statements were not in keeping with good judicial decorum.

Matter of Sadofski, 487 A.2d 700 (N.J. 1985)

- Judge directed hostile language at both the husband and the wife. For example, he interrupted the husband during his testimony about an unrelated arrest and then told him to sit down. He also told the wife she had to figure out "how the hell visitation [was] going to occur" and that her attitude was "baloney."

- Judge's use of hostile and threatening language toward civil litigants warranted a public reprimand.

4B) Judicial Patience, Open-Mindedness, and Restraint with Pro Se Litigants

In re Kellam, 503 A.2d 1308 (Me. 1986)

- Judge engaged in consistent pattern of sarcastic behavior towards litigants.

- Among many other statements, he responded to a husband's concerns about his wife making death threats by saying, "You're here, aren't you? She didn't kill you yet." When a wife petitioned for a protective order from an abusive husband, the Judge stated, "He hasn't changed since he met you, why did you marry him? Why do you want me to do something now?"

- The court expressed its understanding of the difficulty of dealing with pro se litigants in an emotionally charged proceeding, but concluded that the judge's behavior violated the canons of judicial conduct because it was insensitive and discourteous.

5) Personal Investigation into a Custody Dispute and Threatening Statements

ABA Model Code of Judicial Conduct Canon 3(B)(5)

- A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

ABA Model Code of Judicial Conduct Canon 3(B)(10)

- A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments

that are inconsistent with the impartial performance of the adjudicative duties of the office.

In re Turner, 421 So.2d 1077 (Fla. 1982)

- On the evening after a child custody hearing, the judge paid an unannounced visit to the trailer home of the child's mother. Upon finding out that a male visitor was present in the trailer, the judge stated that the male visitor's presence jeopardized the mother's chances of continuing to have custody of her son. The mother responded that her attorney had advised her to have visitors for her protection because she had been threatened by her husband. Prior to departing, the judge replied that he was "like a rattlesnake and that a rattlesnake shakes his rattle just before he strikes."

- According to the court, the judge's use of threats in speaking to the civil litigant was entirely improper and constituted an abuse of his judicial powers.

6) Judge's Private Mediation of Divorce Case

ABA Model Code of Judicial Conduct Canon 4(A)(3)

- A judge shall conduct all of the judge's extra-judicial activities so that they do not interfere with the proper performance of judicial duties.

Florida Judicial Ethics Advisory Committee Opinion 2002-01

- Judge wanted to mediate the divorce between two mutual friends.

- "Pursuant to the clear and unambiguous provisions of the Code of Judicial Conduct, the inquiring judge is precluded from serving as a private mediator unless there is a law or court rule that expressly authorizes said service."

