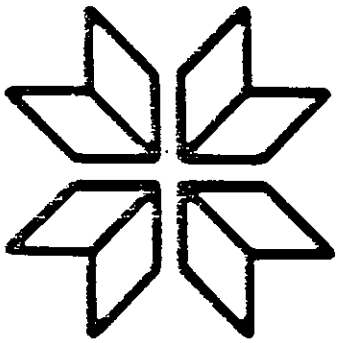
REPORT OF THE
NEW YORK STATE
JUDICIAL COMMISSION ON MINORITIES



VOLUME FIVE
APPENDIX--STAFF REPORTS AND WORKING PAPERS
APRIL, 1991

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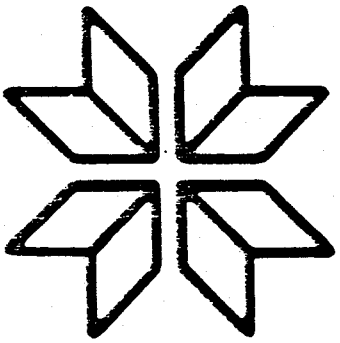

VOLUME FIVE
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NOTE TO THE READER

The appendices contained in this volume consist of staff reports, working papers, and materials submitted to the New York State Judicial Commission on behalf of certain groups.

The materials contained herein express the views of their authors and do not necessarily reflect the views of the Commission or its members.

REPORT OF FINDINGS FROM A STATEWIDE SURVEY OF THE NEW YORK STATE JUDICIARY

ACKNOWLEDGEMENTS

Data entry for this study was generously donated to the Commission by the Fund for the City of New York. Special thanks are due to Michael Lennauer, Ph.D. and Barbara Rubenstein, under whose supervision this service was rendered.

Special thanks are also due Eric Gordy and Jennifer K. Uleman, who during their tenure as research assistants at the Commission conducted the extensive follow-up required to produce an adequate response rate.

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1. INTRODUCTION AND METHODOLOGY

1.1 Introduction

This volume presents data from a survey of 445 judges in New York State [illegible] minority and white, and four of unidentified ethnicity. The study was conducted by the New York State Judicial Commission on Minorities, which was appointed by Chief Judge S. Kaye to examine the treatment of minorities in the courts and in the legal profession. The Commission identified a series of issues for study, some of which were appropriate for inclusion in the study of judges. The following issues were addressed in the judges' study and are the subject of this report:

- Treatment of minority litigants and witnesses in the courts;
- Representation and treatment of minorities in the judiciary;
- Availability and adequacy of legal representation of minorities;
- Representation of minorities in the nonjudicial work force;
- Race-related disparities in civil case outcomes;
- Adequacy of interpretation and other services;
- Race-related disparities in criminal pretrial processing and case outcomes;
- Representation and treatment of minorities in the legal profession; and
- Representation and treatment of minorities on juries.

Each of these issues is addressed in a separate section of this report. These same issues, as well as others, are also addressed in a companion volume which reports on the Commission's study of litigators and in the Commission's main report. The present volume is designed to report on data from the judges' study.

It is important to recognize that judges may have some limitations as reporters in a study of this nature. First, unlike litigators, they are only in courtrooms over which they preside and so lack a comparative frame of reference. Second, because judges are expected to be in charge of their own courtrooms, acknowledgement of bias can be seen to reflect negatively on their own performance. Third, judges are a part of the court system: their identification with, and investment in, that system is likely to cause them to be minimally critical. For all of these reasons, judges' reports are likely to understate the extent of bias in the courts.

It is also important to make a general comment about the many significant differences found between the responses of white and minority judges. Some white judges may be unaware of the subtle forms of bias that could occur in the courts. Minority judges are more likely to have experienced bias themselves and are therefore more likely to be sensitive to its occurrence and thus to perceive bias toward others. It is also possible that minority judges are oversensitized and may thus overestimate the frequency with which [illegible] behavior occurs. It is apparent that the findings of this study cannot be used as a yardstick with which to measure the absolute amount of bias in the courts. Rather the findings should be understood as evidence for the existence of bias. If white judges are unaware and underreport bias and minority judges are hypersensitive and overreport bias, the "truth" may lie somewhere in between. The important point is that there is ample evidence that the courts in New York State are not bias-free.

2.0 Methodology

2.1 Design of the Instrument

The judges survey (Appendix A) consists of 35 open-ended and closed-ended questions (189 variables), with space provided at the end of the questionnaire for additional comments. The survey was designed by the Commission's research staff and reviewed by the Commissioners. Staff then pretested the instrument on all Commissioners who are judges, as well as 16 other judges, to ensure its completeness and clarity.

The names, addresses, and judicial positions of all state judges (excluding justice, village, and town court judges) were supplied to the Commission by the Office of Court Administration. This information was input into a computer database and unique numeric identifiers were assigned to each judge.

The Commission then mailed information about the Commission's mandate, a request for participation in the survey, a stamped, addressed return envelope and the survey itself to all 1,141 judges in January 1989. Each judge's unique identification number was attached to the survey for purposes of follow-up. The confidentiality of the survey respondents was maintained in that the name-ID-number link was kept inaccessible to all but the research director.

2.2 Sample

With only 87 minority judges in New York State, it was essential to obtain a response from as many as possible. Thus, all nonresponding minority judges received follow-up calls to elicit their participation in the survey. A matched (by county and court type) random sample of white judges was also selected for follow-up calls. This "study sample" was devised

in order to guard against the possibility that a biased sample could be created in the process of vigorous follow-up. However, since both the white and minority response rates were high (53.4% and 87.4%, respectively), analysis did not need to be restricted to the study sample. Since minority judges are systematically overrepresented in the study, one cannot generalize from the total survey sample to the population of judges. However, because each group's response rate is high, the attitudes of white judges can be generalized to the white judge population, and the responses of minority judges can be generalized to the minority judge population.

The representativeness of the sample can be further estimated by comparing it along known characteristics to the population it purportedly represents. Table 1 therefore compares survey respondents to the population according to the Court of Appointment/Election, and Table 2 compares the sample and population according to whether they serve in New York City or non-New York City Courts.

Table 1. **Survey Respondents vs. Population: Court of Appointment/Election*** (Numbers in parentheses are percentages)

	Survey Respondents		Population	
Court of Appeals	6	(1.0)	7	(0.6)
Appellate Division	32	(5.1)	47	(4.2)
Supreme Court***	209	(33.4)	392	(34.7)
Court of Claims	11	(1.8)	17	(1.5)
Surrogate's Court	22	(3.5)	34	(3.0)
County Court	57	(9.1)	70	(6.2)
Family Court	66	(10.5)	115	(10.1)
NYC Criminal Court	56	(8.9)	101	(8.9)
NYC Civil Court	61	(9.7)	117	(10.4)
NYC Housing Court	15	(2.4)	30	(2.7)
District Court	17	(2.7)	48	(4.3)
City Court	74	(11.8)	151	(13.4)
TOTAL	**626	(100.0)	1,129	(100.0)

* Source: Office of Court Administration, June 1989.
** Excludes 18 multihat judges and one for whom data were missing.
*** Includes Appellate Term justices and Court of Claims judges assigned to the Supreme Court.

Table 2. **Survey Respondents vs. Population: Geographic Area Served by Judges*** (Numbers in parentheses are percentages)

	Survey Respondents	Population
New York City	270 (42.2)	486 (43.0)
Outside New York City	343 (53.6)	604 (53.5)
Can't be placed ***	32 (4.2)	39 (3.5)
TOTAL	640**	1,129

* Source: Office of Court Administration, June 1989.
** Excludes five respondents for whom data were missing.
*** Includes respondents from the Court of Appeals, Court of Claims, Appellate Division--2nd Department, and Appellate Term--2nd Department.

As Table 1 shows, the distribution of survey respondents in terms of the courts on which they sit is not significantly different from Office of Court Administration data about

the distribution of the entire population of judges. For example, Supreme Court Justices comprise 33% of the survey respondents and 35% of the population of judges in New York State; county court judges make up 9% of the sample and 6% of the population. Overall, the differences in the two distributions are not statistically significant; judges in the sample do not over- or underrepresent the judges in the population in any court.

Table 2 demonstrates the representativeness of the sample in terms of geographic location. Forty-two percent of the survey respondents and 43% of the population of judges are located in New York City Courts. Conversely, 54% of the sample and 54% of the population are located outside New York City. Four percent of both the sample and the population of judges serve on courts which include both New York City and outside New York City jurisdictions (the Court of Appeals, Appellate Term--2nd Department, Appellate Division--2nd Department and Court of Claims) and which therefore cannot be placed in either.

2.3 Presentation of Data in the Report

Several technical points about the discussion and presentation of the survey data in the body of the report are presented here. Most of the analyses examine variation in experiences and attitudes, according to racial and ethnic status. Black, Hispanic, and Asian judges are aggregated as the group of minority judges and compared to white judges. The obvious problem with such a grouping is that it obscures the uniqueness of each race or ethnic group, ignoring aspects where the three groups can be very different. This cannot be avoided, however, since it is not possible to statistically compare all four groups; the minority

sample contains 57 black judges and only 16 Hispanic and 3 Asian judges. There are 565 white judges in the sample.

Statistical tests of significance were performed, but, for ease of presentation, the test statistics are not shown in the body of the report. Appendix B provides replication of all relevant tables presented in the body of the report with the appropriate statistics. Multiple-choice survey questions with choices that range from "very often" (51-100%) to "never" (0%) or "very satisfied" to "very dissatisfied" were treated as continuous variables; t-tests and one-way analyses of variance were performed on the distributions. In other cases, chi-square tests were conducted.

In addition to minority vs. nonminority comparisons, survey responses were also systematically examined by other characteristics, as follows:

- Minority Population of Jurisdiction

  Because it could be expected that judges' responses would vary based on the extensiveness of their courtroom experiences with minority populations, their responses were examined according to the proportion of minorities in the geographic area in which they sit. This variable was constructed based on the 1980 census data on the race/ethnic distributions of county populations. City Court judges were grouped according to the population of the county in which the city is located. The 252 judges in Group 1 are located in Kings, Bronx, New York, and Queens counties, where the minority population as of 1980 represented 52%, 67%, 49%, and 38%, respectively, of the total population. The 185 judges in Group 2 are located in Albany, Dutchess, Erie, Monroe,

Nassau, Orange, Richmond, Rockland, Suffolk, Sullivan, and Westchester counties; the minority populations in these counties range from 9-17%. The 148 judges in Group 3 serve in counties where the minority population is below 9%. The 48 judges in the Court of Appeals, Appellate Term or Appellate Division in the 2nd, 3rd, and 4th departments, and Court of Claims, as well as judges with missing data, could not be placed. There are significant differences among groups in terms of their relative proportions of minority and white judges. Minority judges comprise 23% of Group 1 judges, 5% of Group 2 judges, and 1% of Group 3 judges.

New York City vs. Not New York City

The sample was also divided according to whether the judges sit in the five counties of New York City. Thirty-seven judges who serve on the Court of Appeals, the Court of Claims, or the Appellate Division and Appellate Term in the 2nd Department, or who did not specify any court, could not be placed. Forty-two percent (270) of the judges are in New York City, and 54% (343) of the judges are out of New York City. Racial and ethnic differences in the geographic area served are significant; 4% of the judges in the sample outside New York City are minority, and 22% of those in the New York City sample are minority.

New York City "Ghetto Courts" vs. "Nonghetto Courts"

Much testimony and other anecdotal and systematic data were acquired by the Commission on the particularly dismal conditions of high-volume courts in

New York City that serve a disproportionately high number of minority users. These so-called ghetto courts include the New York City Criminal Court, the New York City Civil Court and its Housing Part, and Family Court in New York City. Therefore, where applicable, the 151 judges sitting in the "ghetto" courts were compared to the 117 judges who serve in other New York City Courts (Supreme Court, Surrogates Court, Appellate Division--1st Department, Appellate Term--1st Department). Differences found between New York City "ghetto" and "nonghetto" judges cannot be attributed to minority status. There is no significant difference in the racial composition of judges serving in the two types of courts; 48% of minority, and 59% of white, judges serve on the "ghetto" courts.

° Civil vs. Criminal Courts

In some instances, comparing judges according to whether they preside over exclusively criminal or exclusively civil court, or examining the responses only of civil or criminal court judges, was necessary to the analyses. This variable was constructed by considering the name of the court over which the judge presides (Survey question 1), since some courts handle only one type of case. In the instance of courts that can handle both, but where a judge may only preside over some types of cases, other parts of the survey were examined. Specifically, if the respondent chose to answer the questions about the proportion of minorities among the court's civil plaintiffs and defendants but declined responding to the parallel question about criminal defendants, the

judge was considered a civil judge (survey question 29). A judge who answered all three items (survey question 29a-c) was assumed to preside over both criminal and civil proceedings in court. This construction yielded 147 exclusively criminal court judges, 179 exclusively civil court judges, 252 who preside over both types of cases (usually excluded from analyses), and 67 cases that could not be placed (excluded from analyses). Differences in the responses of Civil and Criminal Court judges cannot be attributed to differences in race/ethnicity. Among judges with an exclusively criminal or civil caseload, 56% of the white, and 48% of the minority, judges in the sample handle civil cases; the difference is not statistically significant.

II. TREATMENT OF MINORITY LITIGANTS AND WITNESSES IN THE COURTS

1.0 Introduction

As judges necessarily spend a great deal of time in the courts, they represent important reporters on the treatment of minority litigants. A number of items pertained to the treatment of litigants by attorneys, court personnel, and jurors. In addition, judges were asked about the physical conditions of their courthouses because one component of treatment is the quality of the physical surroundings in which people are expected to operate. Deteriorated, crowded physical surroundings send a message that the people in those surroundings are devalued.

2.0 Biased Behavior

Judges were asked a series of five questions about the frequency with which certain behaviors occur. The possible ratings were "never," 0%; "rarely," 1-5%; "sometimes," 6-25%;

"often," 26-50%; and "very often," 51-100%. There was also a "no experience" rating so that not all judges responded to all of the issues. These findings are presented in Table 3a.

Table 3a. Treatment of Litigants*
(Numbers in parentheses are percentages)

	WHITE JUDGES			MINORITY JUDGES			TOTAL JUDGES		
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
Court personnel are disrespectful and discourteous to minority litigants.	6 (1.2)	51 (10.3)	436 (88.4)	6 (9.2)	21 (32.3)	38 (58.5)	12 (2.2)	72 (12.9)	474 (84.9)
Court personnel are disrespectful and discourteous to white litigants.	3 (.6)	51 (10.2)	448 (89.2)	1 (1.5)	15 (23.1)	49 (75.4)	4 (.7)	66 (11.6)	497 (87.7)
Attorneys or courtroom personnel publicly repeat ethnic jokes, epithets or demeaning remarks about minorities.	16 (3.1)	86 (16.8)	409 (80.0)	9 (13.6)	17 (25.8)	40 (60.6)	25 (4.3)	103 (17.9)	449 (77.8)
Attorneys are more respectful of white than of minority witnesses in cross-examination.	8 (1.6)	55 (11.2)	426 (87.1)	17 (25.4)	19 (28.4)	31 (46.3)	25 (4.5)	74 (13.3)	457 (82.2)
Racial stereotypes affect evaluation of litigants' claims.	12 (3.1)	75 (19.5)	298 (77.4)	16 (30.8)	22 (42.3)	14 (26.9)	28 (6.4)	97 (22.2)	312 (71.4)

* See Appendix B, Table B-3a, for means, standard deviations, and tests of significance.

Minority judges reported a significantly higher frequency of courtroom personnel being disrespectful to both white and minority litigants. Fifty-nine percent of minority judges, but 88% of white judges, stated that court personnel are "rarely/never" disrespectful to minority litigants. Similarly, 89% of white, but 75% of minority, judges stated that court personnel are "rarely/never" disrespectful to white litigants. Regardless of the race of litigants, then, relatively fewer minority judges than white judges reported that court personnel are "rarely/never" disrespectful. Perhaps minority judges have a heightened

awareness of disrespectful behavior and are therefore more likely to notice disrespect toward persons of any color. About three times as many minority (32%) as white (10%) judges stated that courtroom personnel treat minority litigants disrespectfully "sometimes." More minority (23%) than white (10%) judges also stated that courtroom personnel treat white litigants disrespectfully "sometimes." Thus, while white judges gave the same ratings regarding the treatment of white and minority litigants, minority judges reported greater frequency of disrespect for both minority and white litigants. Finally, nearly one in ten (9%) minority judges stated that courtroom personnel are disrespectful to minority litigants "often/very often," but only 2% of minority judges gave such a rating for treatment of white litigants. In the experience of minority judges, minority litigants are more likely than white litigants to receive poor treatment by courtroom personnel. Moreover, minority judges are more likely than white judges to be critical of the treatment of all litigants by court personnel.

White judges reported a significantly lower frequency with which "attorneys or courtroom personnel repeat ethnic jokes involving minorities, use racial epithets, or make demeaning remarks about a minority group." More white (80%) than minority (61%) judges stated that such behavior "rarely/never" occurs. However, it is important to note that one in five (20%) white judges reported that attorneys and courtroom personnel make ethnic remarks at least some of the time. Among minority judges, 26% stated that such remarks occur "sometimes" and 14% stated that they occur "often/very often." Thus, 40% of minority judges reported that such behavior occurs at least some of the time.

There is a statistically significant difference between minority and white judges in terms of their experience with attorneys' preferential treatment of white witnesses during cross-examination, with white judges reporting a much less frequent occurrence than minority judges. Eighty-seven percent of white judges, but only 46% of minority judges, stated that white witnesses are "rarely/never" better treated than minority witnesses. Whereas only 2% of white judges stated that such preferential treatment of white witnesses by attorneys happens "often/very often," 25% of minority judges reported such frequency for this type of behavior.

The last item, about how often racial stereotypes affect the evaluation of litigants' claims, is the only item in which the source of prejudicial behavior or attitudes toward minority litigants was left unspecified. In other items the source was specified as either court personnel or attorneys. This item required judges to rate the frequency that racial bias affects the treatment received by minority litigants. The locus of this bias can be in individual attitudes, or it can be embedded in institutional biases such as culture- or class-specific definitions of community stability often used for assessing pretrial risk or likelihood of rehabilitation. Differences between white and minority judges are significant. More than one in five (23%) white judges acknowledged that the evaluations of minority litigant claims are affected by racial stereotypes "sometimes" or "often/very often." Thus, even in the opinions of white judges racial stereotypes affect substantial numbers of minority litigants. Nearly three quarters (73%) of minority judges reported that such stereotypes affect litigants claims "sometimes" or "often/very often."

Four of the five items in Table 3a were combined into a minority treatment scale.[1] The scale has good reliability (alpha=.81). Group means for minority and white judges are presented in Table 3b. The range is from 0 (never) to 4 (very often); the higher the mean the more frequent the maltreatment.

Table 3b. Judge Means and Standard Deviations on the Minority Treatment Scale (t=8.24; p=.000)

	White Judges	Minor. Judges
N	331	42
Mean	.70	1.59
SD	.63	.86

The difference between the means is statistically significant; minority judges have a higher mean on the Minority Treatment Scale than do white judges. Whereas white judges have a mean in the "never" to "rarely" range, minority judges have a mean in the "rarely" to "sometimes" range.

Several unsuccessful regression analyses were run on the minority treatment scale in order to determine the relative strength of a number of independent variables (e.g. Civil vs. Criminal Court, New York City vs. Outside New York City) hypothesized to be related to the perception of biased treatment. The poor results are attributable to both the high proportion of cases with missing data on the dependent as well as independent variables and

[1] The item "court personnel are disrespectful and discourteous to white litigants" was dropped from the scale because of low correlation with the total scale score.

to the overall low dispersion on the dependent variable. The variable with the strongest (positive) association with perceived maltreatment was minority status.[2]

Judges were also asked to provide information on their experiences with jurors and how the latter react to minority expert and lay witnesses. litigants, and victims. These data are presented in Table 4.

Table 4. Juror Reactions to Victims, Litigants, and Witnesses*
(Numbers in parentheses are percentages)

	WHITE JUDGES			MINORITY JUDGES			TOTAL JUDGES		
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Often/ Often	Very Some-times	Rare-ly/ Never
Testimony of a minority expert witness is less effective because of juror reactions to the expert's race.	5 (1.9)	23 (8.8)	232 (89.2)	1 (3.1)	8 (25.0)	23 (71.9)	6 (2.1)	31 (10.6)	255 (87.3)
Testimony of a minority lay witness is less effective because of juror reactions to the witness' race.	11 (3.0)	78 (21.0)	282 (76.0)	4 (7.8)	18 (35.3)	29 (56.9)	15 (3.6)	96 (22.7)	311 (73.7)
Jurors react more positively to a white litigant than to a minority litigant.	17 (4.4)	56 (14.5)	313 (81.1)	10 (19.6)	12 (23.5)	29 (56.9)	27 (6.2)	68 (15.6)	342 (78.3)
Jurors sympathize more with a white victim than with a minority victim.	19 (5.0)	64 (16.9)	295 (78.0)	16 (32.0)	12 (24.0)	22 (44.0)	35 (8.2)	76 (17.8)	317 (74.1)

* See Appendix B, Table B-4, for means, standard deviations, and tests of significance.

Significantly more minority (28%) than white (11%) judges reported that the testimony of a minority expert witness is "sometimes" or "often/very often" less effective because of juror reactions to the race of the witness. Eight-nine percent of white judges, but 72% of minority judges, reported that such biased behavior "rarely/never" occurs. Higher proportions of both minority and white judges reported that biased behavior by jurors occurs

[2] See Appendix B, Table B-3C, for the results of the regression analysis.

with greater frequency toward lay, than toward expert, witnesses. Thus, 24% of white judges reported that biased behavior toward lay witnesses occurs "sometimes" or "often/very often"; 43% of minority judges made such report. The differences between white and minority judges regarding lay witnesses are significant.

There is also a significant difference between white and minority judges regarding their reports of preferential juror response to white litigants. Eighty-one percent of white, but 57% of minority, judges reported that juror preferences for white litigants "rarely/never" occur. One in five (20%) minority judges reported that such juror behavior occurs "often/very often"; only 4% of white judges made such a report.

Although there is a significant difference between minority and white judges in their reports of the frequency with which jurors sympathize more with a white than with a minority victim, both groups of judges reported that such juror preferences for white victims tend to be more common than other race-biased juror behaviors (shown in Table 4). More than one in five white judges (22%) reported that such juror reactions of greater sympathy toward white victims occur "sometimes" or "often/very often"; 56% of minority judges made such report.

The small minority sample size for the juror reactions to minority expert witnesses precluded scale construction and therefore precluded multiple regression analysis.

Some judges commented on the treatment of minorities as follows:

A white judge stated:

> Racism, Sexism, Homophobia--you name it, we got it. I can't imagine why we need a commission to explore how much of it exists. We have enough to satisfy everyone. I don't believe that it exists because we don't know how to eradicate it. It stays with us because we don't want to eradicate it.

A black judge wrote:

> Unawareness with respect to cultural differences; negative inferences given to mode of dress, hair style, speech patterns, attitudes, that do not go to the merits of the case at the bar.
>
> Minority witness testifies, uses "Black English" or slang, non-minority attorney does not understand actual meaning or thought being communicated, nonminority attorney does nothing to clean the record to make thought clear, [court] must ask the question to make record clear and understandable.
>
> Many times judges and non-judicial personnel do not take the time and effort to explain things to non-white litigants when it is apparent to the "average person" that said litigant does not understand.

A Black-Hispanic judge wrote:

> Since I am obviously a minority judge it would be unreal for any obvious discriminatory practices to occur in my presence. I know that racism [and] discrimination [do] exist in the judicial system because I am friendly with all court personnel and I am told of many incidents that occur in other courtrooms and other parts of the building involving judges, court officers and other court personnel. This is not surprising since it reflects the racial polarization which exists in [New York City] as a whole.

A white judge noted:

> In Civil Court, Manhattan, persons (both minority and white) are often treated brusquely, and information is not given properly or patiently. There the minority litigants often are in the majority and are more affected by an arrogant attitude.

A black judge wrote:

> Most of the abuse that I have seen[,] both of defendants [and] of the general public as well[,] has been in the Criminal Court as opposed to the Supreme Court. The court officers in particular are rude [and] basically confrontational. The lack of curtesy [sic] displayed to everyone is appalling.

The same judge also wrote:

> When I was in the [New York City] Criminal Court (vs. Sup[reme] C[our]t), the treatment of lawyers [and defendants] by court officers was abysmal. I

have witnessed rough treatment of prisoners [and] disrespect to defense lawyers.

Lawyers['] cases which were not called were directed by me to be called.

A white judge wrote:

I have observed racial undertones and issues in almost every case on the criminal side. On the civil side, housing issues involve the poor, most of whom are minorities. It would be helpful if all court personnel could be sensitized to the issues of poverty and race.

A black judge stated:

On several occasions I have witnessed non-minority attorneys (usually privately retained rather than agency attorneys) use characterizations of minority persons which are demeaning and/or disparaging (e.g. references to "those people" or to certain "types" of litigants).

In each instance[,] I have, on the record, either requested that counsel clarify their statement or have admonished them for their inappropriate conduct.

An Hispanic judge commented:

Arrogant attitude expressed by judge or court officer toward minority public and family of defendants. [I corrected the situation] [b]y bringing courts displeasure and disapproval to court officer.

Many judges commented on the inappropriate use of first names by attorneys and even by judges, in addressing minority litigants and witnesses. The following represent a few such comments about the problem by black judges:

[There is] [a]n annoying tendency by some judges to refer to minorities by their first names.

Ass[istan]t DA insist[s] on calling minorities by their first names . . . .

Witnesses and litigants called by [their] first names . . . . [I] [a]dvised offender to address person as Mr., Mrs., or Ms. if an adult.

[A]ddressing minorities by [their] first names[.] [O]mitting titles when addressing [persons with such titles.] [I have used] [a] polite reminder to [the] [o]ffender at a bench conference.

[I have experienced] [u]se of first names of witnesses, especially minorities.

[I] require use of appropriate title (Mr., Mrs., etc.) for minority witness. Contempt citation for disparaging [and] contemptuous attorney.

White judges also commented on use of first names. For example:

Minority witness[es] are, on occasion, treated with less respect than other witnesses.

[I] have, for example, instructed counsel not to use witnesses[']first name[s].

Ass[istan]t D.A. addressed young black woman witness by her first name when he did not similarly address other witnesses. I admonished him [at] sidebar.

There have been occasions when witnesses and/or defendants who are minorities were treated in a patronizing fashion and addressed by their first names . . . . As an attorney I would object. As a judge I would admonish the offending party.

Calling a black women by her first name. Don't know whether to blame racial or gender bias . . . . I said, "You mean Mrs. Jones, don't you?".

Other judges provided examples of insensitivity. For example, a white judge wrote:

Only once [have I perceived the treatment of minorities in the courtroom to be unfair or insensitive]. A black defendant was ordered by a court officer to remove his skullcap.

I explained to the court officer that the skullcap was religious attire and not just a hat.

Another white judge wrote:

> [I] [h]ave noticed that some of the <u>older</u> non-judicial employees displayed varying degrees of bias [and] intolerance . . . . I have attempted to privately correct certain employees in some of their attitudes. (emphasis in the original)

Another white judge provided a striking example of insensitivity:

> Puerto Rican witness asked "When did you come to this country?" (happened several different times) . . . .
>
> [I] stop the trial, explain to the jury, etc. that Puerto Rico is part of [the] U.S.

This same judge stated:

> Court personnel tell racist jokes.
>
> [I] point out racism [and] say [it] can't be tolerated in [the] judicial system.

Another white judge noted

> [R]acist and sexist remarks by court personnel while not actually performing their assigned duties.
>
> [I] advised that this behavior was inappropriate and would not be tolerated.

Another white judge wrote:

> On a few rare occasions, litigants have uttered racial slurs about someone involved in the case; e.g., "My ex-wife dates a black man and I object to my child's exposure to this."
>
> In each instance the person uttering the slur was admonished immediately by me.

An Hispanic judge commented:

> Insensitivity to different cultures and backgrounds is not uncommon.
>
> I don't allow use of "slang" terms for ethnicities nor do I tolerate the "They're all stupid" mentality.

Another white judge stated:

> White attorneys treating black litigants with condescending attitudes. Male att[orne]ys treating female att[orne]ys [and] litigants in the same way. All of it very subtle. Court officers making homosexual jokes.
>
> I've told att[orne]ys to stop laughing/making jokes re: their clients. [I've] [t]old c[our]t officers to stop making pejorative jokes/comments re: homosexuals.

Commenting on experiences with racial bias a white judge wrote:

> Black female crime victim's testimony [was] not believed by all-white, though fairly selected, jury, after hearing white male defendant's implausible story.
>
> I could not do anything after [the] jury acquitted the defendant.

Another white judge provided the following example of rude treatment:

> Attorney told incarcerated Black defendant who criticized him to "go back in his cage."
>
> Attorney . . . was immediately reprimanded.

Some white judges commented that the insensitivity they have seen is indiscriminate and not specific to minority litigants. For example, one judge wrote:

> At times court officers are overbearing and/or officious and too quick to act physically altho[ugh] most actions did not necessarily reflect discrimination against a minority person.
>
> [A]ny such actions were corrected.

Another white judge stated:

> [G]enerally, I think [that] minorities [are] treated as well as others, though, particularly given [the] volume, that can be poorly.

Judges were asked "Have you ever experienced a situation in your courtroom in which you perceived the treatment of minority attorneys, litigants (i.e. defendants or plaintiffs), jurors, or witnesses to be unfair or insensitive?" Those who responded in the affirmative

were asked "Have you ever had the opportunity to correct a situation in which you perceived the treatment of minority attorneys, litigants, jurors, or witnesses to be unfair or insensitive?" In addition to the comments provided on the preceding pages, these data are provided in Table 5.

Table 5. Experiences of Bias and Efforts at Redress* (Numbers in parentheses are percentages)

		White Judges	Minor. Judges	TOTAL JUDGES
Ever perceived unfair treatment?	Yes	85 (15.0)	32 (42.1)	117 (18.3)
	No	480 (85.0)	44 (57.9)	524 (81.7)
If so, ever corrected?	Yes	64 (76.2)	29 (90.6)	93 (80.2)
	No	20 (23.8)	3 (9.4)	23 (19.8)

* See Appendix B, Table B-5, for tests of significance.

There is a significant difference between minority and white judges in terms of the proportions who reported that they had "experienced a situation in [their] courtroom in which [they] perceived the treatment of minority attorneys, litigants (i.e. defendants or plaintiffs), jurors, or witnesses to be unfair or insensitive." Nearly three times as many minority (42%) as white (15%) judges reported that they had witnessed unfair treatment. The majority of judges who perceived unfair treatment reported that they had intervened to correct the situation.

3.0 Physical Condition of the Courts

Judges were asked to rate the physical conditions of the courthouse in which they sit: the possible ratings were "excellent," "good," "fair," "poor," or "very poor." Findings by race of judge are presented in Table 6.

Table 6. **Judges' Ratings of the Physical Conditions of the Courts*** (Mean range is from 1-5; 5=excellent; numbers in parentheses are percentages)

	Very Poor	Poor	Fair	Good	Excel-lent	Mean
White	74 (13.4)	96 (17.4)	124 (22.4)	147 (26.6)	112 (20.3)	3.23
Minority	16 (21.1)	19 (25.0)	16 (21.1)	16 (21.1)	9 (11.8)	2.78

* See Appendix B, Table B-6, for standard deviations and tests of significance.

Significantly more minority (46%) than white (31%) judges made ratings of "poor" or "very poor." Conversely, whereas 47% of white judges rated their courts as "excellent" or "good," only 33% of minority judges made such ratings. In fact, the average rating of minority judges is in the "poor" to "fair" range, whereas the average rating of white judges is in the "fair" to "good" range.

Judges' assessment of the physical conditions of their courtrooms was also classified by the type of court in which they sit (Table 7).

Table 7. **Judges' Ratings of the Physical Conditions of the Courts by the Type of Court Over Which Judges Preside***
(Mean range is from 1-5; 5=excellent; numbers in parentheses are percentages)

	Group A	Group B	Group C	Group D
Very Poor	1 (1.4)	25 (12.6)	37 (24.7)	27 (14.2)
Poor	6 (8.2)	33 (16.6)	51 (34.0)	23 (12.1)
Fair	8 (11.0)	45 (22.6)	35 (23.3)	50 (26.3)
Good	19 (26.0)	61 (30.7)	24 (16.0)	52 (27.4)
Excellent	39 (53.4)	35 (17.6)	3 (2.0)	38 (20.0)
MEAN	4.22	3.24	2.37	3.27

* See Appendix B, Table B-7, for standard deviations and tests of significance.

Group A is comprised of judges of the Court of Appeals, Appellate Term, Appellate Division, Court of Claims, and Surrogate Court. The Group A mean rating is 4.22, that is, between "good" and "excellent." Group B, which includes only Supreme Court judges, has a mean rating of 3.24, between "fair" and "good." Group C is comprised of New York City Housing Court, Criminal Court, Civil Court, and Family Court judges; the physical conditions of lower courts in New York City are rated between "poor" and "fair" (2.37). Group D includes County Court, District Court, City Court, and Family Court judges outside New York City. The lower courts outside New York City have a group mean rating between "fair" and "good" (3.27--one point higher than the New York City lower courts). Indeed, the physical conditions of the lower courts in New York City (Group C) have a significantly lower rating than those in the other three groups. Additionally, courts in Group A have a significantly higher rating than do those in Groups B and D.

Judges' ratings of the physical conditions of their courts were also analyzed by the proportion of minorities in the county where the courthouse is located. For the purpose of this analysis, judges were grouped into three categories, based on 1980 census data for the counties in which they sit. Group 1 judges are those who sit in courts in counties where the minority population as of 1980 was between 38% and 67%. Group 2 judges are those who sit in courts in counties where the minority population ranges from 9-17%. Group 3 judges are those who sit in courts in the remaining counties of the state where the minority population is less than 9%. These data are provided in Table 8.

Table 8. **Judges' Ratings of the Physical Conditions of the Courts by the Minority Population of the Counties in Which the Judges Sit*** (Mean Range is from 1-5; 5=excellent; numbers in parentheses are percentages)

	Group 1	Group 2	Group 3
Very Poor	56 (21.5)	26 (14.7)	7 (4.7)
Poor	77 (29.5)	17 (9.6)	18 (12.2)
Fair	65 (24.9)	31 (17.5)	38 (25.7)
Good	46 (17.6)	66 (37.3)	41 (27.7)
Excellent	17 (6.5)	37 (20.9)	44 (29.7)
MEAN	2.58	3.40	3.66

* See Appendix B, Table B-8, for standard deviations and tests of significance.

The mean rating for Group 1 courts is between "poor" and "fair" (2.58). This rating is significantly lower than those for either Groups 2 or 3 (which are between "fair" and "good," 3.40 and 3.66, respectively). Counties with the largest proportions of minorities have the most poorly maintained of the state courts.

These findings support the view that "ghetto" courts--those that are primarily used by minorities--are in far worse physical condition than the courts that are primarily used by Whites. Several judges commented on this phenomenon. For example, one white judge stated:

> [T]he disrepair and, often, unhealthiness, of our court facilities is a monument to racial bias. It takes no in-depth examination to see the vast discrepancy between the facilities in [New York City] Civil Court in which most minority litigants appear--namely, Housing and Small Claims Court--and the better facilities maintained for those litigants, usually white and/or of financial means, in the same courthouse. The same holds true as to the difference between Criminal Court and Supreme Court.

A second white judge wrote:

> Court facilities, their restoration, provision and location should never have been left with local governments. [Since] the [U]nified [C]ourt [S]ystem was created and the jobs transferred to the State, facilities should also have been transferred to the State. The place where justice is meted out is a big part of the image to the public as to its importance in our society. To have the facilities I have seen and worked in is a disgrace to the State, its people and the administration of justice.

A third white judge wrote:

> In courts that deal with large numbers of poor people and often at the same time with large numbers of minority group members, there are now a fair number of minority judges and court personnel. The physical facilities and the congestion (of both people and calendars) suggest that the system, possibly because of the nature of the litigants, places a very low priority on the needs of the litigants in such courts. At the same time court personnel often seem to feel that "poor people's courts" (housing, criminal, family) are the worst assignments.

Yet another white judge stated:

> Cases involving primarily minority litigants are accorded the worst court facilities and the least amount of time. If the court system wishes to achieve fair and equal treatment for all, court space should be allocated equally in terms of the number of litigants and attorneys actually using a courtroom. Similarly, types of cases involving mostly minority litigants should not be

automatically accorded the worst, least comfortable and most crowded facilities.

In addition to their ratings of the physical conditions of the courts in which they sit, judges were asked "Are there public services that should be provided in your courthouse, but are not provided?" Data relevant to physical facilities and maintenance are provided in Table 9; data relevant to services are discussed in Section 7.

Table 9. Number and Percent of Judges Making Suggestions Regarding Physical Facilities*
(Numbers in parentheses are percentages)

	White	Min.
Better rooms/facilities	114 (45.4)	21 (47.7)
Maintenance/physical conditions	112 (44.6)	13 (29.5)
Amenities	50 (19.9)	8 (18.2)
Base= 251 white judges and 44 minority judges who specified a need for improvements.		

* See Appendix B, Table B-9, for tests of significance.

Nearly one half of both white and minority judges who made any mention of a need for improved services wrote about the need for better rooms and facilities. More white than minority judges mentioned the need for improved maintenance and physical conditions of the courts. Responses in this category included mention of better cleaning, improved bathroom facilities, better elevator service, and improved security. Finally, there was no difference between the proportions of white and minority judges who mentioned improvements in amenities (e.g., public telephones and drinking fountains).

4.0 Conclusions

There are significant differences between the perceptions of white and minority judges regarding treatment of litigants. More than three quarters of the white judges reported that the biased behaviors about which they were queried "rarely/never" happen. Minority judges perceived biased behavior happening with considerably greater frequency; nearly three quarters felt that racial stereotypes play a role in the evaluation of many cases. The data on the physical conditions of the courts are strikingly consistent in showing that courts in which predominantly minorities appear are in the worst condition. The "ghetto" courts send a strong message of disrespect and bias.

III. REPRESENTATION AND TREATMENT OF MINORITIES IN THE JUDICIARY

1.0 Introduction

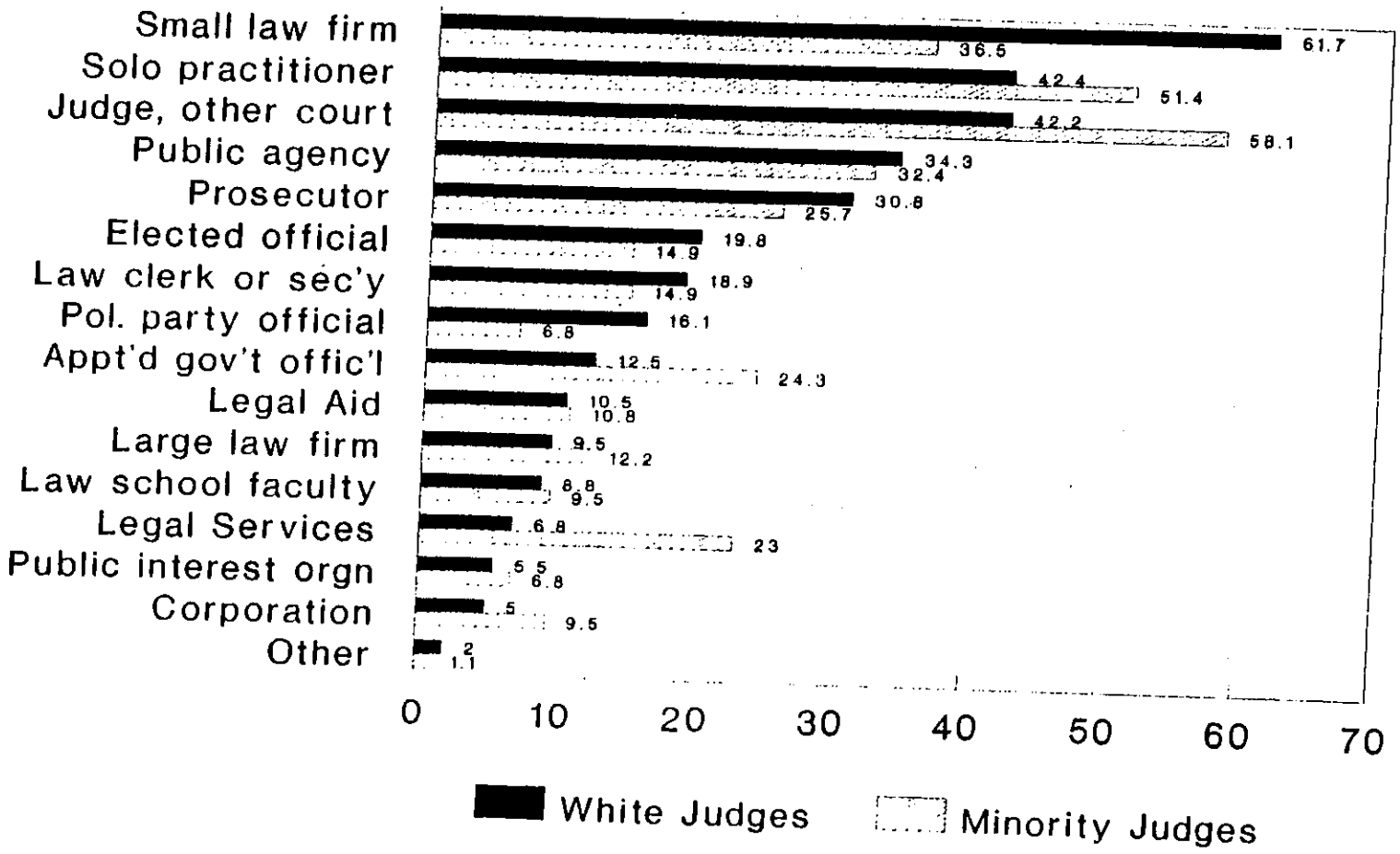
A judiciary in which there are relatively few minorities could contribute to doubts about the fairness of the justice system and to the minority sense of exclusion from positions of influence and decision-making authority. In order to understand possible differences between Whites and minorities in terms of access to the judiciary, the study included a number of questions regarding career paths, the functioning of various screening/nominating committees and political parties in the selection of candidates for the judiciary, assets that assist candidates for the judiciary, and perceptions regarding qualifications for the judiciary. In addition to questions dealing with minority representation on, and access to, the bench, a few questions were addressed to the fairness with which minority judges are treated.

Thus, findings in this section are relevant to two major issues: minority access to the judiciary, including the value placed on minority representation, and the treatment accorded minority judges.

2.0 The Path To The Judiciary

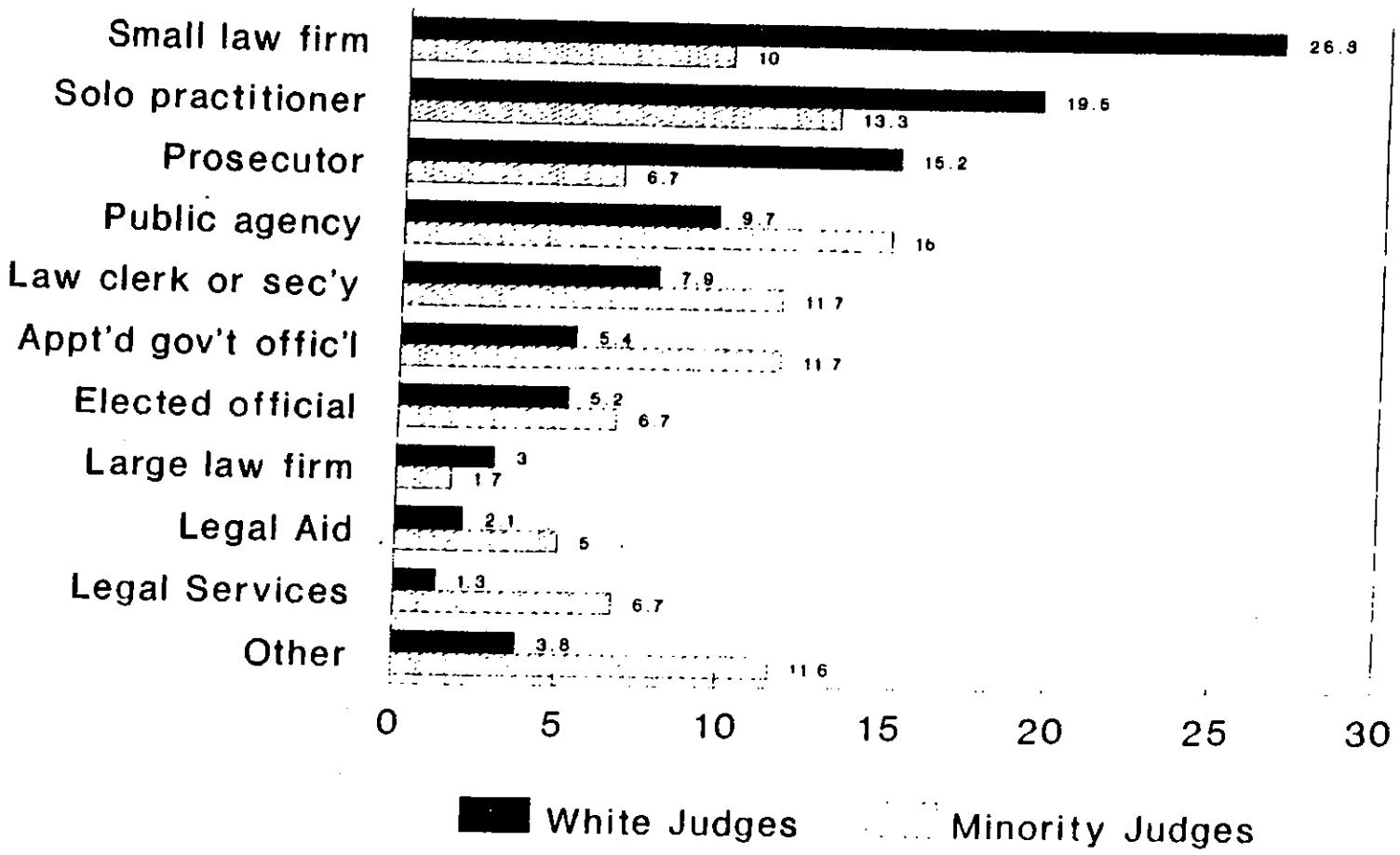
In an effort to discover the differences, if any, between the minority and White paths to the judiciary, judges were asked to provide information on all the positions which they held prior to their current judicial position (Figure 1), and on the position they held immediately prior to election or appointment to their first judicial position (Figure 2).

Figure 1: Percent of Judges Who Have Held the Following Positions at any Point Prior to Current Judicial Position



(Figures are percent of total sample)

Figure 2: Primary Position Held Immediately Prior to First Judicial Appointment or Election



(Figures are percent of total sample)

As shown in Figure 1, significantly more minority (23%) than white (7%) judges had spent some time as legal services attorneys. Also, nearly twice as many minority (24%) as white (13%) judges had served as appointed government officials (e.g., commissioners of various state and local agencies). More minority (58%) than white (42%) judges had been judges or justices on a court other than the one on which they are currently sitting. More white (62%) than minority (37%) judges had been in law firms with fewer than twenty lawyers; among those in such law firms the majority of both white (80%) and minority (79%) judges were partners. There are no other significant differences between white and minority judges in the positions held. Large proportions of both white (42%) and minority (51%) judges had been in solo practice; approximately one third of the judges in both groups had worked as counsel for a public agency. Substantially more judges in both groups had been prosecutors (31% of Whites and 27% of minorities) than legal aid attorneys (about 11% of both groups). Relatively few in either group had been in law firms with more than 20 lawyers (10% white; 12% minority); among these, 33% of white judges and 25% of minority judges were partners.

The data presented in Figure 2 show that the largest single group of white judges (27%) had worked in law firms with fewer than 20 lawyers immediately prior to their first judicial appointment/election; only 10% of minority judges held such positions. This difference is statistically significant. Nearly half (49%) of the white, but only 25% of the minority, judges came to the bench from private practice (law firms or solo practice). Significantly more minority (6.7%) than white (1.3%) judges came to the bench directly from a legal services job.

Overall, the differences between minority and white judges in terms of their path to the judiciary are not striking. Similar proportions of minority and white judges had been solo practitioners, prosecutors, elected government officials, law clerks or secretaries; similar proportions had also worked in a public agency, for legal aid, in a large law firm, on a university faculty (usually law school), or in a public interest organization or corporation. A discriminant analysis in which all prior legal positions were taken into account in order to determine whether there are any significant differences between white and minority judges showed no systematic differences. There certainly is no clear career path to the judiciary for either study group, and, therefore, no difference between the groups.

On the average, white judges had been attorneys for 19.4 years before they achieved their first judicial position; minority judges had been attorneys for an average of 17.4 years. This difference is statistically significant. Thus, it seems that minorities become judges somewhat sooner in their legal career than do Whites. The number of years as an attorney prior to attaining the first judicial position was also examined by <u>when</u> the respondents attained their positions. This was done to test the hypothesis that aggregated differences over time between white and black judges mask the possibility that, among older judges, minority entry into the judiciary may have been relatively delayed. The data did not support this hypothesis. There were no significant differences within race/ethnicity categories or for the whole sample in the number of years between bar passage and first judicial position, according to year of attaining the position. For instance, those who attained their first judicial position in 1986-1988 took 18.60 years; those beginning their judicial careers in 1969-

1972 took 18.05 years. Thus, the widely-held perception that minorities have to wait longer than Whites to reach the bench is not supported by the data.

3.0 Opinions Regarding The Functioning of Screening Committees And Political Parties

Judges were asked to rate the various committees/commissions in New York State that screen/nominate potential judges for appointive or elective positions. Ratings were solicited based on each committee/commission's ability to discern candidates' strengths in areas such as: knowledge of the law; litigation experience; racial and ethnic diversity; and judicial temperament. Judges were asked to make ratings of "very well," "well," "poor," or "very poor"; for the purposes of analysis, all of the "well" ratings were combined and all of the "poor" ratings were combined. These data are presented in Table 10.

ıble 10. Jud Ratings of Various Screening Commissions/Committee the Judiciary
(Numbers in parentheses are percentages)

	KNOWLEDGE OF THE LAW					LITIGATION EXPERIENCE					RACIAL/ETHNIC DIVERSITY					JUDICIAL TEMPERAMENT				
	POORLY		WELL		SIGNIFI-	POORLY		WELL		SIGNIFI-	POORLY		WELL		SIGNIFI-	POORLY		WELL		SIGNIFI-
	White	Min.	White	Min.	GANCE	White	Min.	White	Min.	GANCE	White	Min.	White	Min.	GANCE	White	Min.	White	Min.	GANCE
Commission on icial Nominations Governor's appoint- :s to Ct. of Appeals	42 (15.4)	4 (9.5)	230 (84.6)	38 (90.5)	X^2=.601 P=.4384	48 (21.8)	7 (18.9)	172 (78.2)	30 (81.1)	X^2=.033 P=.8562	32 (16.3)	22 (57.9)	164 (83.7)	16 (42.1)	X^2=28.685 P=.0000 **	33 (15.3)	5 (13.9)	182 (84.7)	31 (86.1)	X^2=.00000 P=1.0000
:ewide Judicial :ening Committee for :rnor's appointments :t. of Claims	85 (35.6)	11 (26.2)	154 (64.4)	31 (73.8)	X^2=1.010 P=.3149	66 (32.8)	11 (30.6)	135 (67.2)	25 (69.4)	X^2=.006 P=.9396	37 (22.7)	22 (62.9)	126 (97.3)	13 (37.1)	X^2=20.334 P=.0000 **	62 (31.6)	11 (32.4)	134 (68.4)	23 (67.6)	X^2=.00000 P=1.0000
ırtmental Judicial :ening Committees Governor's appoint- :s to Appellate Div. iupreme Ct. & vacancies on :eme Ct.	6 (22.2)	4 (9.3)	210 (77.8)	39 (90.7)	X^2=3.054 P=.0806	43 (18.9)	4 (10.8)	184 (81.1)	33 (89.2)	X^2=.936 P=.3344	42 (21.4)	21 (53.8)	154 (78.6)	18 (46.2)	X^2=15.808 P=.0001 **	54 (22.7)	5 (13.5)	184 (77.3)	32 (86.5)	X^2=1.10166 P=.2939
'. Judicial :ening Committees Governor's appoint- :s to Family Ct. iide NYC, County Ct. irrogate's Ct.	43 (24.2)	5 (22.7)	135 (75.8)	17 (77.3)	X^2=.000 P=1.0000	41 (24.6)	5 (25.0)	126 (75.4)	15 (75.0)	X^2=.000 P=1.0000	29 (24.2)	18 (81.8)	91 (75.8)	4 (18.2)	X^2=25.363 P=.0000 **	49 (31.8)	11 (52.4)	105 (68.2)	10 (47.6)	X^2=2.61549 P=.1058
ır's Committee on ciary for Mayor's iintments to Family or Criminal Ct. or vacancies on Civil Ct.	47 (22.9)	20 (36.4)	158 (77.1)	35 (63.6)	X^2=3.421 P=.0644	36 (20.0)	16 (30.8)	144 (80.0)	36 (69.2)	X^2=2.107 P=.1466	17 (9.7)	30 (57.7)	159 (90.3)	22 (42.3)	X^2=53.695 P=.0000 **	47 (25.5)	19 (35.8)	137 (74.5)	34 (64.2)	X^2=1.69228 P=.1933
ing Ct. Advisory iittee and/or OCA f Administrative ie appointments to Housing Court	28 (36.4)	8 (22.9)	49 (63.6)	27 (77.1)	X^2=1.441 P=.2300	28 (38.4)	9 (26.5)	45 (61.6)	25 (73.5)	X^2=.971 P=.3245	9 (12.3)	16 (47.1)	64 (87.7)	18 (52.9)	X^2=13.746 P=.0002 **	26 (38.8)	11 (34.4)	41 (61.2)	21 (65.6)	X^2=.04167 P=.8382
tical party organi- ons in determining es for elective ce	244 (53.9)	40 (63.5)	209 (46.1)	23 (36.5)	X^2=1.701 P=.1921	221 (55.1)	37 (62.7)	180 (44.9)	22 (37.3)	X^2=.917 P=.3382	110 (31.7)	31 (50.8)	237 (68.3)	30 (49.2)	X^2=7.562 P=.0060 **	200 (52.8)	37 (64.9)	179 (47.2)	20 (35.1)	X^2=2.47515 P=.1157

)ifferences are significant at the .01 level

Large numbers of judges did not complete the ratings for most of the appointing screening/nominating committees because of a stated lack of knowledge regarding these bodies. Fewer than 50% of white judges rated any appointive screening/nominating committee; the range in terms of the proportions of white judges giving any ratings is from 13% (average percentage of white judges giving any rating to the Housing Court Advisory Committee) to 41% (average percentage of white judges giving any rating to the Departmental Judicial Screening Committees). Higher proportions of minority judges provided ratings. The range is from 28% (average percentage of minority judges giving any rating to County Judicial Screening Committees) to 70% (average percentage of minority judges giving any rating to the Mayor's Committee on the Judiciary). The majority of judges are unfamiliar with the various screening committees and could not express any opinion as to their effectiveness. Many judges are unfamiliar with appointing committees that deal with positions in specific geographic areas. Moreover, large numbers are unfamiliar with statewide committees such as the New York State Commission on Judicial Nominations for Governor's Appointments to the Court of Appeals; on average, only 40% of white judges and 50% of minority judges rated the Commission on Judicial Nominations.

Among those who did respond, the majority of both white and minority judges gave positive ratings to the New York State Commission on Judicial Nominations for the Governor's Appointments to the Court of Appeals regarding its assessment of candidates' knowledge of the law, litigation experience, and judicial temperament. Thus, 85% of white judges and 91% of minority judges who responded gave the Commission positive ratings for proposing candidates with knowledge of the law; 78% of white judges and 81% of minority

judges felt that candidates have adequate litigation experience; and 85% of white judges and 86% of minority judges felt that proposed candidates have appropriate judicial temperament. The only significant difference between the ratings of white and minority judges was on the issue of how well the Commission does in recommending candidates who would contribute to the racial and ethnic diversity of the Court of Appeals. Whereas 84% of white judges gave the Commission a positive rating, only 42% of minority judges gave such a positive rating on the issue of racial and ethnic diversity. This difference is statistically significant.

The Statewide Judicial Screening Committee for the Governor's Appointments to the Court of Claims received favorable ratings from a majority of both white and minority judges on most dimensions, but substantial proportions of both white and minority judges gave this Committee a "poor" rating. Thirty-six percent of white, and 26% of minority, judges who responded gave a "poor" rating to this Committee's recommendations of candidates who have adequate knowledge of the law; 33% of white judges and 31% of minority judges gave a "poor" rating to the Committee's assessments of candidates' litigation experience; and 32% of both white and minority judges gave a "poor" rating regarding the Committee's assessments of appropriate judicial temperament. Thus, approximately one third of both white and minority judges gave "poor" ratings to this Committee regarding its recommendations to the Governor for the Court of Claims. Moreover, whereas 97% of white judges felt that the Committee does "well" regarding racial and ethnic diversity of candidates, more than one third (37%) of minority judges gave such a rating. This difference is statistically significant. Thus, white judges--a third of whom generally rated the Committee "poor" on other dimensions--were nearly unanimous in their view that the

Committee pays adequate attention to racial and ethnic diversity. Again, it should be noted that relatively few judges (less than half) had any opinion at all on the functioning of this Committee.

Departmental Judicial Screening Committees for the Governor's Appointments to the Appellate Division of the Supreme Court, and for vacancies on the Supreme Court, generally received favorable ratings by the majority of white and minority judges. Seventy-eight percent of white judges and 91% of minority judges who responded gave positive ratings to the Departmental Screening Committees regarding their assessments of candidates' knowledge of the law; 81% of white and 89% of minority judges were positive about the Committees' assessments of litigation experience; and 77% of white and 87% of minority judges gave positive ratings on the Committee's gauge of judicial temperament. In the area of racial and ethnic diversity there was a highly significant difference; 79% of white judges, but 46% of minority judges, gave the Committees a favorable rating.

County Judicial Screening Committees for the Governor's Appointments for Vacancies on Family Court outside of New York City, for County Court and Surrogates Court, generally received favorable ratings from the majority of both white and minority judges on their assessment of candidates' knowledge of the law and litigation experience. Thus, 76% of white and 77% of minority judges who responded gave a favorable rating to the County Screening Committees on their assessment of candidates' knowledge of the law, and 75% of both groups gave positive ratings on assessment of litigation experience. Sixty-eight percent of white judges and 48% of minority judges gave positive ratings on the Committees' assessment of judicial temperament. There was a highly significant difference

in the proportion of white (76%) and minority (18%) judges who gave a positive rating to the Committees' recommendations of candidates contributing to racial and ethnic diversity. In fact, of all the screening bodies about which judges were asked, the County Screening Committees received an unsatisfactory rating from the largest proportion of minority judges on the racial and ethnic diversity dimension.

The Mayor's Committee on the Judiciary for the Mayor's Appointments to Family Court and Criminal Court and for vacancies in Civil Court in New York City received favorable ratings from the majority of judges in most areas. Thus, 77% of white judges and 64% of minority judges were satisfied that the Mayor's Committee recommends candidates with adequate knowledge of the law, 80% of white and 70% of minority judges were satisfied with the litigation experience of those recommended by the Committee, and 75% of white and 64% of minority judges were satisfied regarding the judicial temperament of those recommended. There is a highly significant difference between white (90%) and minority (42%) judges in terms of their satisfaction with the racial and ethnic diversity of the candidates recommended. One black judge stated about this committee: "political considerations override any other considerations."

The Housing Court Advisory Committee, which recommends candidates for New York City Housing Court, also generally received favorable ratings from the majority of judges. Sixty-four percent of the white, and 77% of the minority, judges who responded were satisfied that those recommended have adequate knowledge of the law; 62% of white, and 74% of minority, judges were satisfied with respect to the litigation experience of those recommended; and 62% of white, and 66% of minority, judges were satisfied that the

Committee recommends candidates with appropriate judicial temperament. There is a significant difference between the proportion of white (88%) and minority (53%) judges who were satisfied that the recommendations of the Committee lead to adequate racial and ethnic diversity. It should be noted, however, that this is the only Committee for which at least a slight majority of minority judges expressed a positive rating regarding recommendations of candidates who would contribute racial and ethnic diversity.

Political party organizations were rated by much larger proportions of judges than any of the screening committees for appointments. Political party organizations were the only group rated by a majority of white judges (70%). Similarly, a larger proportion of minority judges (79%) rated political party organizations than any other screening committee. Political party organizations also received substantially less favorable ratings from both white and minority judges than did all of the Committees with responsibilities to various appointing authorities. Whereas the majority of both white judges and minority judges gave positive ratings, except in the area of racial and ethnic diversity, to all of the Committees discussed thus far, the majority of all judges gave negative ratings to the political party organizations. Thus, 54% of white, and 64% of minority, judges gave negative ratings on knowledge of the law among candidates put forth by political parties; 55% of white, and 63% of minority, judges gave negative evaluations on litigation experience; and 53% of white, and 65% of minority, judges gave negative ratings on judicial temperament. The majority of white judges (68%) were satisfied with the racial and ethnic diversity of the candidates proposed by political parties; 49% of minority judges were satisfied. This difference is statistically significant.

Overall, there are several important findings. First, with the exception of racial and ethnic diversity, there are striking similarities in the proportions of white and minority judges who gave favorable ratings to all of the entities which conduct screening for judicial appointments. Second, the majority of both white and minority judges gave favorable ratings to those entities but gave negative ratings to political party organizations. Third, there is marked disagreement between white and minority judges regarding the effectiveness of all of the entities in terms of their recommending candidates who provide racial and ethnic diversity to the bench. Only the Housing Court Advisory Committee received a favorable rating from the majority of minority judges in terms of its history of making recommendations that lead to racial and ethnic diversity.

4.0 Opinions Regarding Assets And Qualifications For The Judiciary

Judges were asked to rate the importance ("very important," "somewhat important," or "not important") of several assets for becoming a judge: political ties; access to positions from which judges are drawn; professional ties; and successful law school performance. These data are presented in Table 11.

Table 11. The Importance of Assets for Becoming a Judge* (Numbers in parentheses are percentages)

	WHITES JUDGES			MINORITY JUDGES			TOTAL JUDGES		
	Very Important	Somewhat Impor.	Not Important	Very Important	Somewhat Impor.	Not Important	Very Important	Somewhat Impor.	Not Important
Political Ties	306 (58.2)	182 (34.6)	38 (7.2)	50 (66.7)	21 (28.0)	4 (5.3)	356 (59.2)	203 (33.8)	42 (7.0)
Access to Positions	199 (42.3)	226 (48.0)	46 (9.8)	37 (54.4)	27 (39.7)	4 (5.9)	236 (43.8)	253 (46.9)	50 (9.3)
Professional Ties	158 (30.4)	288 (55.5)	73 (14.1)	33 (45.2)	32 (43.8)	8 (11.0)	191 (32.3)	320 (54.1)	81 (13.7)
Law School Success	29 (5.7)	193 (37.6)	291 (56.7)	6 (8.1)	22 (29.7)	46 (62.2)	35 (6.0)	215 (36.6)	337 (57.4)

* See Appendix B, Table B-11, for means, standard deviations, and tests of significance.

Political ties received the highest scores from both groups of judges; the majority of both white (58%) and minority (67%) judges agreed that political ties are "very important." Both groups gave the next highest ratings to access to positions from which judges are drawn. However, more minority (54%) than white (42%) judges stated that such access is "very important." Professional ties were seen as somewhat less important than access by both groups, although significantly more minority (45%) than white (30%) judges felt that such ties are "very important." The majority of both white (57%) and minority (62%) judges agreed that successful law school performance is "not important." While there are some differences between minority and white judges, their overall agreement as to what assets support entry into the judiciary is striking. It is apparent that both groups perceive connections to be very important. A few judges added other assets, such as financial

sources, fund-raising ability, bar association activities, and personal characteristics of attorneys (e.g., unblemished record, successful private practice, integrity, courage, and gregariousness).

Judges were also asked to rate the importance that specific characteristics of individuals should play in the selection of judges. The characteristics rated included judicial temperament, knowledge of the law, litigation experience, managerial skills, nonlitigation legal experience, and racial and ethnic diversity. These data are presented in Table 12.

Table 12. The Importance of Certain Characteristics for a Judge*
(Numbers in parentheses are percentages)

	WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
	Very Important	Important	Somewhat Impor.	Unimportant	Very Important	Important	Somewhat Impor.	Unimportant	Very Important	Impor. tant	Somewhat Impor.	Unimportant
Judicial Temperament	471 (84.0)	83 (14.8)	7 (1.2)	0 (0)	65 (85.5)	11 (14.5)	0 (0)	0 (0)	536 (84.1)	94 (14.8)	7 (1.1)	0 (0)
Knowledge of Law	353 (62.6)	200 (35.5)	10 (1.8)	1 (.2)	42 (55.3)	31 (40.8)	3 (3.9)	0 (0)	395 (61.7)	231 (36.1)	13 (2.0)	1 (.2)
Litigation Experience	164 (29.1)	241 (42.8)	147 (26.1)	11 (2.0)	22 (29.3)	37 (49.3)	15 (20.0)	1 (1.3)	186 (29.2)	278 (43.6)	162 (25.4)	12 (1.9)
Managerial Skills	115 (20.6)	256 (46.0)	169 (30.3)	17 (3.1)	10 (13.2)	32 (42.1)	29 (38.2)	5 (6.6)	125 (19.7)	288 (45.5)	198 (31.3)	22 (3.5)
Nonlitigation Experience	65 (11.8)	265 (48.3)	192 (35.0)	27 (4.9)	6 (8.1)	38 (51.4)	29 (39.2)	1 (1.4)	71 (11.4)	303 (48.6)	221 (35.5)	28 (4.5)
Racial Diversity	78 (14.0)	217 (39.0)	174 (31.2)	88 (15.8)	45 (59.2)	25 (32.9)	5 (6.6)	1 (1.3)	123 (19.4)	242 (38.2)	179 (28.3)	89 (14.1)

* See Appendix B, Table B-12, for means, standard deviations, and tests of significance.

Overall, the highest scores were accorded to judicial temperament. The majority of white (84%) and minority (86%) judges stated that judicial temperament is "very important." Knowledge of the law was also rated as "very important" by the majority of white (63%) and minority (55%) judges. Litigation experience was given lower ratings by both groups of judges; 29% of judges in both groups rated such experience as "very important." There was a significant difference in the views of white and minority judges regarding the importance of management skills. More white (21%) than minority (13%) judges rated such skills as "very important." Nonlitigation legal experience was rated as "very important" by similar proportions of white (12%) and minority (8%) judges. Given an opportunity to add additional characteristics that should play a role in the selection of judges, a few respondents added characteristics such as flexibility, patience, familiarity with the community, commitment to public service, impartiality, integrity, ethics, sense of fairness, capacity for empathy, sensitivity to rights of parties, and expertise in settlement techniques.

The largest significant difference between white and minority judges was in the importance accorded to racial and ethnic diversity. Whereas only 14% of white judges rated such diversity as "very important," 59% of minority judges gave this rating. In fact, for minority judges racial and ethnic diversity was second in importance only to judicial temperament. It is important to note, however, that although relatively few white judges rated racial and ethnic diversity as "very important," 39% rated such diversity as "important," so that overall a majority of white judges (53%) rated racial and ethnic diversity as "very important" or "important."

In a related question, judges were asked to rate the importance of greater representation of minorities in the judiciary. These findings are presented in Table 13.

Table 13. Importance of Greater Minority Representation on the Bench* (Numbers in parentheses are percentages)

WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
Very Important	Important	Somewhat Impor.	Unimportant	Very Important	Important	Somewhat Impor.	Unimportant	Very Important	Important	Somewhat Impor.	Unimportant
65 (12.5)	209 (40.0)	184 (35.2)	64 (12.3)	59 (86.8)	8 (11.8)	1 (1.5)	0 (0)	124 (21.0)	217 (36.8)	185 (31.4)	64 (10.8)

* See Appendix B, Table B-13, for means, standard deviations and test of significance.

The differences between white and minority judges are highly significant. Whereas 87% of minority judges rated greater representation of minorities as "very important," only 13% of white judges gave this rating. However, again, it is important to note that 53% of white judges rated greater minority representation as "important" or "very important."

In general, minority judges cared more about the racial and ethnic diversity of the bench and were, thus, dissatisfied with the results achieved to date. One black judge stated:

> Discrimination operates still--but is silent [and] subtle. Suggested ways to combat discriminatory hiring [of judges]:
>
> 1) Specified criteria--the more concrete the better;
> 2) Highly visible recruitment of minorities; and
> 3) Procedures mandated for periodic (yearly) review of the process and results of hiring practices on all levels may help. These reviews should be submitted to the Chief Judge and Admin[istrative] Judge and should be made public. (emphasis in original)

This judge also commented:

> More minority judges should come out of a "colorblind" selection process. The paucity of minority representatives on the bench affects the inequitable results of the current processes. (emphasis in the original)

Another black judge commented:

> I strongly feel that judicial selection must be more representative of the population served by the courts at all levels . . . . Further, minority judges are vastly under-represented in supervisory and administrative level assignments.

An Hispanic judge stated:

> There is a disparity between the first and second departments in the number of minority judges, particularly in the number of Hispanic judges.

Another Hispanic judge stated:

> Existing networks and cli[ques] perpetuate their composition in the selection process.

A black judge wrote:

> Notwithstanding an African-American as the deputy chief administrative officer for the [C]ity of New York there is a dearth of us in the lower supervisory positions. We are still [being] told that vacancies are being filled with judges having administrative experience. Even in counties such as the Bronx, where minorities are the majority and are seeking a sense of fairness, which they do not perceive as coming from a non-minority, minority judges are sidestepped.

Some white judges minimized the importance of such diversity. As one white judge wrote:

> Lawyers are not interested in the race, color, creed, or whatever of a judge. They want a person who will try a case without delay, [will] give the attorney and his client a fair shake in court, will show respect to attorneys[,] clients and witnesses, will make a decision without delay, and [will] exercise common sense in all judicial proceedings.

Other white judges expressed resentment of efforts to increase the numbers of minority judges. For example, one white judge stated:

> [There is] [t]oo much emphasis on minorities yielding to poor selections [which are made] on that basis alone.

e judges believe that there is a widespread perception among Whites that minority judges are selected for the sole purpose of providing racial and ethnic diversity to the judiciary. A white judge stated:

> The perception that (especially) African-American judges are on the bench only because of their race is incredibly pervasive (and demeaning).

Similarly, an Hispanic judge wrote:

> An issue that troubles me is the perception that minority judges are selected to fill a quota and are not as well qualified as our 'white' counterparts.

A white judge wrote:

> I don't believe that racial quotas [are] the answer in our judicial system. I do believe that we should embark upon an educational program of racial sensitivity with[in] our already existing system. Lastly, honest qualified minority candidates for judicial office should be given the same consideration for appointment as any other individual. Our judges should be selected solely on their qualifications, not race!! To select judges in any other manner would undermine the excellence of the judiciary and would be demeaning to the qualified Blacks [and] Hispanics who don't need affirmative action to achieve a position in our judicial system.

There is support among some white judges for affirmative efforts to increase minority representation on the bench, so long as the quality of the judiciary is not compromised by such efforts. Thus one white judge stated that he is

> [i]n favor of strong recruitment efforts to encourage judicial applications by qualified minorities <u>but</u> strongly opposed to quota systems or lowering quality selection criteria--strongly opposed to practices of <u>political party</u> nominating committees that allocate judicial nominees by de facto quotas rather than individual merit--note: Mayor's Committee on the Judiciary has done better than political party nominating committees in upholding principle of merit selection while also recruiting minority candidates. (emphasis in original)

Several judges commented on the need to have more minorities represented on all judicial screening committees. One black judge succinctly summarized the views of many judges: "More minority representation is needed on all judicial screening committees now." Another white judge stated:

> I believe the political process will and should bring more minority representation to the Bench. This should not be done by resorting to quotas.

There were marked differences of opinions regarding how the appointment vs. the election processes affect minorities. One white judge stated the case for appointments succinctly:

> [It is] [v]ery difficult for minority lawyers to become judges under [an] elective system. [There is a] [b]etter opportunity to be appointed [rather] than elected.

Another white judge commenting on the problem with the elective system wrote:

> Of all the questions, [in the survey] those referring to screening committees and their operation remain an enigma to me. I certainly don't know what they do, nor have I seen reports of their activities. Therefore, one cannot assess their abilities or determinations. One can assess political party choices for the judiciary. It's strictly a matter of politics, selecting a winner for the party slate. I believe minorities find it difficult in this area, hence very few seek nomination. As long as the majority of judges are elected--the system will be perpetuated.

Yet another white judge pointed out that the problem with elections may lie not so much with the electorate, but with the selection of candidates by political parties:

> If political parties were not part of the election process, many minorities who might never have a chance at a political party nomination, but are nonetheless qualified and well known for their accomplishments in their communities, would be able to run on their own name.

Similarly, a black judge stated:

> The political structure outside of New York City must improve [and] include blacks on the bench.

The case against appointments and an argument for elections was made by a white judge:

> Highly suspicious of "merit selection" proposed. The City of New York is an example of the problems caused by the, so called[,] non-political appointment of judges by the Mayor's Committee. The Criminal Court is put at a great disadvantage, as this writer has been told, if they are too tough on criminals, their reappointment is in jeopardy. Judges should be elected for shorter terms and the electorate ought to be able to review their record (and not a record from "Judge Watchers").

A black judge added:

> At the present time, the election of judges insures some minority judges will be able to become judges (Manhattan, Bronx). This is not always the case (Brooklyn).

Yet another white judge wrote:

> Some are sponsoring the theory that judges should be appointed. Reviewing the abilities of those on the Supreme Court (both parties) I am proud of their contributions to our system of justice. The system where the parties designate, and the bar association approves or the designee is withdrawn has produced this outstanding Bench. The people should not have their right to elect their judges abridged. As with our founding fathers I fear elitism and the loss of the balance among the executive, legislature, and judiciary.

A black judge wrote:

> I am of the opinion that the present judicial Selection System by election, although politically controlled, results in a judiciary that is more representative of the entire society and therefore, it is more favorable for the election of minorities to the Judiciary. I believe that a Judicial Selection process by appointment only, by the Governor, Mayor, or whomever, at wors[t]will result in fewer appointments for minorities, and at best, will result in an "Elitist Judiciary."

Another black judge stated:

> That so called "merit selection" is a fraud. It is an effort to move power of selection away from cities where there are more minorities to [a] plateau where whites have leverage beyond what their numbers warrant. No self-appointed group should have veto-power in deciding high constitutional office.

Finally, another black judge commented:

> [A]dequate representation in judicial selection has to be achieved by the elective process; the screening committee method has not been effective for minorities.

5.0 Judicial Working Environment

Judges were asked about their satisfaction with their court of appointment or election (87% of white judges and 89% of minority judges were sitting on their "own" courts) and whether case, calendar, and panel assignments are fairly made. These data are presented in Table 14.

Table 14. Satisfaction with Court of Appointment/Election & Assignments* (Numbers in parentheses are percentages)

		White Judges	Minority Judges	Total Judges
Very Satisfied		371 (67.7)	37 (50.0)	408 (65.6)
Satisfied		163 (29.7)	30 (40.5)	193 (31.0)
Dissatisfied		12 (2.2)	6 (8.1)	18 (2.9)
Very Dissatisfied		2 (.4)	1 (1.4)	3 (.5)
Satisfied with Case Assignments	Yes	410 (96.2)	51 (87.9)	461 (95.2)
	No	16 (3.8)	7 (12.1)	23 (4.8)
Satisfied with Calendar Part Assignments	Yes	244 (94.2)	34 (82.9)	278 (92.7)
	No	15 (5.8)	7 (17.1)	22 (7.3)
Satisfied with Panel Assignments	Yes	68 (97.1)	13 (81.3)	81 (94.2)
	No	2 (2.9)	3 (18.8)	5 (5.8)

* See Appendix B, Table B-14, for means, standard deviations, and tests of significance.

Although the majority of both white (68%) and minority (50%) judges reported that they are "very satisfied" with their court, the differences between the two groups are statistically significant. More white judges are "very satisfied," as opposed to merely "satisfied," and more minority judges expressed some dissatisfaction. Whereas 10% of minority judges are either "dissatisfied" or "very dissatisfied" with their experience on the court on which they are sitting, only 3% of white judges are similarly dissatisfied. Judges who were dissatisfied were asked to explain the sources of their dissatisfaction. Some judges reported dissatisfaction due to the size of their case loads, which they feel prevents them from giving due consideration to each case. Some expressed dissatisfaction over the lack of

support staff and research resources. A few judges cited low salaries and the lack of merit promotions as sources of dissatisfaction. Finally, among those who expressed dissatisfaction, the largest number cited poor working conditions, including poor physical environment, and the problematic behavior of others (e.g., unfair administrative judges, incompetence of some judges, attorneys coming late or ill-prepared, and difficulties with clerks and court officers). The source of dissatisfaction was described by one Hispanic judge as follows:

> Unlike any other judge in my court, I was assigned to do intake only for almost two years upon my appointment to the Family Court Bench. I was given this assignment even though I had more trial experience and more graduate education and training than most of my colleagues. Only the conversion to [the individual assignment system] made a trial part available to me.

A white judge wrote of her dissatisfaction:

> No credit given (judicial advancement, etc.) for recognized commitment to participation in anti-racist or affirmative action projects (or daily conduct in courtroom in a nonracist, respectful fashion). Caring about these issues, insisting on their inclusion in programs, etc.; reaching out in employment opportunities or exemplary personal behavior are not part of the coin of the realm.

There are significant differences in the assessment by minority and white judges of the fairness of case assignments. Although a large majority of both white (96%) and minority (88%) judges feel case assignments are fairly made: 12% of minority judges, but only 4% of white judges, feel such assignments are not fairly made. Judges dissatisfied with case assignments feel that "some judges are overworked while others are idle" and that case assignments are made through "internal politics."

Significantly more white (94%) than minority (83%) judges felt that calendar assignments are fair: 17% of minority judges, but only 6% of white judges, felt such

assignments to be unfair. Among those who expressed dissatisfaction, the primary reasons were unequal workloads and assignment of newsworthy cases to judges who have "connections." Respondents also stated that "the least desirable assignments fall to women and Blacks during emergencies"; that "assignments are inappropriately based on computer production record rather than on efficiency and sensitivity"; that "the 'weaker' judges who cannot complete an AP calendar part in an assigned time period get more assignments to jury parts"; that "there should be no special parts (e.g. homicide part)"; that "acting Supreme Court judges get the worst assignments"; that "DAs have too much input into the selection of trial judges"; and that "sensational cases are assigned to friends."

Relatively few judges had panel assignments. Among these few judges (only 70 white and 16 minority), there were no significant differences in the proportions who felt that such assignments are fair. Among the few judges who felt that panel assignments are unfair, most felt that newsworthy cases are unequally distributed among judges and that assignments to the panels should be made on a rotating basis.

Judges were asked to rate the importance of training judges in cultural/ racial sensitivity.[3] These findings are presented in Table 15.

[3]Judges were also asked about the importance of such training for the non-judicial employees in their courts. Responses to this question are discussed in Section V on nonjudicial employees.

Table 15. The Importance of Training on Cross-Cultural Sensitivity for Judges* (Numbers in parentheses are percentages)

WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
Very Important	Somewhat Impor.	Not Important	Unimportant	Very Important	Somewhat Impor.	Not Important	Unimportant	Very Important	Somewhat Impor.	Not Important	Unimportant
143 (27.4)	220 (42.1)	114 (21.8)	45 (8.6)	47 (68.1)	13 (18.8)	5 (7.2)	4 (5.8)	190 (32.1)	233 (39.4)	119 (20.1)	49 (8.3)

* See Appendix B, Table B-15, for means, standard deviations and tests of significance.

There is a highly significant difference between minority and white judges on this issue. Whereas 68% of minority judges felt that such training is "very important," 27% of white judges gave this rating. However, 70% of white judges rated such training as either "very important" or "important."

Judges were asked to rate the extent to which they feel that the race of a judge affects how she or he is treated by other judges, by attorneys, and by courtroom personnel. These findings are presented in Table 16.

Table 16. The Extent to which the Treatment of Judges, by other Judges, Attorneys, and Courtroom Personnel is affected by Racial/Ethnic Differences
(Numbers in parentheses are percentages)

	WHITE JUDGES			MINORITY JUDGES			TOTAL JUDGES		
	Not at all	Some-what	Great-ly	Not at all	Some-what	Great-ly	Not at all	Some-what	Great-ly
Treatment of judges by other judges is affected	462 (85.6)	72 (13.3)	6 (1.1)	20 (26.7)	47 (62.7)	8 (10.7)	482 (78.4)	119 (19.3)	14 (2.3)
Treatment of judges by attorneys is affected	417 (77.3)	109 (20.3)	10 (1.9)	18 (24.0)	43 (57.3)	14 (18.7)	435 (71.2)	152 (24.9)	24 (3.9)
Treatment of judges by court personnel is affected	442 (84.2)	79 (15.0)	4 (.8)	27 (37.0)	37 (50.7)	9 (12.3)	469 (78.4)	116 (19.4)	13 (2.2)

* See Appendix B, Table B-16, for means, standard deviations and tests of significance.

Whereas 11% of minority judges reported that the race of a judge has a "great" effect on how judges are treated by other judges, only 1% of white judges gave such a response. Overall, 86% of white judges, but only 27% of minority judges, said that the race of a judge has no effect on the treatment of a judge by her or his judicial colleagues.

Minority judges were significantly more likely than white judges to state that the race of the judge affects treatment of the judge by all other actors. Thus, whereas 19% of minority judges indicated that race of judges "greatly" affects the treatment of judges by attorneys, only 2% of whites gave this response. It is important to note, however, that 20% of white judges indicated that the race of judges has "somewhat" of an impact on how judges are treated by attorneys. Overall, 78% of white judges, but only 24% of minority judges, said that race has no relationship to how judges are treated by attorneys.

Finally, 12% of minority judges and 1% of white judges reported that race of judges has a "great" impact on how judges are treated by courtroom personnel. Among white judges, 84% reported that race has no impact; 37% of minority judges gave this rating.

Overall, minority judges are inclined to express the opinion that race of judges "somewhat" affects how judges are treated by their colleagues on the bench, by attorneys and by courtroom personnel. Moreover, they feel that their race affects their treatment by attorneys more than it affects their treatment by their colleagues. In their view, their treatment by courtroom personnel is least affected by race. On the other hand, overall, white judges feel that treatment of judges by others is "not at all" affected by race.

One black judge commented:

> As a lawyer I encountered subtle forms of racism in that judges had the tendency to assume that I was the litigant as opposed to being an attorney. My legal skills and competency were often called into question in subtle ways and sometimes blatantly. As a judge I find that I still encounter forms of racism and/or sexism from the attorneys as well as some of my colleagues. There is a way in which your skills and knowledge of the law will be called into question much more quickly than [those of] a non-minority person.

6.0 Conclusions

The data show few differences in the career paths of white and minority judges. Minorities are not being kept from the bench because they lack some critical job experience(s).

Large numbers of judges have no opinion regarding the functioning of various screening/nominating committees for appointive positions, suggesting that the work of these committees is not widely known and not subject to public scrutiny. There are striking similarities in the proportions of white and minority judges giving favorable ratings to these

entities in terms of their capacity to identify and to recommend candidates with judicial temperament, knowledge of the law and litigation experience. Minority judges are much less satisfied, however, than white judges with the racial and ethnic diversity of those identified and recommended. The majority of both white and minority judges gave favorable ratings to committees that function on behalf of appointing authorities and gave negative ratings to political party organizations, suggesting that political party organizations are selecting less satisfactory candidates.

There is marked agreement as to the assets that support entry into the judiciary; "connections" count. This finding supports the Commission's view that increasing the numbers of minorities on various judicial nominating/screening panels is critical. Minorities on these panels are more likely to be familiar with other minorities. If who you know counts, it is apparent that increasing the numbers of minorities on these panels will extend the outreach capability of these panels into the minority legal community and will expand the pool of minority applicants for the bench.

There is strong agreement regarding the characteristics that make a good judge: judicial temperament; knowledge of the law; litigation experience; and other legal experience. Minority judges are more likely than white judges to value racial and ethnic diversity as an important characteristic. Nevertheless, a majority of white judges rated racial and ethnic diversity as an important characteristic.

The majority of white and minority judges were satisfied with their court of appointment/election and with the fairness of their assignments. Nevertheless, there was more dissatisfaction among minority judges.

A majority of both white and minority judges endorsed the importance of training on cross cultural sensitivity, suggesting that such training would be a welcome and important addition to judicial training. The need for such training is supported by the finding that the majority of minority judges felt that their treatment by other judges, attorneys, and court personnel is affected by their race.

IV. LEGAL REPRESENTATION OF MINORITIES

1.0 Introduction

There has been extensive research documenting the fact that the supply of civil legal services is inadequate to meet the needs of low-income persons in New York State. There has also been research documenting the problems of legal aid, public defender, and 18-B panel attorneys in providing quality legal representation to low-income persons in criminal cases.[4] The overrepresentation of minorities among the poor makes the matter of the availability and quality of legal representation a minority issue.[5] For this reason, the Commission was interested in judges' observations regarding the availability of legal representation in civil cases and the quality of representation in both civil and criminal cases.

2.0 Findings Relevant to the Availability and Quality of Legal Representation

Judges were asked to report on the frequency ("never" 0%; "rarely" 1-5%; "sometimes" 6-25%; "often" 26-50%; and "very often" 51-100%) with which minority and white litigants are unrepresented. For the purpose of this analysis, only the 384 white judges and the 51 minority judges with civil court experience were included. In addition, all judges

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[4] See Legal Representation of Minorities, Background Briefing Paper #3, in this volume.

[5] In 1987, 11.5% of Whites, but 31.6% of Blacks, 38% of Hispanics and 18.1% of "others" (including Asian Americans and Native Americans) lived below the federal poverty level (Current Population Survey, New York State Department of Economic Development, State Data Center, 1988).

were asked to report on the frequency with which minority and white litigants receive inadequate legal representation. These findings are presented in Table 17.

Table 17. **The Frequency with which Litigants are in Court Without Legal Representation or with Inadequate Representation*** (Numbers in parentheses are percentages)

	WHITE JUDGES			MINORITY JUDGES			TOTAL JUDGES		
	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly
Minority litigants are not represented**	50 (13.0)	72 (18.8)	262 (68.2)	21 (41.2)	12 (23.5)	18 (35.3)	71 (16.3)	84 (19.3)	280 (64.4)
White litigants are not represented	26 (6.7)	94 (24.1)	270 (69.2)	4 (8.2)	18 (36.7)	27 (55.1)	30 (6.8)	112 (25.5)	297 (67.7)
Minority litigants have inadequate legal representation	50 (10.0)	163 (32.6)	287 (57.4)	35 (48.6)	20 (27.8)	17 (23.6)	85 (14.9)	183 (32.0)	304 (53.1)
White litigants have inadequate legal representation	20 (3.9)	192 (37.9)	295 (58.2)	4 (5.9)	36 (52.9)	28 (41.2)	24 (4.2)	228 (39.7)	323 (56.2)

* See Appendix B, Table 17 for means, standard deviations, and tests of significance.
** Only judges with reported experience presiding over civil cases were included.

There are significant differences between white and minority judges in their perceptions regarding the frequency with which both white and minority civil litigants are unrepresented. Among white judges with civil court experience, 68% stated that minority litigants are "never/rarely" unrepresented; 69% said the same of white litigants. Minority judges were far more likely to state that both white and minority litigants are unrepresented; 55% said white litigants, and 35% said minority litigants, are "never/rarely" unrepresented. Conversely, among white judges, 7% stated that white, and 13% stated that minority, litigants are "often/very often" unrepresented; among minority judges, 8% responded in this manner

regarding white litigants, and 41% said minority litigants are "often/very often" unrepresented. Whereas white judges gave essentially the same response for both white and minority litigants, there is a significant difference in the response of minority judges; minority judges stated that minority litigants are more often unrepresented than are white litigants. Overall, it seems that minority judges have a heightened sensitivity to the civil representation problems not only of minorities, but also of white litigants. Moreover, while white judges reported no differences between white and minority litigants in terms of the frequency with which they lack counsel, minority judges reported a major difference.

Several judges commented on the lack of representation for minority litigants. For example, one white judge wrote:

> I believe the situation in the landlord-tenant parts of the Civil Court of the City of New York is outrageous. I believe minority pro se litigants are denied equal protection of the law on a daily basis there. They are opposed by highly skilled landlords' attorneys who regularly take unfair advantage of them. Many default judgements are obtained and minority respondents evicted from their homes without due process of law. The situation is horrendous.

Indeed, judges presiding over New York City Housing Court and Civil Court were more likely to report lack of representation for both minority and white litigants than were judges in the Civil Term of Supreme Court. Among New York City "ghetto" court judges, 52% said that minority litigants lack legal representation "often/very often"; the comparable statistic for white litigants is 22%. Among Supreme Court judges with civil court experience, 16% reported that minority litigants are unrepresented "often/very often"; the comparable percentage for white litigants was 4%. These data support the findings presented in Section II regarding the adverse impact of "ghetto" courts. Not only are physical conditions worse

in these courts, in which predominantly minorities appear, but persons appearing in these courts are also less likely to have an attorney.

There are significant differences between white and minority judges in terms of reported frequency of inadequate representation of both white and minority litigants. White judges perceived little difference between minority and white litigants, in terms of the frequency with which they are inadequately represented. Approximately one third of white judges stated that both white (38%) and minority (33%) litigants receive inadequate representation "sometimes." Minority judges have a very different view on this issue, even as it relates to white litigants. Thus, much larger proportions of minority (53%) than white (38%) judges reported that representation received by white litigants is inadequate "sometimes." Minority judges reported more frequent inadequate representation for minority litigants. Whereas only 6% of minority judges perceived inadequate representation for white litigants "often/very often," 49% perceived inadequate representation for minority litigants with such frequency. This difference is also significant.

Civil court judges reported a significantly higher incidence of inadequate legal representation for minority and white litigants than did criminal court judges. Among judges handling exclusively criminal caseloads, 2% reported that white litigants have inadequate legal representation "often/very often," and 38% reported "sometimes"; the comparable figures for minority litigants were 10% and 33%, respectively. Ten percent of civil court judges said white litigants are inadequately represented "often/very often" and 43% said this was true "sometimes"; the comparable figures for minority litigants are 25% and 34%, respectively.

Regarding both minority and white litigants, judges in New York City ghetto courts reported a higher frequency of inadequate legal representation than did other New York City judges. Nine percent of ghetto court judges reported that white litigants are inadequately represented "often/very often"; 28% made such report of minority litigants. Five percent of other New York City judges said white litigants had inadequate legal representation; 18% said this about minority litigants.

Overall, white judges saw no difference in the quality of the representation available to white and minority litigants and were less likely than were minority judges to report that the quality of representation is poor. Minority judges reported poor quality of representation for all litigants more often than did white judges, but particularly for minority litigants.

One black judge commented on the inexperience of attorneys assigned to minority litigants:

> With respect to the [F]amily [C]ourt, in the County of Westchester, the County Attorney's Office prosecutes all j[uvenile] o[ffender], neglect, abuse, [and] [g]uardianship cases. Most of the respondents and families in this category are non-white. Most, if not all of the attorneys assigned to Family Court from the County Attorney's Office have less than 2 years legal experience, limited courtroom experience, no significant training and in many cases are not admitted to the Bar yet. This works to the detriment of the respondents as well as the non-white and white children in whose interest these cases are brought. There appears to be an attitude that these issues and people are not important enough to warrant diligent and experienced attorneys.

3.6 Conclusions

The findings show that substantial numbers of judges, especially minority judges, are aware of the lack of representation for litigants, particularly minorities, in civil litigation.

Lack of representation is more of a problem in New York City Civil Court and Housing Court than in Civil Term of Supreme Court. Moreover, substantial numbers of judges, particularly minority judges, reported poor quality representation of litigants, particularly minority litigants. More Civil Court than Criminal Court judges reported poor quality legal representation. Minority, but not white, judges perceive minority litigants to be disadvantaged in both the availablility of civil representation and in the overall quality of representation available. Thus, minorities not only appear in courts with the worst physical facilities but are also less likely to be represented by counsel or to receive quality legal representation.

V. REPRESENTATION OF MINORITIES IN THE NONJUDICIAL WORK FORCE AND INTERACTION WITH THE PUBLIC

1.0 Introduction

Representation of minorities in the nonjudicial work force could have a major impact on minority users of the courts in terms of their perceptions of isolation and fairness. As discussed in the body of the Commission's main report, the minority perception that justice means "just us" is fueled by the underrepresentation of minorities among nonjudicial personnel. The Commission obtained and reported data on the proportions of minorities among various categories of nonjudicial personnel in various types of courts. For the purposes of the judges' study, it was important to obtain information on the awareness of judges about the race/ethnic composition of their courtroom personnel and the importance accorded greater minority representation and greater sensitivity of all nonjudicial personnel to minority litigants.

2.0 Minority Representation in the Nonjudicial Work Force

Judges were asked to rate the frequency ("never," 0%; "rarely," 1-5%; "sometimes," 6-25%; "often," 26-50%; and "very often," 51-100%) with which cases involving minority litigants are heard in courtrooms in which all nonjudicial personnel are white. Because it could be expected that the frequency of occurrence of such events would vary with the proportion of minority court-users (as approximated by the proportions of minorities in the general population) for the purposes of this analysis, judges were grouped into three categories based on 1980 census data for the counties in which they sit. Group 1 judges are those who sit in courts where minorities represent 38% to 67% of the population. Group 2 judges are those who sit in courts in counties where the minority populations range from 9-17%. Group 3 judges are those who sit in courts in the remaining counties of the state where the minority population is less than 9%. The findings are presented in Table 18.

Table 18. The Frequency with which a Case Involving a Minority Litigant is Decided in a Courtroom in which all Nonjudicial Personnel are White
(Numbers in parentheses are percentages)

GROUP 1			GROUP 2			GROUP 3			TOTAL JUDGES		
Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly
50 (20.5)	77 (31.6)	117 (48.0)	107 (62.9)	37 (21.8)	26 (15.3)	107 (81.7)	16 (12.1)	8 (6.1)	264 (48.4)	130 (23.8)	151 (27.7)

* See Appendix E, Table E-18, for means, standard deviations, and tests of significance.

The differences among judges in these three geographic groupings are significant with Group 1 reporting the lowest frequency of all-white nonjudicial staffs, followed by Group 2 and 3, respectively. The most striking finding is the high proportion of judges who stated that cases of minority litigants are heard in courtrooms in which the nonjudicial personnel

are all white. One in five (21%) judges in counties with sizeable minority populations (Group 1) stated that minority cases are heard in such all-white courtrooms "often/very often." Among Group 2 judges, who sit in counties where the minority proportion of the population ranges from 9-17%, nearly two thirds (63%) stated that minority cases are heard in all-white courtrooms "often/very often." And an overwhelming 81% percent of judges in counties with less than 9% minority populations (Group 3 judges) stated that minority cases are heard in all-white courtrooms "often/very often." One white judge wrote:

> For Family Court (and other high-volume, "poor person's" courts) the presence--or absence--of minority, non-judicial personnel is particularly important, since many litigants appear pro se, and have significant interactions with non-judicial personnel.

A black judge wrote:

> The over abundance of white court officers contributes to the existence of both real and perceived bias [and] inequality displayed in the courts.

Judges were also asked about the number of minorities on their personal legal and clerical staff. These data are presented in Table 19.

Table 19. Race of Judges' Staff Attorneys and Clerical Staff
(Numbers in parentheses are percentages)

		WHITE JUDGES	MIN. JUDGES	TOTAL JUDGES
Staff Attorneys	White	461 (93.9)	40 (54.8)	501 (88.8)
	Min.	30 (6.1)	33 (45.2)	63 (11.2)
	Total	491 (100)	73 (100)	564 (100)
Clerical Staff	White	822 (86.0)	64 (52.0)	886 (82.1)
	Min.	134 (14.0)	59 (48.0)	193 (17.9)
	Total	956 (100)	123 (100)	1079 (100)

Overall, the percentage of minority attorneys on the staff of white judges is 6%; of the 491 staff attorneys working for white judges, only 30 attorneys are minorities. The percentage of minority attorneys on the staff of minority judges is 45%. Of the 73 attorneys working for minority judges, 33 are minorities. It is apparent that relatively few white judges employ minority attorneys. Similarly, 14% of white judges' clerical staff are minorities; 48% of minority judges' clerical staff are minorities. One white judge stated:

> The reason I have a 100% white staff is because I have been unable to attract the calibre of attorneys I require. Most minority attorneys are hired by large firms who pay twice as much as I can offer. I have actively solicited schools. This is sad for the system, good for the young attorneys.

Judges were asked to rate their satisfaction with minority representation in the nonjudicial work force in their courtrooms and the importance of greater representation of minorities among nonjudicial personnel. These data are presented in Tables 20 and 21.

Table 20. **Satisfaction with Minority Representation in the Nonjudicial Work Force*** (Numbers in parentheses are percentages)

WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
Very Satis-fied	Satis-fied	Dis-satis-fied	Very Dissat-isfied	Very Satis-fied	Satis-fied	Dis-satis-fied	Very Dissat-isfied	Very Satis-fied	Satis-fied	Dis-satis-fied	Very Dissat-isfied
127 (24.2)	305 (58.1)	82 (15.6)	11 (2.1)	9 (12.3)	26 (35.6)	30 (41.1)	8 (11.0)	136 (22.7)	331 (55.4)	112 (18.7)	19 (3.2)

* See Appendix E, Table E-20, for means, standard deviations, and test of significance.

Table 21. The Importance of Greater Minority Representation Among Nonjudicial Personnel*

Numbers in parentheses are percentages

WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
Very Important	Important	Somewhat Important	Not Important	Very Important	Important	Somewhat Important	Not Important	Very Important	Important	Somewhat Important	Not Important
50 (11.5)	128 (36.3)	150 (30.7)	111 (21.4)	40 (58.8)	22 (33.3)	5 (7.4)	0 (0.0)	100 (17.1)	211 (36.0)	164 (28.0)	111 (18.9)

* See Appendix B, Table B-21, for means, standard deviations, and test of significance.

There is a significant difference between white and minority judges in terms of satisfaction with minority representation in the nonjudicial work force. Whereas more than three quarters (82%) of white judges are "satisfied" or "very satisfied," fewer than half (48%) of minority judges are "satisfied" or "very satisfied."

Differences between minority and white judges in terms of the perceived importance of greater representation of minorities among nonjudicial personnel are also significant. Whereas 59% of minority judges rated increased representation of minorities among nonjudicial personnel as "very important," only 12% of white judges ascribed such importance to greater minority representation. However, it is noteworthy that, overall, 48% of white judges rated this issue as "important" or "very important." Among minority judges, 93% rated increased representation of minorities in the nonjudicial work force as "important" or "very important." An Hispanic judge wrote:

> The judiciary and supportive personnel should be involved in programs directed to minority youth, to assist development and education, towards increasing [the] number of educated prepared minority persons to take on court responsibilities in every title.

Another Hispanic judge stated:

> Hispanic representation in court officer, court clerk, and stenographer positions is virtually non existent!

A black judge stated:

> I am concerned about the number of Blacks that are taking [and] passing the civil service test for the myriad of positions available in the courthouse. The number of minorities holding these positions, here in the suburbs, is alarmingly low.

A white judge commented:

> Non-judicial personnel seem to believe that promotional opportunities are limited to white males. Notices of examinations should be more widely circulated, and visible assignments (i.e., in the courtrooms as opposed to in the back offices) should be more widely distributed.

3.0 Interaction of Nonjudicial Personnel with the Public

Judges were asked to rate their satisfaction with their nonjudicial personnel in terms of competence, dedication, and quality of interaction with the public. These findings are provided in Table 22.

Table 22. Satisfaction with the Competence, Dedication and Interaction with the Public of Nonjudicial Personnel*

Numbers in parentheses are percentages.

	WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
	Very Satis-fied	Satis-fied	Dis-satis-fied	Very Dissat-isfied	Very Satis-fied	Satis-fied	Dis-satis-fied	Very Dissat-isfied	Very Satis-fied	Satis-fied	Dis-satis-fied	Very Dissat-isfied
Competence	260 (47.2)	263 (47.7)	26 (4.7)	2 (0.4)	26 (35.1)	43 (58.1)	5 (6.8)	0 (0.0)	286 (45.8)	306 (49.3)	31 (5.0)	2 (0.3)
Dedication	226 (41.0)	269 (48.8)	50 (9.1)	6 (1.1)	18 (24.7)	47 (64.4)	7 (9.6)	1 (1.4)	244 (39.1)	316 (50.6)	57 (9.1)	7 (1.1)
Interaction with the public	203 (36.8)	301 (55.3)	41 (7.5)	2 (0.4)	16 (22.2)	45 (62.5)	9 (12.5)	2 (2.8)	216 (35.1)	346 (56.2)	50 (8.1)	4 (0.6)

* See Appendix B, Table B-22, for means, standard deviations, and tests of significance.

There are no differences between white and minority judges in terms of their satisfaction with the competence of nonjudicial personnel. The large majority of both white and minority judges are either "very satisfied" or "satisfied" (95% of white and 93% of minority judges).

There is a significant difference in the degree of satisfaction expressed by white and minority judges as to the dedication of courtroom personnel. Whereas only 25% of minority judges are "very satisfied," 41% of white judges are "very satisfied." However, relatively few judges in either group are "dissatisfied" or "very dissatisfied" (10% white; 11% minority).

There is also a significant difference in judges' satisfaction with how courtroom personnel interact with the public. Whereas 37% of white judges are "very satisfied," only 22% of minority judges are "very satisfied." Moreover, nearly twice as many minority (15%) as white (8%) judges are "dissatisfied" or "very dissatisfied." Despite these differences, the

great majority of both white and minority judges are "satisfied" or "very satisfied" (92% white; 85% minority).

Among New York City judges, those who preside over ghetto courts (Family court. Criminal Court, Civil Court, and Housing Court) were significantly less satisfied with the quality of interaction with the public by nonjudicial personnel than other judges. Almost one in five (18%) judges in New York City ghetto courts were "dissatisfied" or "very dissatisfied" with the nonjudicial personnel's interaction with the public; the comparable figure for other New York City judges was only 8%. There were no significant differences on these items between judges who preside over exclusively criminal or civil courts. One white judge expressed dissatisfaction as follows:

> The present term rotation of court officers and six month rotation of court clerks and law assistants makes it quite impossible to create the team play that should pervade Housing Court. The Housing Judges have no say over those selections. The Housing Judges have no "personal staff," though a law assistant position was created about four years ago which greatly increased the capacity to do a competent job. At present I have a more than perfect court clerk and law assistant. The prior six months the court clerk was incompetent and gruff. The court officers are a totally mixed bag. Yes they presently provide security (I never had an "incident" in my courtroom) but for the most part they do not perceive that they are there to assist the public. If underlying their job is help to the public and I think it should be, I'm distressed and dissatisfied.

Judges were also asked to rate the importance of training for nonjudicial personnel on cultural and racial sensitivity. These data are provided in Table 23.

Table 23. The Importance of Training Nonjudicial Personnel on Cultural/Racial Sensitivity*
(Numbers in parentheses are percentages)

WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
Very Impor-tant	Impor-tant	Some-what Impor.	Not Impor-tant	Very Impor-tant	Impor-tant	Some-what Impor.	Not Impor-tant	Very Impor-tant	Impor-tant	Some-what Impor.	Not Impor-tant
150 (28.8)	207 (39.7)	124 (23.8)	40 (7.7)	47 (67.1)	14 (20.0)	8 (11.4)	1 (1.4)	197 (33.3)	221 (37.4)	132 (22.3)	41 (6.9)

* See Appendix B, Table B-23, for means, standard deviations, and test of significance.

The difference between white and minority judges is statistically significant and striking. Sixty-seven percent of minority judges and 29% of white judges rated such training as "very important." It is noteworthy, however, that 40% of white judges rated such training as "important," so that overall more than two thirds (69%) of white judges gave "important" or "very important" as their response. Among minority judges, 87% rated such training as important" or "very important." It is interesting to note that judges' ratings of the importance of training for nonjudicial personnel are very similar to their ratings of the importance of such training for judges, as discussed in Section III. Thus, judges did not say that training in cross-cultural sensitivity is important for nonjudicial personnel but not for judges. Very similar proportions of both white and minority judges endorsed the importance of training for both judicial and nonjudicial personnel.

The need for training of court personnel was summarized by one white judge as follows:

> In my protracted and complex litigation (civil) part, I am able to control the behavior of court personnel and mandate both courtesy and avoidance of racial slurs. In a large calendar part involving criminal defendants or landlord-tenant respondents, a Judge is far more dependent on the court personnel and at the same time less able to control their behavior. While a Judge can "set

a tone," sensitivity training is needed. Attitudes and behavior patterns cannot change overnight so training must begin at once.

Another white judge wrote:

> Discrimination is based on the unfounded perception that one person is "better" than someone else. There is no litmus test for determining who is prejudiced but it does seem to me that those who have the broadest range of life experiences seem to be the least prejudiced and vice versa. I see too many white court personnel who have had only one, narrow life experience with minorities and that is as defendants in criminal cases. The minority judges and lawyers they use are dismissed as exceptions to the rule. Training for non-judicial personnel on cultural/racial sensitivity is a void that must be filled.

An Hispanic judge wrote:

> More training and education has to be provided to all personnel, including judges, in the area of racial and gender sensitivity training and understanding. [Training] [s]hould be done on [a] regular basis.

4.0 Conclusions

The findings strongly support the view that many minority litigants enter all-white courtrooms. The absence of minority court personnel may fuel both the feelings of estrangement felt by minority litigants and the perceptions of bias. The findings also show that, with rare exceptions (6%), white judges do not choose minority lawyers for their personal legal staffs. One benefit associated with minority judges is that they are far more likely to have minority lawyers on their staffs and thus to contribute in the legal training of the "next generation." However, there appears to be an understanding among white judges of the need for more minority personnel in the courts: 48% of white judges rated such greater minority representation as "important" or "very important".

Most judges, whether white or minority, appear to be satisfied with their nonjudicial personnel. Satisfaction ratings are generally higher for the competence of personnel than

for their interaction with the public. Judges recognize the need for training in cultural and racial sensitivity of existing personnel and would therefore be likely to be supportive of a training effort.

VI. RACE-RELATED DISPARITIES IN CIVIL CASE OUTCOMES

1.0 Introduction

Because of reports that minorities receive lower settlements than Whites, judges were asked a few questions pertaining to race-related disparities in civil cases. Judges' awareness of such disparities is important in terms of stimulating a debate about disparities and the mechanisms that can be put in place to document and monitor them.

2.0 Disparities in Civil Outcomes

Judges were asked to rate the frequency with which "a civil case is regarded by attorneys or insurance companies as less 'winnable' because the injured party is minority" and how often "the relief awarded to a white plaintiff in a civil case is more than the relief awarded to a minority plaintiff in a comparable case." The possible ratings were "never" (0%); "rarely" (1-5%); "sometimes" (6-25%); "often" (26-50%); and "very often" (51-100%). There was also a "no experience" rating so that judges without civil court experience did not respond to these questions. Findings relevant to these two items are presented in Table 24.

Table 24. Judge Responses to Questions About Civil Outcomes* (Numbers in parentheses are percentages)

	WHITE JUDGES			MINORITY JUDGES			TOTAL JUDGES		
	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly
A civil case is regarded by attorneys or insurance companies as less 'winnable' because the injured party is minority.	12 (4.4)	63 (23.3)	195 (72.2)	11 (28.2)	12 (30.8)	16 (41.0)	23 (7.4)	75 (24.3)	212 (68.3)
The relief awarded to a white plaintiff in a civil case is more than the relief awarded to a minority plaintiff in a comparable case.	10 (3.8)	44 (16.5)	212 (79.7)	15 (39.5)	11 (28.9)	12 (31.6)	25 (8.2)	55 (18.1)	224 (73.7)

* See Appendix B, Table B-24, for means, standard deviations, and tests of significance.

Significantly more white (72%) than minority (41%) judges reported that civil cases are "never/rarely" regarded as less winnable because the injured party is minority. It is striking, however, that more than one quarter (28%) of white judges reported that this happens "sometimes" or "often/very often." Among minority judges, 31% reported that such behavior occurs "sometimes," and more than one quarter (28%) reported that it happens "often/very often."

There are also significant differences between white and minority judges regarding their perceptions as to how often the relief awarded to a white plaintiff is more than the relief awarded to a minority plaintiff. Whereas 80% of white judges stated that this "never/rarely" happens, only 32% of minority judges made such report. On the other hand, 20% of white judges reported that such behavior happens "sometimes" or "often/very often." Among minority judges, 29% reported that such behavior happens "sometimes," and reported that it happens "often/very often."

Responses to these items were also analyzed by the proportions of minorities in the counties in which judges sit. Group 1 judges serve in counties where minorities represent 38-97% of the total population. Group 2 judges are located in counties where there is a 9-37% minority population, and Group 3 judges are in counties with less than 9% minority population. Judges in predominantly white counties (Group 3) reported significantly lower rates of minority plaintiffs' cases being considered less winnable, and white plaintiffs receiving more relief than judges in Groups 1 or 2. Sixty-six percent of Group 1 judges, 63% of Group 2 judges, and 84% of Group 3 judges reported that minority plaintiffs' civil cases are considered less winnable "never/rarely." As for the frequency with which more relief is awarded to white civil plaintiffs, 32% of Group 1 judges, 26% of Group 2 judges, and 10% of Group 3 judges responded that this happens at least "sometimes."

Within New York City, there were no significant differences on these two items according to type of civil court in question. Among New York City judges, there were also no significant differences on either of these two items between judges who preside over "ghetto courts" (Family Court, Civil Court, and Housing Court) and other judges.

Judges were also asked "[h]ave you ever set aside a jury award or refused to approve a settlement in a case involving a minority litigant because you felt that it was inadequate and not comparable to what a white litigant would receive under similar circumstances?"

Relatively few judges reported any specific experiences in this area. One white judge stated:

> The tort system itself is somewhat biased toward white males in that lost earnings or potential earnings are a big factor [in determining the size of the reward].

A black judge reported:

> An East Indian woman had a permanent injury [for] which the jury gave a minimal amount of money--I set it aside. I believe that Blacks, in the suburbs[,] are victims of a double standard in civil cases. The compensation for injuries is greatly disproportionate to that which whites receive.

Another black judge stated:

> I have withheld approval of a minority minor's settlement where it was inappropriately at [the] "hundreds" level rather than "thousands."

Another black judge had never set aside a jury award but commented elsewhere in the survey:

> Sometimes the defense bar in personal injury cases offers settlements to minority litigants that are less than what they would offer a white litigant for substantially the same injury.
>
> [I correct this situation] [b]y reminding attorneys what the general range is concerning a particular injury.

3.6 Conclusions

Approximately one in four white judges, and a large majority of minority judges, reported that disparities in civil outcomes do occur.

VII. THE ADEQUACY OF INTERPRETATION AND OTHER SERVICES

1.0 Introduction

As discussed in the Commission's main report, the Commission received extensive testimony about the lack of court services, particularly the inadequacy of interpreter services. Therefore, judges were asked about their experiences with the adequacy of services.

2.0 Adequacy of Interpretation Services

Judges were asked to rate their satisfaction with the availability and quality of court-provided interpreters. These data are provided in Table 25.

Table 25. Satisfaction with the Availability and Quality of Court-Appointed Interpreters
(Numbers in parentheses are percentages.)

	WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
	Very Satis-fied	Satis-fied	Dis-satis-fied	Very Dissat-isfied	Very Satis-fied	Satis-fied	Dis-satis-fied	Very Dissat-isfied	Very Satis-fied	Satis-fied	Dis-satis-fied	Very Dissat-isfied
Availability	74 (20.2)	256 (54.9)	30 (*9.0)	26 (5.6)	11 (*5.5)	37 (52.*)	20 (28.2)	3 (4.2)	*05 (19.6)	293 (54.6)	*10 (20.3)	29 (5.4)
Quality	*08 (23.8)	282 (62.1)	55 (*1.*)	11 (2.4)	12 (17.9)	43 (64.2)	*0 (*4.9)	2 (3.0)	*20 (23.0)	325 (62.*)	65 (*2.*)	*3 (2.5)

* See Appendix B, Table B-25, for means, standard deviations, and tests of significance.

There were no significant differences in the proportions of white and minority judges who expressed satisfaction with the availability of interpreters. Seventy-five percent of white judges and 65% of minority judges reported that they were "satisfied" or "very satisfied" with the availability of interpreters. One-quarter of the white judges, and nearly one third (32%) of minority judges, reported that they are "dissatisfied" or "very dissatisfied." The responses of the 16 Hispanic and three Asian judges in the sample were compared to the responses of all other judges. Hispanic and Asian judges were, in fact, significantly less satisfied with the availability of interpreters. Thus, 50% of Hispanic and Asian judges, as contrasted with only 25% of all other judges, expressed dissatisfaction.

For both groups of judges, satisfaction with the quality of interpreters was somewhat higher than satisfaction with the availability of interpreters; differences between white and minority judges are not statistically significant. Eighty-two percent of minority and 86% of white judges reported that they are "very satisfied" or "satisfied" with the quality of

interpreters. There were no significant differences in the proportions of Asian and Hispanic judges expressing dissatisfaction with the quality of interpretation.

Satisfaction with the availability and quality of interpreters was examined by the type of court over which the judges preside. There was no statistically significant difference between the satisfaction of civil court and criminal court judges. Among New York City judges, those who preside over ghetto courts (Criminal Court; Civil Court, Housing Part; and Family Court) were significantly less satisfied with the availability of interpreters than were other New York City judges. Thirty-three percent of judges sitting in New York ghetto courts were "dissatisfied" or "very dissatisfied" with the availability of court-appointed interpreters, and 18% expressed such dissatisfaction with the quality of interpreter services; the comparable figures for judges in other New York City Courts are 18% and 20%, respectively. There were no significant differences when judges were grouped according to geographic region (New York City or outside New York City), or proportion of minorities in the population (high-medium-low).

3.0 Adequacy of Other Human Services

Judges were also asked "Are there public services that should be provided in your courthouse, but are not provided?" Data on services are provided in Table 26.[6]

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[6] Data pertaining to services and information are provided in this section; data pertaining to maintenance and facilities are presented in Section 2 on treatment.

Table 26. **Services That Judges Want Provided in Their Courthouses.*** (Numbers in parentheses are percentages)

	White Judges	Minority Judges
Child care	57 (22.7)	15 (34.1)
Information for court users	12 (4.8)	7 (15.9)
Handicapped access/system for hearing impaired	23 (9.2)	1 (2.3)
Social Services (e.g. Counseling job referrals, homes for the evicted).	19 (7.6)	4 (9.1)
Base: 251 white judges and 44 minority judges who indicated the need for any additional service.		

* See Appendix B, Table B-26, for tests of significance.

It should be noted that fewer than half (44%) of the white judges and slightly more than a majority (58%) of the minority judges gave any response to this question. Among those who did, the largest percentages of both minority and white judges were clearly concerned about child care. This concern was voiced by one white judge as follows:

> Day care, too, must be provided in the courthouse. Since most minority litigants in [New York City] Civil Court are black women (usually with small children), they are frequently forced in to unfair agreements simply because they have no where to put their children should they want to negotiate longer or have a trial.

Another white judge wrote:

> The Family Court desperately needs enhanced facilities for families in litigation [and] crisis, particularly for those individuals who are borderline eligible for Legal Aid, 18-B [and] Law Guardian services. More attorneys, more psychologists, psychiatrists [and] more counselling programs must be designed and provided for our litigants who are often poor women, blacks, Hispanics and very often nearly illiterate who come to this court in a time of real need for judicial intervention.

It is interesting to note some of the characteristics of the courts on which judges who suggested child care sit. Over one quarter (26%) of the judges who suggested child care preside over Family Courts, 26% are in the Supreme Courts, 20% are in New York City Civil Courts, and 18% are in New York City Criminal Courts. There was no significant difference in the frequency with which judges who preside over criminal and civil courts suggested child-care services. The availability of child care in the courthouse seems to be an urban concern. Eighteen percent of judges in New York City suggested the necessity of child care, compared to 7% of judges outside New York City.

4.0 Conclusions

The availability of interpreter services is clearly a problem. One out of four white judges, and one out of three minority judges, reported dissatisfaction with availability. Such dissatisfaction was significantly greater among those judges (Hispanic and Asian) whose cultural background could provide them with a framework from which to assess the importance of this issue. Dissatisfaction was also significantly greater among those presiding over New York City ghetto courts. Litigants in these courts face not only the worst physical facilities and nonexistent or inadequate legal representation, but also an absence of interpreters. The quality of court-provided interpreters seems to be less of a problem in that fewer judges are dissatisfied. Of course, it is easier for judges to assess availability than quality.

The need for child care and its potential adverse impact on minorities is also a problem highlighted by substantial numbers of judges.

VII. RACE-RELATED DISPARITIES IN PRETRIAL PROCESSING AND CRIMINAL CASE OUTCOMES

1.0 Introduction

There is a vast social science literature on racial disparities in criminal court pretrial processing and sentencing.[7] Despite variation in methodologies and jurisdictions, a careful review of this literature leads to the conclusion that, even when other variables are controlled, there are disparities that can only be accounted for by race. For this reason, judges were asked a series of questions in order to measure their awareness and perception of racial disparities in criminal court pretrial processing and sentencing.

2.0 Findings Regarding Race-Related Disparities

Judges were asked five questions regarding the frequency with which white defendants receive preferential treatment in the criminal courts: possible ratings were "never," 0%; "rarely," 1-5%; "sometimes," 6-25%; "often," 26-50%; and "very often," 51-100%. Findings relevant to these five questions are provided in Table 27a. Differences between white and minority judges were significant on all five questions.

[7] See Background Briefing Paper #7: Criminal Sanctions and Pretrial Processing, in this volume.

Table 27a. The Frequency of Racial Disparities in Criminal Case Pretrial Processing and Outcomes*

(Numbers in parentheses are percentages)

	WHITE JUDGES			MINORITY JUDGES			TOTAL JUDGES		
	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly
A white defendant is released, with or without bail, pending trial, in a situation that would lead to detention for a minority defendant.	10 (2.4)	75 (17.6)	340 (80.0)	24 (40.7)	25 (42.4)	10 (16.9)	34 (7.0)	100 (20.7)	350 (72.3)
Lower bail is set for white defendants than for minority defendants accused of similar crimes, with similar records and similar community ties.	7 (1.7)	42 (10.2)	363 (88.1)	22 (36.7)	17 (28.3)	21 (35.0)	29 (6.1)	59 (12.5)	384 (81.4)
A criminal case is regarded by defense attorneys as more "winnable" because the defendant is white.	30 (8.5)	95 (26.9)	228 (64.6)	20 (35.7)	19 (33.9)	17 (30.4)	50 (12.2)	114 (27.9)	245 (59.9)
A criminal case is regarded by prosecutors as more "winnable" because the victim is white.	22 (6.4)	87 (25.4)	234 (68.2)	25 (43.9)	15 (26.3)	17 (29.8)	47 (11.8)	102 (25.5)	251 (62.8)
The court is encouraged by counsel to consider a wider range of dispositional alternatives when the case involves white rather than minority defendants.	17 (4.2)	64 (15.6)	328 (80.2)	24 (39.3)	20 (32.8)	17 (27.9)	41 (8.7)	84 (17.9)	345 (73.4)

* See Appendix B, Table B-27a, for means, standard deviations, and tests of significance.

Minority judges rated the item "[a] white defendant is released, with or without bail, pending trial, in a situation that would lead to detention for a minority defendant" as happening with substantial frequency. Nearly half (42%) reported that greater pretrial detention of minorities happens "sometimes" and 41% stated that such greater detention of minorities happens "often/very often." In fact, only 17% of minority judges stated that this "never/rarely" happens. White judges reported quite different experiences. Eighty percent stated that greater pretrial detention of minorities "never/rarely" occurs. It is important to

white. However, that one in five (20%) white judges reported that greater pretrial detention of minorities occurs at least "sometimes."

Minority judges reported with greater frequency than did white judges that "[l]ower bail is set for white defendants than for minority defendants accused of similar crimes, with similar records and similar community ties." Whereas only 35% of minority judges reported that lower bail is "never/rarely" set for white defendants, 88% of white judges gave such report. Thirty-seven percent of minority judges, but only 2% of white judges, said such lower bail setting for white defendants happens "often/very often."

Judges were asked how frequently "[a] criminal case is regarded by defense attorneys as more 'winnable' because the defendant is white." Differences between minority and white judges are significant, but it is striking that even 35% of white judges reported that such behavior happens at least "sometimes." More than two thirds (70%) of minority judges reported that at least "sometimes" defense attorneys regard cases as more "winnable" when the defendant is white.

Nearly one third (32%) of white judges reported that at least "sometimes" "[a] criminal case is regarded by prosecutors as more 'winnable' because the victim is white"; 70% of minority judges made comparable report. It is noteworthy that 44% of minority judges stated that such prosecutorial assessment happens "often/ very often."

Finally, judges were asked the frequency with which "[i]n the case of a white defendant/respondent (adult or juvenile), the court is encouraged by counsel to consider a wider range of dispositional alternatives (e.g. drug treatment programs, community service programs, private placements or treatment programs, supervised home release) than that

presented in cases involving minority defendants/respondents." Whereas 80% of white judges stated that this "never/rarely" happens, only 28% of minority judges made such report. However, one in five white judges reported that such preferential treatment for white defendants happens at least "sometimes." Among minority judges, 39% reported that it happens "often/very often."

A scale of the five items in Table 27a was constructed (Table 27b), based on the 285 white and 46 minority judges with no missing data. The scale has a high reliability (alpha=.87). Minority judges had a significantly higher mean score for the Criminal Penalties Scale than did white judges; minority judges reported on average that such racial disparities "sometimes" occur (mean=2.10) and white judges claim that they "rarely" occur (mean=.82).

Table 27b. **Means and Standard Deviations on the Criminal Penalties Scale** (Range 1-4; 4="very often") (t=10.37; P=.00)

	White Judges	Min. Judges
N	285	46
Mean	.82	2.10
St. Dev.	.73	1.01

Scale scores were also compared for the 107 judges who had once been employed as prosecutors but had never been employed by public defenders' offices, and for the 21 judges for whom the reverse was true. The difference in the mean scores (.81 and 1.24, respectively) was not significant.

For each of these five items in the scale, and by extension, for the Criminal Penalties Scale, New York City judges reported a significantly higher frequency of racial/ethnic disparity in criminal proceedings than did judges outside New York City (scale means = 1.22 and .75, respectively). Responses of Supreme Court justices were compared to responses of judges in other criminal courts (County Court, City Court, District Court, and New York City Criminal Courts) on the Criminal Penalties Scale; the difference in means was not statistically significant.

A regression analysis was done on the Criminal Penalties Scale; minority status and female status were both positively associated with perceived bias (see Appendix B, Table B-27c, for regression analysis). Variables that did not discriminate were type of past employment, number of years on the bench, geographic location of court (New York City vs. outside New York City), and type of Criminal Court (Supreme Court--Criminal Term vs. Criminal Court).

A few judges commented on issues related to bail and other criminal court outcomes. For example, one white judge wrote:

> Court statistics among people of different races may vary for reasons other than bias, i.e. cultural, custom, educational, moral [and] familial differences. A judge often is expected to predict a person's responsibility [and] reliability (bail applications) [and] the likelihood of rehabilitation (sentencing). In most cases the judge is forced to make such judgments almost instantly. For this reason it is almost inevitable that judges, in many cases, rely upon generalities formed over years of experience. The reality is that among persons charged with criminal conduct certain factors are found to be more prevalent in one group than in another, i.e. broken family unit, extra-marital relationship with illegitimate children, alcohol [and] drug abuse, poor work history, to name some. The court that recognizes this reality [and] acts upon it is not indulging in a form of racism. To ignore it because of a defendant's race would be rank bias or racism. Some judges feel it presents them with a dilemma--to be torn

between the desire to make the best, intellectualy, [sic] decision on one hand, [and] to avoid even the appearance of bias.

Another white judge wrote:

> One major problem, especially on the criminal side, is a lack of resources. The majority of defendants are minority--but probation is overwhelmed with huge caseloads, alternatives to detention have had funding cut[s] education is inadequate for those who later end up in the system (which is part of why some end up in it), as is social service backup--when involved in the system these resources continue [to be] inadequate. In teaching at the New Judges Seminars I was delighted by the easy acceptance of my suggestions about bail not being used as an economic device to disadvantage minority defendants.

Another white judge wrote:

> []Black defendants were often less able to make bail even when the amount was relatively insignificant. The reasons for this may be unconnected with class or race but often seemed attributable to a family having despaired of the recidivist.

A black judge stated:

> While the question of race is a factor in setting of bail and criminal disposition, the greater emphasis is placed on other factors which may themselves be heavily effected by race. These are: employment history, family stability or community ties, educational background, and any prior contact with court, issuance of prior bench warrants, and conviction record.

An Hispanic judge commented:

> I have often complained about disproportionate sentences meted out to minorities . . . when compared to sentences imposed on their white counterparts for the same crimes.

A black judge wrote:

> Plea negotiations were unfairly conferred by Assistant District Attorney--majority defendant received better plea deal than minority defendant with similar fact pattern.
>
> [I] spoke with supervising Assistant District Attorney to discuss same plea availability [for] minority defendant.

Another black judge noted:

> There was an invidious distinction in the offers for pleas to a white [defendant] versus a black [defendant].
>
> I refused to impose the suggested sentences and insisted on a more equitable plea offer.

3.0 Conclusions

The differences between minority and white judges are more extreme in this area than in virtually any other queried in this study. Approximately three quarters of minority judges believe that disparities in pretrial treatment and dispositional alternatives are not a rarity; in fact more than a third believe that such disparities are a regular occurrence. At least one in five white judges also believe that such race-related disparities are not a rarity.

IX. REPRESENTATION AND TREATMENT OF MINORITIES IN THE LEGAL PROFESSION

1.0 Introduction

Because judges have the opportunity to observe the treatment of attorneys who come before the bench, they were asked a few questions about the treatment of minority attorneys by persons in the court system. Of course, the treatment of attorneys by judges was not addressed because judges could not be expected to report on their own preferential or discourteous treatment. Judges were also asked about the frequency with which minority attorneys appear in their courtrooms and about the importance they attach to greater minority representation among attorneys.

2.0 Treatment and Representation of Minority Attorneys

Judges were asked to rate the frequency ("never" 0%; "rarely" 1-5%; "sometimes" 6-25%; "often" 26-50%; and "very often" 51-100%) with which "[w]hite attorneys get more

respect and cooperation from other attorneys than do minority attorneys"; "court personnel are more respectful of white attorneys than of minority attorneys"; and "jurors respond more favorably to white attorneys than to minority attorneys." These findings are provided in Table 28.

Table 28. The Treatment of Minority Attorneys in Court*
(Numbers in parentheses are percentages)

	WHITE JUDGES			MINORITY JUDGES			TOTAL JUDGES		
	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly
White attorneys get more respect and cooperation from other attorneys than do minority attorneys.	4 (.9)	44 (9.8)	400 (89.3)	20 (31.3)	21 (32.8)	23 (35.9)	24 (4.7)	65 (12.7)	423 (82.6)
Court personnel are more respectful of white attorneys than of minority attorneys.	4 (.8)	21 (4.3)	465 (94.9)	9 (14.1)	15 (23.4)	40 (62.5)	13 (2.3)	36 (6.5)	505 (91.2)
Jurors respond more favorably to white attorneys than to minority attorneys.	6 (1.6)	40 (10.8)	326 (87.6)	7 (14.3)	13 (26.5)	29 (59.2)	13 (3.1)	53 (12.6)	355 (84.3)

* See Appendix B, Table B-28, for means, standard deviations, and tests of significance.

Relatively few white judges reported any experience with white attorneys receiving more respect and cooperation from other attorneys than do minority attorneys; 89% reported that this "never/rarely" happens. Minority judges, on the other hand, reported that such preferential treatment of white attorneys by their colleagues happens with some frequency. In fact, 33% of minority judges reported that such preferential treatment of white attorneys happens "sometimes," and nearly one third (31%) reported that it happens "often/very often." The difference between white and minority judges is statistically significant.

More white (5% than minority (3% judges stated that courtroom personnel never or rarely act more respectfully toward white attorneys than toward minority attorneys. More minority (23% than white (4% judges reported that courtroom personnel are more respectful to white attorneys "sometimes"; 14% of minority judges, but only 1% of white judges, reported that such behavior occurs "often/very often." The difference between white and minority judges in terms of their experience with the differential treatment of white and minority attorneys by courtroom personnel is statistically significant.

There is a significant difference between white and minority judges in their reports of how frequently jurors respond more positively to white attorneys than to minority attorneys. Whereas 88% of white judges stated that juror response to a white attorney is "never/rarely" better than to a minority attorney, only 59% of minority judges reported that such preferential response "never/rarely" happens. Twelve percent of white judges, but 41% of minority judges, stated that such preferential response to white attorneys happens "sometimes" or "often/very often."

No significant differences were found on any of the three items in Table 28 between judges who preside over either exclusively criminal or exclusively civil courts. There were significant differences when the judges were grouped according to the proportion of minority residents in their counties. Group 1 judges are those who sit in counties where the minority population as of 1980 represented 38-67% of the total population. Group 2 judges sit in courts in counties where the minority populations in these counties range from 9-17%. Group 3 judges are those who sit in courts in the remaining counties of the state where the minority population is less than 9%. Group 1 judges reported a significantly higher

frequency of both white attorneys and court personnel cooperating more with white than with minority attorneys than did judges in Groups 2 or 3. Twenty-five percent of Group 1 judges, as opposed to 12% of Groups 2 judges and 6% of Group 3 judges, reported that attorneys cooperate more with white attorneys than with minority attorneys. Similarly, 15% of Group 1 judges, 5% of Group 2 judges, and 2% of Group 3 judges reported that court personnel cooperate more with white than with minority attorneys. Also, Group 1 judges reported a significantly higher incidence of jurors reacting generally more favorably to white attorneys than did Group 3 judges. Nineteen percent of judges in Group 1, but 8% of judges in Group 3 reported that this type of bias occurs at least "sometimes." Within the pool of New York City judges, those who serve on "ghetto" courts (New York City Criminal Court, Civil Court, Housing Court and Family Court) did not respond significantly differently than did other New York City judges on any of these items.

Several judges commented on the problematic treatment of minority attorneys and how they (the judges) seek to resolve it. A white judge wrote:

> Black attorney in African garb was asked if he was a criminal defendant by court officer.
>
> I spoke both with court officer and with the attorney and resolved problem--officer apologized--attorney said he was satisfied.

Another white judge recounted:

> [An] Asian-American [woman] attorney [was] told by male adversary that she should make tea for him.
>
> I pointed out the racist/sexist implication [and] asked [the] male attorney Italian-American how he'd feel about being asked to bring the pizza.

Yet another white judge commented:

> Occasionally, minority attorneys are mistaken for caseworkers or litigants. These were matters of tone and perception rather than substance.

A black judge wrote:

> Yes I have experienced bias, but not often as a matter of routine. In some instances minority attorneys are made to wait for their cases an unreasonable length of time, say in arraignment.
>
> In the example given [I] simply inquire as to the delay and it is cured inoffensively.

Judges were also asked to rate the frequency with which minority attorneys appear in their courtrooms. For the purposes of this analysis, judges were grouped into three categories based on 1980 census data for the counties in which they sit. These findings are presented in Table 29.

Table 29. The Frequency with which a Minority Attorney Appears in Judges' Courtroom by Minority Population in Counties Served*
(Numbers in parentheses are percentages)

GROUP 1 JUDGES			GROUP 2 JUDGES			GROUP 3 JUDGES			TOTAL JUDGES		
Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly
135 (52.3)	102 (39.5)	21 (8.1)	54 (30.7)	87 (49.4)	35 (19.9)	21 (15.3)	43 (31.4)	73 (53.3)	210 (36.8)	232 (40.6)	129 (22.6)

* See Appendix B, Table B-29, for means, standard deviations and test of significance.

Differences among judges in the three groups of counties are statistically significant: judges in Group 1 reported the most frequent appearance of minority attorneys in their courtrooms followed by Group 2 and 3, respectively. While only 8% of Group 1 judges rated the appearance of a minority attorney as a "never/rare" occurrence, 20% of Group 2 and 53% of Group 3 judges made such a rating. Conversely, among Group 1 judges, 52%

said a minority attorney appears in their courtroom "often/very often"; 31% of Group 2 judges, and 15% of Group 3 judges, made such ratings. It is apparent that there is a dearth of minority attorneys who appear in courtrooms. Given not only the minority population base of the counties in which these judges are sitting, but also the fact that 90% of prisoners in New York City are minority,[8] there is clearly a striking imbalance in the number of minority attorneys as compared to the presence of minority defendants appearing in these same court rooms.

Judges presiding over exclusively criminal courts reported a significantly higher incidence of minority attorneys in the courtroom than did exclusively civil court judges. Eight percent of criminal court judges reported that minority attorneys appear in their courts "rarely/never," as opposed to 25% of civil court judges so reporting. Within New York City, judges who preside over "ghetto courts . . . noted a significantly higher incidence of minority attorneys appearing before them than did other judges. Fifty-seven percent of judges presiding over New York City ghetto courts, but 45% of other New York City judges, reported that minority attorneys appear in their courtrooms "often/very often."

Judges were asked to rate the importance of greater representation of minorities among attorneys. These data are presented in Table 30.

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[8] The New York State Commission Of Corrections, Racial Breakdown of Prisoners in New York City Prisons: 1983.

Table 30. The Importance of Greater Minority Representation Among Attorneys in Your Courtroom

Numbers in parentheses are percentages

WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
Very Important	Important	Somewhat Impor.	Not Important	Very Important	Important	Somewhat Impor.	Not Important	Very Important	Important	Somewhat Impor.	Not Important
74 (14.2)	213 (41.0)	149 (28.7)	33 (6.3)	91 (75.8)	14 (11.7)	5 (4.2)	0 (0.0)	165 (31.3)	227 (43.0)	154 (29.2)	33 (6.3)

* See Appendix B, Table B-30, for means, standard deviations, and test of significance.

The difference between white and minority judges is statistically significant. Whereas 14% of white judges stated that greater representation of minorities among attorneys is "very important," 76% of minority judges made this rating. However, it is important to note that 41% of white judges stated that greater representation is "important." Thus, a majority of white judges (55%) rated increased representation as "important" or "very important"; the comparable figure among minority judges is 96%.

3.0 Conclusions

The response of minority judges to questions about the treatment of minority attorneys suggests that there is a problem, particularly in the treatment of minority attorneys by other attorneys. Findings from the Commission's study of litigators, which appear in a companion volume, strongly support the perception of minority judges that minority attorneys have to struggle to obtain professional treatment in the courts.

X. REPRESENTATION AND TREATMENT OF MINORITIES ON JURIES

1.0 Introduction

There is a substantial body of research which shows that like-race jurors are more sympathetic to like-race defendants and witnesses.[9] For this reason, the Commission was interested in judges' experiences with the frequency of minority representation on juries and their views as to the importance of such representation.

2.0 Findings Relevant to Juries

Judges were asked to rate the frequency ("never," 0%; "rarely," 1-5%; "sometimes," 6-25%; "often," 26-50%; and "very often," 51-100%) with which "[a] case involving a minority litigant is decided by an all-white jury" and the frequency with which "[a] case involving a minority litigant is decided by a jury that is predominantly minority." For the purposes of these analyses, judges were grouped into three categories, based on 1980 census data for the counties in which they sit. Group 1 judges are those who sit in courts in counties where minorities represent 38-67% of the population. Group 2 judges are in counties with minority populations from 9-17%. Group 3 judges are those who sit in courts in the remaining counties of the state where the minority population is less than 9%. These findings are presented in Table 31.

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[9] See Background Briefing Paper #10: Juror Attitudes Toward Minority Defendants and Attorneys, in this volume.

Table 31. The Racial Composition of Juries by Minority Population in County* (Numbers in parentheses are percentages)

	GROUP 1 JUDGES			GROUP 2 JUDGES			GROUP 3 JUDGES			TOTAL JUDGES		
	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly	Often/ Very Often	Some-times	Never/ Rare-ly
A case involving a minority litigant is decided by an all-white jury.	12 (6.1)	39 (19.8)	146 (74.1)	58 (38.7)	60 (40.0)	32 (21.3)	62 (57.9)	20 (18.7)	25 (23.4)	132 (29.1)	119 (26.2)	203 (44.7)
A case involving a minority litigant is decided by a predominantly minority jury.	73 (36.1)	75 (37.1)	54 (26.7)	9 (6.1)	25 (16.9)	114 (77.0)	3 (2.9)	8 (7.8)	92 (89.3)	85 (18.8)	108 (23.8)	260 (57.4)

* See Appendix B, Table B-31, for means, standard deviations, and tests of significance.

Group 3 judges reported the most frequent occurrence of a minority litigant's case being decided by an all-white jury, followed by Group 2 and Group 1 judges, respectively; each group is significantly different from the other. Judges serving in areas with substantial minority populations (Group 1) reported that all-white juries for minority litigants are a relatively rare phenomenon; 74% stated that this happens "never/rarely." Moreover, only 6% stated that minority litigants appear before all white juries "often/very often." Among Group 2 and Group 3 judges, the appearance of a minority litigant before an all-white jury is a fairly routine phenomenon. Thus, 39% of Group 2 judges and 58% of Group 3 judges stated that minorities appear as defendants before all-white juries "often/very often." It is important to note that analysis of minority vs. white judge responses shows no difference. Thus, the important issue is not differences in the perceptions of minority and white judges regarding the racial composition of juries but rather the differences borne of geographic location. A minority litigant not living in Brooklyn, the Bronx, Manhattan, or Queens has a high probability of having her or his case heard by an all-white jury.

There are also significant differences among the three Groups in the frequency with which minority litigants appear before juries that are predominantly minority. While only 27% of Group 1 judges stated that this "never/rarely" happens, 77% of Group 2 and 89% of Group 3 judges gave this response.

Judges were also queried regarding their views as to the importance of greater representation of minorities on juries. These findings are presented in Table 32.

Table 32. The Importance of Greater Minority Representation on Juries by Race of Judge*
(Numbers in parentheses are percentages)

WHITE JUDGES				MINORITY JUDGES				TOTAL JUDGES			
Very Important	Important	Somewhat Impor.	Not Important	Very Important	Important	Somewhat Impor.	Not Important	Very Important	Important	Somewhat Impor.	Not Important
88 (17.4)	179 (35.4)	136 (26.9)	103 (20.4)	35 (50.7)	21 (30.4)	12 (17.4)	1 (1.4)	123 (21.4)	200 (34.8)	148 (25.7)	104 (18.1)

* See Appendix B, Table B-32, for means, standard deviations, and test of significance.

Minority judges attached a significantly greater importance to increasing minority representation on juries than did white judges. More than half (51%) of the minority judges rated such increased representation as "very important"; 17% of white judges made comparable ratings. It is important to note, however, that 53% of white judges rated such increased representation as "important" or "very important"; the comparable figure for minority judges is 81%.

The importance of "[g]reater representation of minorities on juries" was also examined by the proportion of minorities in the population in the county served by the judge (as done in Table 31). Judges in counties with a high proportion of minority residents (Group 1) attributed less importance statistically to increasing minority representation on

juries than did judges in Group 2. There were no statistically significant differences between Groups 1 and 3, or between Groups 2 and 3.

There was no significant difference on this item between judges who preside over exclusively criminal, as opposed to exclusively civil, courts. A number of judges made comments about the special difficulties confronting minority jurors or about their own efforts to ensure a lack of bias among jurors.

On the issue of difficulties associated with being a juror that may particularly impact minorities, one black judge stated:

> Sequestration of jurors may influence minorities more because of greater family responsibilities.

A white judge stated:

> Selected black jurors are difficult to keep awake as they frequently hold two jobs; one [being] jury duty, the second job creates a 17-18 hour day--tiresome, but very necessary to juror.

Another white judge stated:

> Frequently minority jurors asked to be excused for hardship reasons either financial or personal, i.e. young children. This frequently results in a minority defendant being tried by a jury with no minority members.

A third white judge recommended:

> Increase jury fees to a realistic amount to ensure all income brackets could serve on a jury or require employers to pay employee's salary while on jury service.

Several judges commented on the continuing exclusion of minorities through peremptory challenges. One white judge stated:

> Many lawyers persist in picking juries along racial or gender lines. The unfortunate prejudice--that <u>all</u> jurors of a particular background think the same way--still exists.

Another white judge wrote:

> DA has peremptorily challenged black prospective jurors whom I believed would have been fair [and] impartial.
>
> Incidents referred to occurred prior to Supreme Court decision in Batson.

Another white judge reported:

> [I] required an attorney, at a hearing, to explain repeated challenges to jurors of minority groups.

Yet another white judge reported:

> Condescending attitudes from time to time.
>
> Brought to the attention of prosecution--on the record--that minority jurors (black) were disproportionately being peremptorily challenged (murder case--[defendant] Black)!

On the issue of trying to ensure that jury deliberations are free from racial bias, one white judge stated:

> After a verdict involving a Black defendant I have asked all white jurors on a number of occasions if the race of the defendant was ever discussed or considered. Very strong denials were made in every case [and] the responses seemed sincere.

Another white judge stated:

> If we wish to advance, not the perception of fairness in courtrooms, but true fairness, our main effort must be to make the decision making process by the jury free of all external bias.

However, a black judge stated:

> Perhaps because I am black I am more sensitive. Jurors have stated that because the [defendant] was black, they could not be fair.

One white judge reported:

> A juror expressed dissatisfactions because [the] defendant [and the] defendant's attorney were minorities.

Another white judge stated:

> [I]n Criminal Court (when assigned) jurors expressed prejudice such as "Defendant is black, I wouldn't believe him"--in a case where the def[endan]t was Hispanic 'I live in Yonkers, [and] we're infected with that type.'
>
> Jurors had to be excused. Only lesson learned was that it is a good way to avoid jury service.

Yet another white judge recounted:

> I presided over one civil trial on which the two plaintiffs were respected professionals, who sued a news station for libel . . . . The attorneys treated the plaintiffs with respect and I perceived no difference in their treatment by courtroom personnel. However, I had a gut feeling that the verdict by the all-white jury might have been different had the plaintiffs been white and not black.

3.0 Conclusions

It is apparent that minority litigants appear before all-white juries with regularity in the state of New York. Given the bias that minority litigants face, as documented and discussed in earlier sections, the bias imposed by an all-white jury may represent an additional, unfair burden. Even a majority of white judges recognizes the importance of increasing minority representation on juries.

XI. SUMMARY OF MAJOR FINDINGS

Treatment of Minority Litigants and Witnesses

- Minority judges reported significantly more maltreatment of litigants and witnesses than did white judges.
- Courts that are used primarily by minorities ("ghetto" courts) are in far worse physical condition than are the courts that are primarily used by Whites.

Representation and Treatment of Minorities in the Judiciary

- The career paths to the judiciary of minority and white judges, in terms of prior positions held, are not substantially different.
- Minority judges are appointed/elected somewhat sooner in their legal careers than are white judges.
- The majority of both white and minority judges gave favorable ratings to Committees/Commissions that screen/nominate candidates for appointing authorities, but negative ratings to political party organizations. White and minority judges show strong agreement regarding how well various committees function in identifying candidates for the judiciary who have knowledge of the law, litigation experience, and judicial temperament. Minority judges are, however, much less satisfied than white judges with the various Committees'/ Commissions' identification of candidates who contribute to the racial and ethnic diversity of the bench.
- The majority of judges, including white judges, view increased representation of minorities on the judiciary as important.
- The majority of white and minority judges are satisfied with their working conditions, but there is more dissatisfaction among minority judges.
- Minority judges tend to feel that their treatment by other judges, attorneys, and court personnel is affected by race.
- A majority of both white and minority judges endorsed the importance of training on cross-cultural sensitivity.

Legal Representation of Minorities

- Large numbers of judges, particularly minority judges, are aware of the lack of representation for litigants, particularly minority litigants, in civil litigation.
- Substantial numbers of judges, particularly minority judges, reported poor quality representation of litigants, particularly minority litigants.

Nonjudicial Work force

- Courtrooms in which all nonjudicial personnel are white are commonplace; a large percentage of white judges perceived the importance of increasing minority representation in the nonjudicial work force.
- The majority of judges is satisfied with nonjudicial personnel.
- There is greater satisfaction with the competence of nonjudicial personnel than with their interaction with the public; a majority of judges endorsed cultural/racial sensitivity training for court personnel.

Race-Related Disparities in Civil Case Outcomes

- A majority of minority judges, and substantial numbers of white judges, reported race-related disparities in civil case outcomes.

Adequacy of Interpretation and Other Services

- A substantial number of both white and minority judges reported dissatisfaction with the availability of court-provided interpreters. There was less dissatisfaction with the quality of interpretation. Dissatisfaction with the availability of interpreters was particularly strong among judges sitting in "ghetto" courts.

Race-Related Disparities in Pretrial Processing and Criminal Case Outcomes

- Substantial numbers of minority judges reported that race-related disparities in pretrial treatment and dispositional alternatives are a regular occurrence. Some white judges also reported such disparities as a common occurrence.

Representation and Treatment of Minorities in the Legal Profession

- Substantial numbers of minority judges reported that minority attorneys have to struggle in order to achieve professional recognition and treatment in the courts.

Representation and Treatment of Minorities on Juries

- Large numbers of judges reported that minorities routinely appear before all-white juries.
- Even a majority of white judges recognized the importance of increasing minority representation on juries.

APPENDIX A

SURVEY INSTRUMENT

QUESTIONNAIRE FOR JUDGES IN NEW YORK STATE

ON

ISSUES RELATING TO JUDICIAL

SELECTION AND PERCEPTIONS OF FAIRNESS AND

SENSITIVITY IN THE COURTROOM

PLEASE NOTE: YOUR RESPONSE TO THIS QUESTIONNAIRE IS ENTIRELY CONFIDENTIAL. RESPONSES WILL BE AGGREGATED AND CANNOT BE CONNECTED WITH ANY INDIVIDUAL.

DATE _____

For Office use only

ID _____ 1

1. What is the court to which you have most recently been elected or appointed? [Check one; please fill in blank(s) if appropriate]

1 ( ) Court of Appeals

2 ( ) Appellate Division/Supreme Court _____ Dept.

3 ( ) Appellate Term/Supreme Court _____ Dept.

4 ( ) Supreme Court _____ District _____ County

5 ( ) Court of Claims (Part A)

6 ( ) Court of Claims (Assigned to Supreme Court) _____ County — 2

7 ( ) Surrogate Court _____ County

8 ( ) County Court _____ County — 3

9 ( ) Family Court _____ County — 4

10 ( ) NYC Criminal Court _____ County

11 ( ) NYC Civil Court _____ County — 5

12 ( ) NYC Housing Court _____ County — 6

13 ( ) District Court _____ County

14 ( ) City Court _____ City

2. How long have you been on this court? _____ Check one ( ) mos. or ( ) yrs. — 7

3. Are you presently sitting on your court or on another court? — 8

1 ( ) own court
2 ( ) other court

3a. IF ANOTHER COURT,

1. What court is it? _____ — 9

2. How long have you been on this court?

_____ Check one ( ) mos. or ( ) yrs. — 10

4. Please indicate which of the following positions, if any, you have held prior to your current position: [Check ALL that apply]

		For Office use only
1. Judge or justice of a court other than the one on which you now sit.	Yes (1) ( )	11
2. Member of a law school faculty.	( )	12
IF YES, Please specify highest level.		
Tenured full-time	1 ( )	13
Non-tenured full-time	2 ( )	
Adjunct or other part-time	3 ( )	
3. Member of a law firm with fewer than 20 lawyers.	( )	14
IF YES, Please specify whether:		
Partner	1 ( )	15
Associate	2 ( )	
(Check both, if both apply)		
4. Member of a law firm with more than 20 lawyers.	( )	16
IF YES, Please specify whether:		
Partner	1 ( )	17
Associate	2 ( )	
(Check both, if both apply)		
5. Solo practitioner	( )	18
6. Prosecutor (DA, Asst DA, U.S. Attorney, or Asst. U.S. Attorney)	( )	19
7. Public Agency Counsel (e.g. Corp. Counsel, State or City Agency or unit of Government, Attorney General's Office, etc.)	( )	20
8. Legal aid attorney (criminal) or public defender	( )	21
9. Legal services attorney or other provider of civil representation to the poor.	( )	22
10. Corporate officer or employee (specify highest position held _____)	( )	23

For Office use only

11. Elected official (specify highest office held _____)	Yes (1) ( )	24
12. Appointed government official (specify highest office held _____)	( )	25
13. Political party official or staff member (specify highest position held _____)	( )	26
14. Judicial clerk, law secretary or law assistant (specify title and court_____)	( )	27
15. Officer or employee of public interest organization.	( )	28
16. Other (specify _____)	( )	29

5. Please enter below the number (FROM LIST ABOVE: 1-16) corresponding to the primary position you held immediately prior to appointment or election to your first judicial position._____ 30

6. How long have you been an attorney? _____ yrs. 31

7. How long have you been a judge? _____ yrs. 32

8. How satisfied are you with your experience as a judge on your current court? (IF ON A DIFFERENT COURT FROM COURT OF APPOINTMENT/OR ELECTION, Also indicate how satisfied you are with the court on which you are currently sitting.)

	very satisfied 4	satisfied 3	dis-satisfied 2	very dis-satisfied 1	
Court of appointment/ election	( )	( )	( )	( )	33
FOR JUDGES SITTING ON A DIFFERENT COURT THAN THE ONE TO WHICH THEY ARE APPOINTED OR ELECTED					
Current court	( )	( )	( )	( )	34

For Office use onl

9. If you checked "dissatisfied" or "very dissatisfied" regarding any aspect of Q.8, please explain the sources of your dissatisfaction. _____ 35

_____ 36

_____ 37

_____ 38

_____ 39

10. If you are in a court in which <u>calendar part assignments</u> are made, do you feel that these assignments are made fairly?

1 ( ) Yes
2 ( ) No (Please explain) _____ 40

_____ 41

_____ 42

_____ 43

_____ 44

*8888 ( ) Not relevant, not in a court in which calendar assignments are made.

11. If you are in a court in which <u>panel assignments</u> are made, do you feel that these assignments are made fairly?

1 ( ) Yes
2 ( ) No (Please explain) _____ 45

_____ 46

_____ 47

_____ 48

_____ 49

*8888 ( ) Not relevant, not in a court in which panel assignments are made.

* numbers are for office use only

14. How well does each of the screening committees listed below function in identifying potential judges who have <u>outstanding knowledge of the law</u>?

	very well 4	well 3	poorly 2	very poorly 1	no knowledge 0	For Office use only
a) New York State Commission on Judicial Nominations for Governor's appointments to Court of Appeals	( )	( )	( )	( )	( )	62
b) Statewide Judicial Screening Committee for Governor's appointments to the Court of Claims	( )	( )	( )	( )	( )	63
c) Departmental Judicial Screening Committees for Governor's appointments to the Appellate Division of the Supreme Court and for vacancies on the Supreme Court	( )	( )	( )	( )	( )	64
d) County Judicial Screening Committees for Governor's appointments for vacancies on Family Court outside of NYC, County Court, & Surrogate's Court	( )	( )	( )	( )	( )	65
e) Mayor's Committee on the Judiciary for Mayor's appointments to Family Court or Criminal Court or for vacancies on the Civil Court in NYC?	( )	( )	( )	( )	( )	66
f) Housing Court Advisory Committee and/or OCA Chief Administrative Judge appointments to New York City Housing Court	( )	( )	( )	( )	( )	67
g) Political party organizations in determining slates for elective office	( )	( )	( )	( )	( )	68

15. How well does each of the screening committees listed below function in identifying potential judges who have litigation experience?

	very well 4	well 3	poorly 2	very poorly 1	no knowledge 0	For Office use only
a) New York State Commission on Judicial Nominations for Governor's appointments to Court of Appeals	( )	( )	( )	( )	( )	69
b) Statewide Judicial Screening Committee for Governor's appointments to the Court of Claims	( )	( )	( )	( )	( )	70
c) Departmental Judicial Screening Committees for Governor's appointments to the Appellate Division of the Supreme Court and for vacancies on the Supreme Court	( )	( )	( )	( )	( )	71
d) County Judicial Screening Committees for Governor's appointments for vacancies on Family Court outside of NYC, County Court, & Surrogate's Court	( )	( )	( )	( )	( )	72
e) Mayor's Committee on the Judiciary for Mayor's appointments to Family Court or Criminal Court or for vacancies on the Civil Court in NYC?	( )	( )	( )	( )	( )	73
f) Housing Court Advisory Committee and/or OCA Chief Administrative Judge appointments to New York City Housing Court	( )	( )	( )	( )	( )	74
g) Political party organizations in determining slates for elective office	( )	( )	( )	( )	( )	75

16. How well does each of the screening committees listed below function in identifying potential judges that would provide racial/ethnic diversity to the judiciary?

	very well 4	well 3	poorly 2	very poorly 1	no knowledge 0	For Office use only
a) New York State Commission on Judicial Nominations for Governor's appointments to Court of Appeals	( )	( )	( )	( )	( )	76
b) Statewide Judicial Screening Committee for Governor's appointments to the Court of Claims	( )	( )	( )	( )	( )	77
c) Departmental Judicial Screening Committees for Governor's appointments to the Appellate Division of the Supreme Court and for vacancies on the Supreme Court	( )	( )	( )	( )	( )	78
d) County Judicial Screening Committees for Governor's appointments for vacancies on Family Court outside of NYC, County Court, & Surrogate's Court	( )	( )	( )	( )	( )	79
e) Mayor's Committee on the Judiciary for Mayor's appointments to Family Court or Criminal Court or for vacancies on the Civil Court in NYC?	( )	( )	( )	( )	( )	80
f) Housing Court Advisory Committee and/or OCA Chief Administrative Judge appointments to New York City Housing Court	( )	( )	( )	( )	( )	81
g) Political party organizations in determining slates for elective office	( )	( )	( )	( )	( )	82

For office use only

17. How well does each of the screening committees listed below function in identifying potential judges who have an <u>appropriate judicial temperament</u>?

	very well 4	well 3	poorly 2	very poorly 1	no knowledge 0	
a) New York State Commission on Judicial Nominations for Governor's appointments to Court of Appeals	( )	( )	( )	( )	( )	83
b) Statewide Judicial Screening Committee for Governor's appointments to the Court of Claims	( )	( )	( )	( )	( )	84
c) Departmental Judicial Screening Committees for Governor's appointments to the Appellate Division of the Supreme Court and for vacancies on the Supreme Court	( )	( )	( )	( )	( )	85
d) County Judicial Screening Committees for Governor's appointments for vacancies on Family Court outside of NYC, County Court, & Surrogate's Court	( )	( )	( )	( )	( )	86
e) Mayor's Committee on the Judiciary for Mayor's appointments to Family Court or Criminal Court or for vacancies on the Civil Court in NYC?	( )	( )	( )	( )	( )	87
f) Housing Court Advisory Committee and/or OCA Chief Administrative Judge appointments to New York City Housing Court	( )	( )	( )	( )	( )	88
g) Political party organizations in determining slates for elective office	( )	( )	( )	( )	( )	89

18. Please rate each of the following in terms of its importance for an attorney to become a judge:

	very important 3	somewhat important 2	not important 1	no opinion 0	For Office use only
a) Professional contacts	( )	( )	( )	( )	
b) Political contacts	( )	( )	( )	( )	90
c) Access to positions from which judges are drawn	( )	( )	( )	( )	91
d) Successful law school performance	( )	( )	( )	( )	92
e) Other (Specify)_____	( )	( )	( )	( )	93
_____					94
f) Other (Specify)_____	( )	( )	( )	( )	95
_____					

19. To what extent, if any, do the following adversely affect the professional treatment accorded judges by attorneys?

	greatly 3	somewhat 2	not at all 1	
a) Racial/ethnic differences	( )	( )	( )	96
b) Gender differences	( )	( )	( )	97
c) Other (specify)_____	( )	( )	( )	98
_____				

20. To what extent, if any, do the following adversely affect the professional treatment accorded judges by other judges?

	greatly 3	somewhat 2	not at all 1	
a) Racial/ethnic differences	( )	( )	( )	99
b) Gender differences	( )	( )	( )	100
c) Other (specify)_____	( )	( )	( )	101
_____				

21. To what extent, if any, do the following adversely affect the professional treatment accorded judges by courtroom personnel?

	greatly 3	somewhat 2	not at all 1	For Office use only
a) Racial/ethnic differences	( )	( )	( )	102
b) Gender differences	( )	( )	( )	103
c) Other (specify)_____	( )	( )	( )	104

_____

22. How satisfied are you with the nonjudicial personnel in your courtroom in terms of the following?

	very satisfied 4	satis-fied 3	dissat-isfied 2	very dissat-isfied 1	
a) Competence in performing their job	( )	( )	( )	( )	105
b) Dedication to their job	( )	( )	( )	( )	106
c) Minority representation	( )	( )	( )	( )	107
d) Interaction with public/ litigants	( )	( )	( )	( )	108

23. How satisfied are you with the availability and quality of court-provided interpreters?

	very satisfied 4	satis-fied 3	dissat-isfied 2	very dissat-isfied 1	no exp. 0	
a) Availability	( )	( )	( )	( )	( )	109
b) Quality	( )	( )	( )	( )	( )	110

24. Have you ever experienced a situation in your courtroom in which you perceived the treatment of minority attorneys, litigants (i.e. defendants or plaintiffs), jurors, or witnesses to be unfair or insensitive?

( ) Yes (Please give specific examples)_____ 111

_____ 112

_____ 113

_____ 114

_____ 115

*0( ) No

* numbers are for office use only

For Office use only

24a. IF YES TO Q. 24, Have you ever had the opportunity to correct a situation in which you perceived the treatment of minority attorneys, litigants, jurors, or witnesses to be unfair or insensitive?

( ) Yes (Please give specific examples)_____

_____ 116

_____ 117

_____ 118

_____ 119

_____ 120

*0( ) No

25. Have you ever set aside a jury award or refused to approve a settlement in a case involving a minority litigant because you felt that it was inadequate and not comparable to what a white litigant would receive under similar circumstances?

( ) Yes (Please describe the circumstances) _____

_____ 121

_____ 122

_____ 123

_____ 124

_____ 125

*0( ) No

*8888( ) Not applicable

25a. How many times have you done this? _____

126

* numbers are for office use only

26. In your experience, how often does each of the following occur? If you have no relevant experience, check the column marked "no experience".

	very often 51-100% 5	often 26-50% 4	some-times 6-25% 3	rare-ly 1-5% 2	never 0% 1	no exp. 0	For Office use only
a. The testimony of a minority expert witness is less effective because of juror reactions to the expert's race.	( )	( )	( )	( )	( )	( )	127
b. The testimony of a minority lay witness is less effective because of juror reactions to the witness' race.	( )	( )	( )	( )	( )	( )	128
c. Court personnel are disrespectful and discourteous to minority litigants.	( )	( )	( )	( )	( )	( )	129
d. Court personnel are disrespectful and discourteous to white litigants.	( )	( )	( )	( )	( )	( )	130
e. Court personnel are more respectful of white attorneys than of minority attorneys.	( )	( )	( )	( )	( )	( )	131
f. Jurors respond more favorably to white attorneys than to minority attorneys.	( )	( )	( )	( )	( )	( )	132
g. Jurors react more positively to a white litigant than to a minority litigant.	( )	( )	( )	( )	( )	( )	133
h. Jurors sympathize more with a white victim than with a minority victim.	( )	( )	( )	( )	( )	( )	134
i. Attorneys are more respectful and courteous toward white witnesses than toward minority witnesses in cross examination.	( )	( )	( )	( )	( )	( )	135
j. White attorneys get more respect and cooperation from other attorneys than do minority attorneys.	( )	( )	( )	( )	( )	( )	136

Q. 26 Continued

	very often 51-100% 5	often 26-50% 4	some-times 6-25% 3	rare-ly 1-5% 2	never 0% 1	no exp. 0	For Office use only
k. A civil case is regarded by attorneys or insurance companies as less "winnable" because the injured party is minority.	( )	( )	( )	( )	( )	( )	137
l. A criminal case is regarded by defense attorneys as more "winnable" because the defendant is white.	( )	( )	( )	( )	( )	( )	138
m. A criminal case is regarded by prosecutors as more "winnable" because the <u>victim</u> is white.	( )	( )	( )	( )	( )	( )	139
n. Minority litigants receive inadequate legal representation.	( )	( )	( )	( )	( )	( )	140
o. Minority litigants are unrepresented.	( )	( )	( )	( )	( )	( )	141
p. White litigants receive inadequate legal representation.	( )	( )	( )	( )	( )	( )	142
q. White litigants are unrepresented.	( )	( )	( )	( )	( )	( )	143
r. The relief awarded to a white plaintiff in a civil case is <u>more</u> than the relief awarded to a minority plaintiff in a comparable case.	( )	( )	( )	( )	( )	( )	144
s. A case involving a minority litigant is decided by an all-white jury.	( )	( )	( )	( )	( )	( )	145
t. A case involving a minority litigant is decided by a jury that is predominantly minority.	( )	( )	( )	( )	( )	( )	146

Q. 26 Continued

	very often 51-100% 5	often 26-50% 4	some-times 6-25% 3	rare-ly 1-5% 2	never 0% 1	no exp. 0.	For Office use only
u. In the case of a white defendant/respondent (adult or juvenile), the court is encouraged by counsel to consider a wider range of dispositional alternatives (e.g. drug treatment programs, community service programs, private placements or treatment programs, supervised home release) than that presented in cases involving minority defendants/respondents.	( )	( )	( )	( )	( )	( )	147
v. A white defendant is released, with or without bail, pending trial, in a situation that would lead to detention for a minority defendant.	( )	( )	( )	( )	( )	( )	148
w. Lower bail is set for white defendants than for minority defendants accused of similar crimes, with similar records and similar community ties.	( )	( )	( )	( )	( )	( )	149
x. A case involving a minority litigant is heard in a courtroom in which all non-judicial personnel (clerks, court officers and stenographers) are white.	( )	( )	( )	( )	( )	( )	150
y. Attorneys or courtroom personnel repeat ethnic jokes involving minorities, use racial epithets, or make demeaning remarks about a minority group.	( )	( )	( )	( )	( )	( )	151
z. A minority attorney appears in your courtroom.	( )	( )	( )	( )	( )	( )	152
aa. Racial stereotypes affect the evaluation of litigants' claims.	( )	( )	( )	( )	( )	( )	153

27. FOR FAMILY COURT JUDGES ONLY: Did you terminate parental rights in any cases in the last 12 months?

( ) Yes Approximately how many? _____

*0( ) No

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154

27a. IF YES TO Q. 27: How many of these cases involved minority children? _____

155

28. ALL JUDGES: Please rate each of the following in terms of the importance you ascribe to them:

	Very Impor. 4	Impor. 3	somewhat impor. 2	not impor. 1	
a) Training for judges on cultural/racial sensitivity	( )	( )	( )	( )	156
b) Greater representation of minorities on the bench	( )	( )	( )	( )	157
c) Greater representation of minorities among attorneys appearing in your courtroom	( )	( )	( )	( )	158
d) Greater representation of minorities among non-judicial personnel in your courtroom	( )	( )	( )	( )	159
e) Training for non-judicial personnel on cultural/racial sensitivity.	( )	( )	( )	( )	160
f) Greater representation of minorities on juries	( )	( )	( )	( )	161

29. Please indicate the approximate minority percentage for EACH of the following groups in your court:

	0-10% 1	11-25% 2	26-50% 3	51-75% 4	76-100% 5	no exp. 0	
a) Court Personnel	( )	( )	( )	( )	( )	( )	162
b) Attorneys	( )	( )	( )	( )	( )	( )	163
c) Criminal defendants	( )	( )	( )	( )	( )	( )	164
d) Civil defendants	( )	( )	( )	( )	( )	( )	165
e) Civil plaintiffs	( )	( )	( )	( )	( )	( )	166

* numbers are for office use only

For Office use only

30. Please indicate below the number of persons in each category on your personal staff.

	White	Black	Hispanic	Asian	Native American
attorney(s)	_____ (167)	_____ (168)	_____ (169)	_____ (170)	_____ (171)
clerical	_____ (172)	_____ (173)	_____ (174)	_____ (175)	_____ (176)

31. How would you describe the physical conditions in the courthouse in which you now sit?

5( ) excellent

4( ) good

3( ) fair

2( ) poor

1( ) very poor

_____ 177

32. Are there public services that should be provided in your courthouse, but are not provided?

( ) Yes. (Please specify.)

1. _____ 178
2. _____ 179
3. _____ 180
4. _____ 181
5. _____ 182

*0( ) No

33. Is there any other aspect relating to judicial selection, non-judicial personnel, or the perception and reality of fairness in the courts which you would like to share with us?

_____ 183

_____ 184

_____ 185

_____ 186

_____ 187

* numbers are for office use only

APPENDIX B

STATISTICAL TABLES

Table B-3a. Treatment of Litigants

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
Court personnel are disrespectful and discourteous to minority litigants.	493	.536	.728	65	1.277	.927	-6.20	.000
Court personnel are disrespectful and discourteous to white litigants.	502	.550	.698	65	1.046	.717	-5.38	.000
Attorneys or courtroom personnel publicly repeat ethnic jokes, epithets or demeaning remarks about minorities.	511	.824	.847	66	1.303	1.022	-.365	.000
Attorneys are more respectful of white than of minority witnesses in cross-examination.	489	.528	.781	67	1.642	1.151	-7.69	.000
Racial stereotypes affect evaluation of litigants' claims.	385	.733	.898	52	2.039	1.188	-7.64	.000

Means based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often

ible B-4. Juror Reactions to Victims, Litigants, and Witnesses

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-tail Prob.
Testimony of a minority expert witness is less effective because of juror reactions to the expert's race.	260	.469	.737	32	.875	.907	-2.86	.005
Testimony of a minority lay witness is less effective because of juror reactions to the witness' race.	371	.790	.875	51	1.196	.980	-3.06	.002
Jurors react more positively to a white litigant than to a minority litigant.	386	.681	.880	51	1.451	1.064	-5.72	.000
Jurors sympathize more with a white victim than with a minority victim.	378	.733	.941	50	1.76	1.205	-5.80	.000

Means based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often

ible B-5. Experiences of Bias and Efforts at Redress by Minority Status of Judge

	Chi-Square	P
Ever perceived unfair treatment?	31.088	.000
If so, ever corrected?	2.197	.138

ble B-6. Judges' Ratings of the Physical Conditions of the Courts

WHITE JUDGES			MINORITY JUDGES			STATISTICS	
N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
553	3.230	1.317	76	2.776	1.323	2.80	.006

Means based on 1=Very Poor, 2=Poor, 3=Fair, 4=Good, 5=Excellent.

Table B-7. **Judges' Ratings of the Physical Conditions of the Courts by the Type of Court Over Which Judges Preside**

GROUP A JUDGES			GROUP B JUDGES			GROUP C JUDGES			GROUP D JUDGES			SIGNIFICANT DIFFERENCES
N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	Groups: A & B C & D A & C A & D B & C
73	4.219	1.031	199	3.241	1.276	150	2.367	1.083	190	3.268	1.304	

Means based on 1=Very Poor, 2=Poor, 3=Fair, 4=Good, 5=Excellent.
See page 24, above, for definition of Groups A through D.

Table B-8. **Judges' Ratings of the Physical Conditions of the Courts by the Minority Population of the Counties in Which the Judges Sit**

GROUP 1 JUDGES			GROUP 2 JUDGES			GROUP 3 JUDGES			TOTAL JUDGES
N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	Significant Differences
261	2.582	1.192	177	3.401	1.320	148	3.655	1.165	Groups: 1 & 2, 1 & 3

Means based on 1=Very Poor, 2=Poor, 3=Fair, 4=Good, 5=Excellent.
See pages 7-8, above, for definition of Groups 1 through 3.

ıble B-8c. **Regression Analysis on the Minority Litigant Treatment Scale, Where a Positive Correlation Reflects a Positive Relationship with Perceiving Poor Treatment**

	Correlation with Scale	Beta
Minority	.34	.30 (P<.001)
Female	.12	
Was in solo practice	.03	
Was law firm member	-.12	
Was prosecutor	.01	
Was in Legal Aid Society or Civil Legal Services for poor	.19	.16 (P<.01)
Was in a quasi non-judicial position	.06	
Was a judge on another court	-.06	
Number of years since first judicial position (natural log)	-.12	
Court in New York City	.22	.14 (P<.01)
Overall adjusted R^2=.158		

able B-9. **Number and Percent of Judges Making Suggestions Regarding Physical Facilities**

	CHI-SQUARE	SIGNIFICANCE
Better rooms/facilities	.014	.905
Maintenance/physical conditions	2.895	.089
Amenities	.004	.951
Base=251 white judges and 44 minority judges who specified a need for improvements.		

Figure B-1. Percent of Judges Who Have Held the Following Positions at any Point Prior to Current Judicial Position

	Chi-Square	Significance
Small Law Firm	15.99049	.0001
Solo Practitioner	1.78229	.1819
Judge, Other Court	6.05712	.0139
Public Agency	.03586	.8498
Prosecutor	.59355	.4411
Elected Official	.73457	.3914
Law Clerk or Secretary	.46277	.4963
Pol Party Official	3.79427	.0514
Appointed Government Official	6.68591	.0097
Legal Aid	.0000	1.0000
Large Law Firm	.0000	1.0000
Law School Faculty	.0000	1.000
Legal Services	19.44696	.0000
Public Interest Orgn.	.02870	.8655
Corporation	1.75365	.1854
Other	.47410	.4911

Figure B-2. Primary Position Held Immediately Prior to First Judicial Appointment or Election

Chi-Square	Significance
40.48009	.0002

Table B-11. The Importance of Assets for Becoming a Judge

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
Political Ties	526	2.510	.629	75	2.613	.590	-1.35	.178
Access to Positions	471	2.325	.645	68	2.485	.611	-1.93	.054
Professional Ties	519	2.164	.645	73	2.343	.671	-2.20	.028
Law School Success	513	1.489	.603	74	1.460	.645	.39	.694

Means based on 1 = Not Important, 2 = Somewhat Important, 3 = Very Important.

Table B-12. The Importance of Certain Characteristics for a Judge

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
Judicial Temperament	561	3.827	.410	76	3.855	.354	-.57	.569
Knowledge of Law	564	3.605	.534	76	3.513	.577	1.39	.166
Litigation Experience	563	2.991	.795	75	3.067	.741	-.78	.436
Management Skills	557	2.842	.780	76	2.618	.790	2.34	.020
Nonlitigation Experience	549	2.670	.746	74	2.662	.647	.09	.929
Racial Diversity	557	2.512	.921	76	3.500	.683	-11.29	.000

Means based on 1 = Unimportant, 2 = Somewhat Important, 3 = Important, 4 = Very Important.

Table B-13. Importance of Greater Minority Representation on the Bench

WHITE JUDGES			MINORITY JUDGES			STATISTICS	
N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
522	2.527	.863	68	3.853	.396	-21.69	.000

Means based on 1 = Unimportant, 2 = Somewhat Important, 3 = Important, 4 = Very Important.

Table B-14. Satisfaction with Court of Appointment/Election & Assignments

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
Satisfaction with Court of Appointment/ Election	548	3.648	.543	74	3.392	.699	3.67	.000

	CHI-SQUARE	SIGNIFICANCE
Satisfied with Case Assignments	6.0659	.0138
Satisfied with Calendar Assignments	5.0733	.0243
Satisfied with Panel Assignments	3.4554	.0630

Means based on 1=Very Dissatisfied, 2=Dissatisfied, 3=Satisfied, 4=Very Satisfied

Table B-15. The Importance of Training on Cross-Cultural Sensitivity for Judges

WHITE JUDGES			MINORITY JUDGES			STATISTICS	
N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
522	2.883	.908	69	3.493	.868	-5.27	.000

Means based on 1=Unimportant, 2=Somewhat Important, 3=Important, 4=Very Important

Table B-16. The Extent to which the Treatment of Judges, by other Judges, Attorneys, and Courtroom Personnel is affected by Racial/Ethnic Differences

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
Treatment of judges by other judges is affected.	540	.156	.392	75	.840	.594	-9.69	.000
Treatment of judges by attorneys is affected.	536	.241	.470	75	.947	.655	-9.01	.000
Treatment of judges by court personnel is affected.	525	.166	.392	73	.753	.662	-7.41	.000

Means based on 0=Not at all, 1=Somewhat, 2=Greatly

Table B-17. The Frequency with which Litigants are in Court Without Legal Representation or with Inadequate Representation

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
Minority litigants are not represented	384	1.042	1.169	51	2.157	1.332	-6.29	.000
White litigants are not represented	390	.997	.997	49	1.408	.814	-3.24	.000
Minority litigants have inadequate legal representation	500	1.248	1.049	72	2.375	1.067	-8.40	.000
White litigants have have inadequate legal representation	507	1.203	.880	68	1.588	.696	-3.46	.000

Means based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often

Table B-18. The Frequency with which a Case Involving a Minority Litigant is Decided in a Courtroom in which all Nonjudicial Personnel are White

GROUP 1 JUDGES			GROUP 2 JUDGES			GROUP 3 JUDGES			STATISTICS
N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	Significant Differences
244	1.603	1.082	170	2.782	1.159	132	3.379	.993	Groups: 1 & 2 2 & 3 1 & 3

Means based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often
See pages 7-8, above, for definition of Groups 1 through 3.

Table B-20. Satisfaction with Minority Representation in the Nonjudicial Work Force

WHITE JUDGES			MINORITY JUDGES			STATISTICS	
N	Mean	Std. Dev.	N	Mean	Std. Dev.	T Value	2-Tail Prob.
525	3.04	.69	73	2.49	.85	5.28	.000

Means based on 1=Very Dissatisfied, 2=Dissatisfied, 3=Satisfied, 4=Very Satisfied

Table B-21. The Importance of Greater Minority Representation of Minorities Among Nonjudicial Personnel

WHITE JUDGES			MINORITY JUDGES			STATISTICS	
N	Mean	Std. Dev.	N	Mean	Std. Dev.	T Value	2-Tail Prob.
518	2.380	.947	68	3.515	.635	-12.96	.000

Means based on 1=Unimportant, 2=Somewhat Important, 3=Important, 4=Very Important

Table B-22. Satisfaction with the Competence, Dedication and Interaction with the Public of Nonjudicial Personnel

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T Value	2-Tail Prob
Competence	551	3.417	.600	74	3.283	.586	1.80	.072
Dedication	551	3.298	.676	73	3.123	.622	2.09	.037
Interaction with the public	544	3.285	.614	72	3.042	.680	3.12	.002

Means Based on 1=Very Dissatisfied, 2=Dissatisfied, 3=Satisfied, 4=Very Satisfied

Table B-23. The Importance of Training Nonjudicial Personnel on Cultural/Racial Sensitivity

WHITE JUDGES			MINORITY JUDGES			STATISTICS	
N	Mean	Std. Dev.	N	Mean	Std. Dev.	T Value	2-Tail Prob.
521	2.896	.908	70	3.529	.756	-5.57	.000

Means based on 1=Unimportant, 2=Somewhat Important, 3=Important, 4=Very Important

Table B-24. Judge Responses to Questions About Civil Outcomes

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T Value	2-Tail Prob.
A civil case is regarded by attorneys or insurance companies as less 'winnable' because the injured party is minority.	270	.878	.954	39	1.769	1.135	-5.32	.000
The relief award to a white plaintiff in a civil case is more than the relief awarded to a minority plaintiff in a comparable injury case.	266	.669	.896	38	2.184	1.159	-7.73	.000

Means based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often

Table B-25. Satisfaction with the Availability and Quality of Court-Appointed Interpreters

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T-Value	2-Tail Prob.
Availability	466	2.897	.780	71	2.789	.754	1.09	.275
Quality	454	3.073	.669	67	2.97	.674	1.17	.242

Means Based on 1=Very Dissatisfied, 2=Dissatisfied, 3=Satisfied, 4=Very Satisfied

Table B-26. Services That Judges Want Provided in Their Courthouses.

	Chi-Square	Signif-icance
Child care	2.048	.1524
Information for court users	5.958	.0147
Handicapped access/system for hearing impaired	1.546	.2138
Social Services (e.g. Counseling job referrals, homes for the evicted).	.002	.9662
Base: 251 white judges and 44 minority judges who indicated the need for any additional service.		

Table B-27a. The Frequency of Racial Disparities in Criminal Case Pretrial Processing and Outcomes

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T Value	2-Tail Prob.
A white defendant is released, with or without bail, in a situation that would lead to detention for a minority defendant.	425	.657	.866	59	2.288	1.175	-10.28	.000
Lower bail is set for white than for minority defendants accused of similar crimes, with similar records and community ties.	412	.466	.765	60	1.983	1.359	-8.45	.000
A criminal case is regarded by defense attorneys as more "winnable" because the defendant is white.	353	1.071	1.013	56	2.000	1.079	-6.32	.000
A criminal case is regarded by prosecutors as more "winnable" because the victim is white.	343	1.012	.967	57	2.105	1.175	-7.65	.000
The court is encouraged by counsel to consider a wider range of dispositional alternatives when the case involves white rather than minority defendants.	409	.677	.917	61	2.098	1.193	-8.92	.000

Means based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often

Table B-28. The Treatment of Minority Attorneys in Court

	WHITE JUDGES			MINORITY JUDGES			STATISTICS	
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	T Value	2-Tail Prob.
White attorneys get more respect and cooperation from other attorneys than do minority attorneys.	448	.415	.712	64	1.844	1.087	-10.21	.000
Court personnel are more respectful of white than of minority attorneys.	490	.278	.580	64	1.266	1.043	-7.43	.000
Jurors respond more favorably to white attorneys than to minority attorneys.	372	.476	.750	49	1.286	1.080	-5.09	.000

Means based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often

Table B-29. The Frequency with which a Minority Attorney Appears in Judges' Courtroom by Minority Population in Counties Served

GROUP 1 JUDGES			GROUP 2 JUDGES			GROUPS 3 JUDGES			STATISTICS
N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	Significant Differences
258	2.624	.888	176	2.199	.882	137	1.606	.988	Groups: 1 & 2 1 & 3 2 & 3

Means based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often
See pages 7-8, above, for definition of Groups 1 through 3.

Table B-30. The Importance of Greater Minority Representation of Minority Attorneys in Your Courtroom

WHITE JUDGES			MINORITY JUDGES			STATISTICS	
N	Mean	Std. Dev.	N	Mean	Std. Dev.	T Value	2-Tail Prob.
519	2.536	.925	68	3.706	.548	-15.03	.000

Means based on 1=Unimportant, 2=Somewhat Important, 3=Important, 4=Very Important

Table B-31. The Racial Composition of Juries by Minority Population in County

	GROUP 1 JUDGES			GROUP 2 JUDGES			GROUP 3 JUDGES			TOTAL JUDGES
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	Significant Difference
A case involving a minority litigant is decided by an all-white jury.	197	.990	.915	150	2.213	1.10	107	2.570	1.318	Groups: 1 & 2 1 & 3 2 & 3
A case involving a minority litigant is decided by a jury that is predominantly minority.	202	2.188	1.086	148	.912	.975	103	.544	.802	Groups: 1 & 2 1 & 3 2 & 3

Means based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often
See pages 7-8, above, for definition of Groups 1 through 3.

Table B-32. The Importance of Greater Minority Representation on Juries by Race of Judge

WHITE JUDGES			MINORITY JUDGES			STATISTICS	
N	Mean	Std. Dev.	N	Mean	Std. Dev.	T Value	2-Tail Prob.
506	2.498	1.003	69	3.304	.810	-6.40	.000

Means based on 1=Unimportant, 2=Somewhat Important, 3=Important, 4=Very Important

REPORT OF FINDINGS FROM A SURVEY OF NEW YORK STATE LITIGATORS

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I. INTRODUCTION AND METHODOLOGY

1.0 Introduction

This volume provides the findings from a survey of litigators in New York State. The study was conducted by the New York State Judicial Commission on Minorities, which was appointed by Chief Judge Sol Wachtler in January 1988 to examine the treatment of minorities in the courts and in the legal profession. The Commission identified a series of issues for study, some of which were appropriate for inclusion in the study of litigators. The following issues were addressed in the litigators' study and are the subject of this report:

- Treatment of minority litigants and witnesses in the courts;
- Aspirations to the bench and perceived importance of minority representation in the judiciary;
- Adequacy and availability of legal representation of minorities;
- Representation of minorities in the nonjudicial workforce;
- Race-related disparities in civil case outcomes;
- Adequacy of interpreter and other services;
- Race-related disparities in pretrial processing and criminal case outcomes;
- Representation and treatment of minorities in the legal profession;
- Bar passage; and
- Representation and treatment of minorities on juries.

Each of these issues is addressed in a separate section of this report. These same issues, as well as others, are also addressed in a companion volume which reports on the Commission's study of judges and in the Commission's main report. The present volume is

designed to report on data from the litigators' study. Litigators, unlike judges, practice in many different courtrooms and, therefore, have observed a wider range of behaviors than have judges. Moreover, litigators, unlike judges, are not in charge of the courts in which they appear and, therefore, are less likely to be invested in perceiving the courtrooms in which they function to be free of racial bias. Finally, litigators are less likely to be identified with the court system and are therefore more likely to be critical of the system. For all of these reasons, it was thought that a study of litigators would be particularly important in examining the extent of racial bias.

The study was designed to include only litigators, rather than lawyers in general, because of the Commission's mandate to examine the treatment of minorities in the courts. For the purposes of the study, a litigator was defined as a lawyer who had appeared in New York State courts at least ten times during the 12 months prior to the initiation of the study. While the focus on litigators was necessary in order to address the mandate pertaining to the courts, it should be recognized that the findings from those aspects of the study which deal with the treatment of minorities in the legal profession are limited to litigators and cannot be generalized to all lawyers.

2.0 Methodology

The Commission's study of litigators is based on a mailed survey of six different groups: 1) black, 2) Hispanic, and 3) Asian lawyers in New York City; 4) a comparison sample of white lawyers in New York City; 5) minority lawyers outside of New York City; and 6) a comparison sample of white lawyers outside of New York City. Native Americans were not included as a separate group because there is not a sufficiently large number of

Native Americans practicing law in New York State to permit a separate group. Nonetheless, a concerted effort was made to find Native American litigators outside of New York City for inclusion in group five.[1]

This discussion of the methodology used for the litigators study focuses on the following issues: design of the instrument; development of the sampling frame for each of the six groups; the screening of attorneys to identify litigators; follow-up for purposes of ensuring adequate response rates; and sample characteristics.

2.1 Design of the Instrument

The litigators survey (Appendix A) consists of 37 open-ended and closed-ended questions (261 variables) with space provided at the end of the questionnaire for additional comments. The survey was designed by the Commission's research staff and by Commissioners. Staff then pretested the instrument with 16 litigators to ensure its completeness and clarity.

2.2 Sampling Frame

In order to develop the universe of litigators from which each of the samples for the six groups was drawn, a variety of sources was used: lists of lawyers obtained from various

[1] According to the 1980 census, there were only 35 Native American lawyers in New York State. In an effort to find as many of these as possible, contacts were made with the following: the General Counsel of the Seneca Nation, Judicial Services of the Bureau of Indian Affairs, Association on American Indian Affairs, American Indian Community House, Bureau of Indian Affairs in New York State, National Indian Justice Center, American Indian Law Center, American Indian Bar Association, Native-American Rights Fund, Erie County Department of Social Services, Seneca Tribal Government, New York State Bar Association, Buffalo North American Indian Center, St. Regis Mohawk Tribal Nation, and law schools in New York State which enroll Native-Americans. This search yielded 12 Native-Americans, 7 of whom practice outside of New York City and were included in group 5. The others included: 2 litigators in New York city, 1 litigator who appears only in Indian Nation Courts, and 2 lawyers who did not meet the study criterion of at least ten appearances in New York State courts. These last 5 Native American lawyers have been excluded from all statistical analyses.

lawyers' associations in the state, including all minority bar associations;[2] lists of minority lawyers obtained from all public offices[3] that employ lawyers in those fifteen counties of the state that had, according to the 1980 census, the highest proportions of minorities[4]; all attorneys with Hispanic and Asian surnames who were listed in the New York Lawyers Diary and Manual for 1988; and ongoing referrals of Hispanic and Asian lawyers in New York City, and of minority lawyers outside of New York City systematically solicited during the screening process. Using all of the lists and approaches discussed above, a data base was constructed, consisting of a total of 8,018 lawyers: 1,274 Blacks in New York City; 476 Hispanics in New York City; 704 Asians in New York City; 2,624 Whites in New York City; 254 minorities outside of New York City; and 2,674 Whites outside of New York City.

The screening process described in the following section was designed to produce six samples of 150 litigators each (900 total). Through the screening effort, the six litigator samples were constructed. It is important to understand the differences among samples in order to understand the kinds of conclusions that can be drawn from the study.

The black New York City sample represents a random sample of the 1,274 black lawyers in the data base. As the black lawyers data base was primarily derived from

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[2] Law Guardians, Felony and Misdemeanor Panel, Assigned Counsel Defender Plans, New York State Trial Lawyers Association, Metropolitan Black Bar Association, National Conference of Black Lawyers, Minority Bar Association of Western New York, Black Bar Association of Bronx County, Association of Black Women Attorneys, National Black Prosecutors Association of New York City, Puerto Rican Bar Associations of New York City and Albany, Black and Hispanic Bar Association (Long Island), Chinese Lawyers Association, New York University Asian Alumni, Asian American Legal Defense and Education Fund, and Korean-American Lawyers Association.

[3] Public sector agencies contacted included Housing Authorities, District Attorney's Offices, Legal Aid, Legal Services, Corporation Counsels/Departments of Law, Departments of Social Services, County Attorney's Offices, Prisoner's Legal Services, Departments of Health, Departments of Social Services, Boards of Education, City Council/City Clerk Offices, Boards of Corrections, Departments of City Planning, Departments of Consumer Affairs, Departments of Buildings, and Offices of Administrative Trial Hearings.

[4] The 15 counties with the largest minority populations in New York State are Albany, Bronx, Dutchess, Erie, Kings, Monroe, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk, Sullivan and Westchester.

association membership lists, the litigators in this sample are likely to represent a group relatively more integrated in the profession.

Because of the difficulty experienced in reaching the study goal of 150 Hispanic litigators through association lists, additional methods were employed. Hispanic surnames were identified through the Lawyers Diary and Manual, for example, and calls were made to all public agencies that employ attorneys in the 15 counties with the largest minority populations, in order to solicit additional names of Hispanic attorneys. Thus, any litigator who was known to anyone was identified, rather than just members of associations.

Using the same procedures as those described for Hispanics a list of 704 Asian attorneys was constructed and all 369 that could be found were screened. Nevertheless, only 83 turned out to be litigators. During conversations with Asian lawyers, which occurred as part of the screening process, screeners were told that confrontation is antithetical to Asian culture and that for this reason relatively few Asian lawyers are involved in litigation practice. Another reason given was that Asian attorneys are more likely to graduate from higher ranked law schools and therefore to enter the "corporate law track" or some other nonlitigation specialty.

The minorities-outside-of-New-York-City sample represents the universe of such litigators. Despite contact with all minority bar associations outside of New York City, calls to public agencies in the 10 counties outside of New York City with the largest minority populations, inclusion of all Hispanic and Asian surname lawyers listed in the Lawyers Diary and Manual in cities outside of New York City, queries to every screened minority attorney outside of New York City, and a notice in the New York Law Journal, only 133 minority

litigators outside of New York City were identified.

The two comparison samples of white litigators (New York City and outside New York City) were initially drawn at random. However, the initial random samples of white litigators had greater proportions of litigators in private practice and lower proportions of litigators in public sector practice, than any of the minority samples.[5] In order to minimize the confounding of race and practice type, the white comparison samples were deliberately supplemented by additional litigators listed in the New York Lawyers Diary and Manual as being in public practice. Thus, the white samples do not represent random samples of the universe of white litigators, but rather random samples within strata defined by practice type, i.e., public vs. private. Like the black sample, the white samples were drawn from association lists and may overrepresent persons who join professional organizations.

To summarize the differences between samples:

- Names of Whites and Blacks were obtained from association lists. Blacks represent a random sample; among Whites, however, public sector attorneys were oversampled to compensate for the public-private disparities between white and minority samples.
- Hispanics, Asians, and minorities outside of New York City represent not random samples, but all litigators who could be found through any means. The litigators in these three study groups probably represent the universe of litigators in those groups.

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[5] The initial white samples were generated from the membership of the New York State Trial Lawyer's Association. Because a large majority of lawyers are white, that Association was assumed, for sampling purposes, to have an all-white membership. When Black, Hispanic and Asian litigators were found via this list, they were included in the study and classified in the appropriate category.

For these reasons, findings relevant to Hispanics and Asians in New York City and to minorities outside New York City can be interpreted to represent the views and experiences of all such litigators. Any generalizations of the findings relevant to black litigators should be tempered by the understanding that the black litigators in the study are those who join professional associations. Any generalizations of findings relevant to white litigators should be tempered by the understanding that these samples were constructed as comparison samples and, therefore, do not represent random samples of white litigators. Not only were public sector, white litigators oversampled, but a weighting procedure was used in the analysis of data in order to further compensate for differences in public-private sector practice between white and minority litigators.

For convenience, the text sometimes refers to the "overall" response, but is should be understood that, for the reasons discussed above, the findings cannot be generalized to all litigators in New York State. Moreover, the findings are based only on the experiences of attorneys who have litigation practices and cannot be generalized to attorneys in general.

2.3 Screening of Attorneys

Six high school students were hired full-time during the summer of 1989 to conduct the screening. The students attended a training session in which they were instructed on the screening procedure. Using the Commission's mandate, a copy of the questionnaire, a screening script, a possible scenario sheet, a log sheet, and telephone screening simulation, the screeners were familiarized with their task.

All of the various source lists were aggregated into six master lists, one for each of the six study groups. The number of lawyers on each list was divided by 150, the quotient

provided an "n," and then each screener started by calling every n^{th} person on her list. Each lawyer was asked first about the number of appearances she made in New York State courts in the last 12 months. If she did not meet the study criterion as a litigator, the interview was terminated and the interviewer contacted the next person on the list, following the same sampling interval. If the lawyer met the study criterion as a litigator, she was asked about her legal practice type and race/ethnicity. The litigator was then asked if she would participate in the study, was told to expect a questionnaire, and was asked to return it within two weeks.

Persons selected at random who could not be reached (e.g., wrong numbers, left office leaving no forwarding address) were replaced by using the next name on the list as an alternate. In the case of Asians in New York City and minorities outside of New York City, efforts were made to contact every person in the data base because we could not identify 150 litigators in either group. Extensive efforts were made to track persons who could not be found.

Ultimately, it was necessary to screen different numbers of attorneys from each of the six data bases. This is because the ratio of litigators to attorneys varies from group to group. These data are provided in Table 1.

Table 1. **Number of Litigators as Proportion of Total Number of Attorneys Screened for Each of the Study Groups.**

	Total Screened	Refused at Screening	Total Lawyers (Status Known)	Number of Litigators	Ratio of Litigators to Lawyers
Blacks (NYC)	275	1	274	166	.606
Hispanics (NYC)	225	1	224	159	.710
Asians (NYC)	369	13	356	83	.233
Whites (NYC)	208	7	201	186	.925
Minorities (outside of NYC)	212	0	212	133	.627
Whites (outside of NYC)	248	9	239	188	.787

As Table 1 shows, more Asians were screened than any other group because the ratio of litigators to lawyers was so small. Given that white lawyers were identified through the New York State Trial Lawyer's association list and Assigned Counsel Defender Plans, the ratios of white litigators to lawyers are misleadingly high and should not be taken as true ratios.

2.4 Follow-up and Response Rates

In order to ensure adequate response rates for each of the groups, nonrespondents were telephoned repeatedly until adequate response rates were obtained. The response rates are provided in Table 2.

Table 2. Response Rates for each of the Study Groups

		NONRESPONDENTS				
	Number of Litigators	Refusal after receipt of quest.	Unable to Com-plete*	Non-Respon-dents**	Number Received	Response Rate
Black (NYC)	166	6	7	19	134	.807
Hispanic(NYC)	159	3	5	21	130	.818
Asian (NYC)	83	3	2	4	74	.892
White (NYC)	186	24	6	10	146	.785
Minorities (outside NYC)	133	5	1	25	102	.767
White (outside NYC)	188	15	3	16	154	.819
TOTAL	915	56	24	95	740	.809

* Persons who experienced serious personal or professional crises.
** Persons who did not respond despite repeated follow-up.

As a result of repeated and persistent follow-up, highly satisfactory response rates were obtained for each group. Of the total questionnaires mailed, 81% of black, 82% of Hispanic, 89% of Asian, and 79% of white litigators in New York City, and 77% of minority, and 82% of white, litigators outside of New York City, responded to the survey. The overall response rate was 81%.

2.5 Characteristics of the Samples and Construction of Variables

2.5.1 Type of Employment

Table 3a. Employment Type by Minority Status for the Unweighted Samples
(Numbers in parentheses are percentages)

	NEW YORK CITY		OUTSIDE NYC	
	White	Min.	White	Min.
Solo, small firms	88 (60.3)	169 (50.0)	81 (52.6)	45 (44.1)
Medium or large firms, corporations	28 (19.2)	64 (18.9)	35 (22.7)	8 (7.8)
Public, private-nonprofits	30 (20.5)	105 (31.1)	8 (24.7)	49 (48.0)

Table 3b. Employment Type by Minority Status for the Weighted Samples
(Numbers in parentheses are percentages)

	NEW YORK CITY					OUTSIDE NYC		
	White	Black	Hisp.	Asian	Min. Sub-total	White	Min.	Total
Solo, small firms	73 (50.0)	75 (56.0)	58 (44.6)	36 (48.6)	169 (50.0)	68 (44.1)	45 (44.1)	355 (48.0)
Medium or large firms, corporations	28 (18.9)	24 (17.9)	23 (17.7)	17 (23.0)	64 (18.9)	12 (7.8)	8 (7.8)	112 (15.1)
Public, private nonprofits	46 (31.2)	35 (26.1)	49 (37.7)	21 (28.4)	105 (31.1)	74 (48.0)	49 (48.0)	273 (37.0)

As noted above, white litigators were underrepresented in public and private-not-for-profit organizations. For example, 25% of white, but 48% of minority, litigators outside New York City were so employed. Since the two white samples are comparison groups, their responses were weighted by employment type in order to reflect what their responses would have been had they had the same employment type distribution as the minority groups. Since the employment distributions differ for the three minority samples in New York City, the New York City white sample was weighted to reflect the grouped minority distribution (Table 3b, minority subtotal). For example, the contribution of the responses of white New

York City solo practitioners and small-firm members was minimized so that it would represent 50% rather than 60% of the responses. Tables 3a and 3b display the employment distributions for the unweighted and the weighted data for minority and white litigators in and outside New York City. All analyses hereinafter use the weighted samples so that differences found among race/ethnic groups cannot be attributed to differences in employment.

2.5.2 Legal Specialization

Table 4. Legal Specialization of the Six Samples
(Numbers in parentheses are percentages)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
General Litigation	7 (5.0)	8 (6.8)	8 (6.5)	6 (9.4)	10 (7.3)	8 (9.2)	47 (7.1)
Civil Litigation	13 (9.8)	8 (6.8)	12 (9.8)	6 (9.4)	8 (5.6)	3 (3.4)	50 (7.6)
Criminal Litigation	51 (37.5)	39 (33.3)	45 (36.6)	11 (17.2)	46 (33.0)	28 (32.2)	220 (33.0)
Personal Injury Negligence	29 (21.6)	9 (7.7)	14 (11.4)	1 (1.6)	18 (12.9)	8 (9.2)	79 (11.9)
Family	8 (5.9)	8 (6.8)	4 (3.3)	5 (7.8)	27 (19.8)	17 (19.5)	69 (11.9)
Real Estate	5 (3.4)	18 (15.4)	20 (16.3)	13 (20.3)	8 (5.8)	4 (4.6)	68 (10.2)
Business/ Commercial	4 (2.7)	12 (10.3)	7 (5.7)	9 (14.1)	5 (3.3)	8 (9.2)	44 (6.6)
Medical Malpractice	4 (2.8)	5 (4.3)	1 (.8)	0 (.0)	2 (1.3)	0 (.0)	12 (1.7)
Labor	0 (.0)	2 (1.7)	1 (.8)	0 (.0)	2 (1.5)	2 (2.3)	2 (1.1)
Other	16 (11.4)	8 (6.8)	11 (8.9)	13 (20.3)	13 (9.5)	9 (10.3)	70 (10.5)

As shown in Table 4, there are some differences among sample groups according to type of legal specialization. Overall, 33% of the litigators noted that they had a predominantly or exclusively criminal litigation practice; only Asians in New York City had a significantly smaller proportion of litigators in criminal practice (17%). White litigators

in New York City were significantly overrepresented and Asian litigators in New York City were significantly underrepresented among litigators who specialize in personal injury or negligence: in New York City, 22% of whites, 8% of Blacks, 11% of Hispanics, and 2% of Asians had this specialization, and outside New York City 13% of whites, and 9% of minorities, had this specialization.

2.5.3 Civil vs. Criminal Practice

Litigators were also grouped according to whether they had an exclusively criminal or exclusively civil practice. Their practice was determined by examining whether they responded to the Question 10 items that asked about specifically criminal or civil case matters. This information was supplemented by their responses about what courts they practice in (Question 3) since some courts are exclusively civil and some others are exclusively criminal. Finally, for unplaced litigators, their stated legal specializations were examined. This resulted in labeling 344 litigators as having exclusively civil practices, 174 as having exclusively criminal practices, and 222 as having mixed practices or too much missing data to determine practice type. Table 5 displays the civil vs. criminal distributions for the six sample groups.

Table 5. Distribution of the Six Study Samples by Civil vs. Criminal Practice
(Numbers in parentheses are percentages)

	New York City				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
Civil	75 (62.2)	64 (75.3)	56 (58.3)	48 (82.8)	64 (63.1)	37 (64.9)	344 (66.4)
Criminal	46 (37.8)	21 (24.7)	40 (41.7)	10 (17.2)	37 (36.9)	20 (35.1)	174 (33.6)

Asian litigators with New York City practices were significantly overrepresented

among civil case litigators. Between 58% and 75% of other litigators have exclusively civil practices and 83% of Asians in New York City have exclusively civil practices.

2.5.4 New York City vs. Outside NYC

When data were being collected, the location of the litigators' practice was determined in two ways: before they were screened, the mailing address served as an indication of where their practice is located, and during telephone screening, they were queried about the location of their practice. The responses in the survey itself allowed for further precision in determining whether their practice was predominantly in or outside New York City. Survey Question 1 (list of top three counties where litigators practice by frequency of court appearances) was used to determine location of practice and where this resulted in litigators who practice both in New York City and outside New York City, their oral response during screening was taken. Similarly, the screening lists were updated when the survey responses clearly contradicted information obtained during screening. This resulted in 102 minorities (64 Blacks, 25 Hispanics, six Asians, and seven Native Americans) and 154 whites outside New York City, and 134 Blacks, 130 Hispanics, 74 Asians and 146 Whites in New York City.

2.5.5 Ghetto vs. Nonghetto Courts in New York City

In some instances, the survey responses of New York City litigators are examined according to whether they appear in the so-called New York City ghetto courts (Family Court, Criminal Court, Civil Court, Housing Court).

Table 6. **Distribution of the Six Study Samples by Practice in New York City "Ghetto Courts"***
(Numbers in parentheses are percentages)

	White	Black	Hisp.	Asian	Total
No	37 (25.5)	18 (13.4)	21 (16.2)	11 (14.9)	87 (18.0)
Yes	109 (74.5)	116 (86.6)	109 (83.8)	63 (85.1)	397 (82.0)

* "Ghetto" courts include Criminal, Civil, Housing, and Family Courts in New York City.

Of the 484 New York City litigators, 397 reported having appeared in these courts, and 87 litigators reported never appearing there. White New York City litigators were significantly overrepresented among those who had never appeared in these courts: they comprise 30% of all New York City litigators in the sample, but 43% of those who have never appeared in these courts. Three quarters of the white litigators, and between 84% and 87% of other litigators, in New York City have appeared in Family Court (in New York City), Civil Court, Criminal Court, and Housing Court.

2.5.6 Gender

The six samples differ markedly in terms of their proportions of males and females. The percentages of females in the New York City samples are: Whites, 17%; Blacks, 47%; Hispanics, 28%; and Asians, 30%. Percentages of females for the samples outside of New York City are: Whites, 23%, and Minorities, 38%.

2.5.7 Number of Years in Practice, Number of Court Appearance and Race Distribution of Clients

Other characteristics of the samples include number of years since passing the bar, the number of court appearances made in the last twelve months, and the race distribution of the litigators' clients.

Table 7. Mean Number of Years Since Admission to Practice, Number of Court Appearances Made in Past 12 Months and Percentage Minority Clients

		NEW YORK CITY				OUTSIDE NYC	
		White	Black	Hisp.	Asian	White	Min.
Years since being admitted to practice in New York State	N	144	132	122	73	153	100
	Mean	12.74	11.36	8.21	6.56	13.56	9.25
	Std Dev	10.03	10.33	6.76	5.34	10.20	8.05
Number of court appearances in past twelve months.	N	146	117	124	71	149	93
	Mean	240.24	155.20	151.62	110.30	178.71	167.45
	Std Dev	324.79	194.00	207.25	190.10	260.63	331.23
Percentage of minority clients*	N	123	113	100	54	123	69
	Mean	60.35	78.13	75.46	62.28	30.53	61.77
	Std Dev	28.09	31.59	31.08	36.52	25.50	31.60

* 143 litigators whose clients are not individuals (e.g., District Attorneys represent "The People") were not included in this item.

Overall, the survey respondents reported being in practice in New York State an average of 10.8 years. There are statistically significant differences among the six samples: Asian and Hispanic litigators in New York City have been in practice in the State for a significantly shorter period of time than New York City white litigators (6.6 and 8.2 versus 12.7 years, respectively), and the Asian mean is also significantly lower than the mean number of years for Black litigators in New York City (11.4). Outside New York City, minority litigators were admitted into practice, as a group, more recently than were white litigators (9.3 versus 13.6 years ago).

To qualify for participation in the survey, attorneys needed to have made at least 10 appearances in state courts over the twelve-month period prior to the survey. The mean number of appearances for the sample groups is much higher than that. Whites in New York City appeared an average of 240 times in state court, Blacks 155 times, Hispanics 152

times, and Asians, 110 times, and outside New York City, Whites appeared an average of 179, and minorities 168, times. The only significant difference in the means was that between Asians and Whites in New York City. Overall, 36.4% of the litigators appeared in court between 10 and 50 times in the last year. Whites litigators in New York City were significantly underrepresented in this group (they comprise 20% of the total litigators and 14% of who had made between 10 and 50 appearances) and Asians in New York City were significantly overrepresented in this group (comprising 10% of the litigators and 15% of those who had made between 10 and 50 appearances). Black litigators in New York City were significantly overrepresented among those who had made over 1000 court appearances in the past twelve months: they represent 18% of the litigators but 40% of those who had made over 1000 appearances.

Overall, 60% of the litigators' clients were minority. Black and Hispanic litigators in New York City had the highest mean percent of minority clients (78% and 75%, respectively); these percents are significantly higher than that of white litigators in New York City (60%). Indeed, 65% of Black litigators and 56% of Hispanic litigators had 90-100% minority clientele. White litigators outside New York City had a significantly lower mean percent of minority clients (30%) than did any other group.

2.6 Presentation of Data in the Report

For ease of presentation, statistical tests of significance are not presented in the body of the report. Appendix B replicates all relevant tables presented in the body of the report with the appropriate statistics. Multiple-choice survey questions with choices that range from "very often" (51-100%) to "never" (0%) or "very satisfied" to "very dissatisfied" were treated

as continuous variables; t-tests and one-way analyses of variance were performed on these distributions. In other cases, chi-square tests were conducted. Significant differences between New York City samples and samples outside New York City are not mentioned in the report or in Appendix B.

II. TREATMENT OF MINORITY LITIGANTS AND WITNESSES

1.0 Introduction

Litigators spend a great deal of time in courtrooms. For this reason they were asked a series of questions about the treatment of minorities in the courts; data relevant to the treatment of litigants and witnesses and to the reactions to jurors are discussed in this section. In addition, findings relevant to the physical conditions of the courts are provided in this section because one component of "treatment" is the quality of the physical surroundings in which people are expected to operate.

2.0 Biased or Disrespectful Behavior

Litigators were asked to rate the frequency with which certain behaviors occur ("never," 0%; "rarely," 1-5%; "sometimes," 6-25%; "often," 26-50%; and "very often," 51-100%). These findings are presented in Table 8a.

Table 8a. Treatment of Litigants*
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
Racial stereotypes affect evaluation of litigants' claims.	24 (20.9)	47 (41.2)	44 (38.0)	72 (63.2)	34 (29.8)	8 (7.0)	51 (46.4)	39 (35.5)	20 (18.2)	16 (27.6)	23 (39.7)	19 (32.8)	10 (9.6)	54 (49.8)	44 (40.6)	45 (54.9)	24 (29.3)	13 (15.9)	218 (37.2)	221 (37.7)	148 (25.2)
Judges, attorneys or courtroom personnel publicly repeat ethnic jokes, epithets or demeaning remarks.	10 (7.7)	30 (22.6)	92 (69.7)	30 (25.2)	20 (16.8)	69 (58.0)	23 (19.2)	31 (25.8)	66 (55.0)	4 (5.9)	17 (25.0)	47 (69.1)	10 (7.0)	27 (19.5)	102 (73.4)	18 (18.8)	30 (31.3)	48 (50.0)	95 (14.1)	155 (23.0)	424 (62.9)
Comments by judge about the personal appearance of minority litigants, witnesses, and attorneys.	5 (3.6)	14 (11.4)	106 (85.0)	24 (20.5)	26 (22.2)	67 (57.3)	13 (11.1)	31 (26.5)	73 (62.4)	7 (11.1)	12 (19.0)	44 (69.8)	2 (1.5)	6 (5.0)	120 (93.5)	12 (13.0)	15 (16.3)	65 (70.7)	62 (9.7)	105 (16.3)	475 (74.0)
Minority attorneys, litigants, and witnesses are addressed by first name.	8 (6.3)	20 (16.1)	97 (77.6)	47 (36.2)	37 (28.5)	46 (35.4)	26 (21.5)	33 (27.3)	62 (51.2)	6 (8.8)	14 (20.6)	48 (70.6)	0 (.3)	8 (6.8)	110 (92.9)	20 (22.0)	20 (22.0)	51 (56.0)	107 (16.4)	132 (20.2)	414 (63.3)
Court personnel are discourteous to minority litigants.	24 (17.5)	44 (32.1)	69 (50.4)	51 (39.2)	53 (40.8)	26 (20.0)	48 (38.4)	49 (39.2)	28 (22.4)	17 (24.6)	25 (36.2)	27 (39.1)	3 (2.2)	27 (19.0)	114 (78.9)	22 (22.4)	39 (39.8)	37 (37.8)	165 (23.5)	237 (33.7)	301 (42.8)
Court personnel are discourteous to white litigants.	8 (5.7)	55 (40.2)	74 (54.1)	7 (5.5)	43 (33.6)	78 (60.9)	8 (6.3)	45 (35.7)	73 (57.9)	3 (4.3)	29 (41.4)	38 (54.3)	0 (0)	34 (23.1)	113 (76.9)	3 (3.1)	22 (22.9)	71 (74.0)	29 (4.1)	228 (32.4)	447 (63.5)
Minority defendants complain of physical maltreatment in holding areas.	18 (28.3)	22 (33.6)	25 (38.1)	44 (65.7)	16 (23.9)	7 (10.4)	33 (45.8)	20 (27.8)	19 (26.4)	8 (36.4)	8 (36.4)	6 (27.3)	7 (8.5)	28 (33.5)	48 (58.0)	28 (46.7)	19 (31.7)	13 (21.7)	138 (37.5)	113 (30.5)	118 (31.9)
White defendants complain of physical maltreatment in holding areas.	4 (6.2)	27 (41.9)	33 (51.8)	5 (8.2)	22 (36.1)	34 (55.7)	7 (10.1)	21 (30.4)	41 (59.4)	3 (14.3)	9 (42.9)	9 (42.9)	5 (5.4)	26 (31.4)	53 (63.1)	3 (5.2)	23 (39.7)	32 (55.2)	27 (7.4)	128 (35.9)	202 (56.6)

* See Appendix 8, Table 8-8a, for means, standard deviations, and tests of significance.

Overall, more than one third (37%) of litigators reported that "racial stereotypes affect minority litigants' claims" "often/very often." There are significant differences among groups. Thus, 63% of black, 46% of Hispanic, 28% of Asian and 21% of white litigators in New York City, and 55% of minority and 10% of white litigators outside New York City, reported that racial stereotypes affect minority litigant claims "often/very often." It is important to note that although white litigators reported such bias less frequently than did minority litigators, 62% of white litigators in New York City and 59% of white litigators outside New York City reported that such bias occurs at least "sometimes." Litigators offered numerous comments on such bias. For example, a Native American litigator outside New York City stated:

> Many times Native (American) defendants charged with crimes are perceived to be guilty[,] before anything is determined, simply because of their race.

A white litigator in New York City lamented:

> When fighting for a client's rights, we are frequently met with the rejoinder "What difference does it make? They are just going back to the projects." or "They're never going to Harvard."

Comments by white litigators outside of New York City included:

> When I was an ADA, judge asked why I was not reducing the charges since [the] victim in a sex abuse case was black and defendant was white.
>
> My client was Japanese. I was arguing a motion before a Supreme Court judge and had submitted an affidavit of my client outlining the facts. The opposing attorney alleged that my client was lying and suggested that the Japanese cannot be trusted--and the Judge agreed!
>
> In child abuse/neglect Family Court cases, white children are protected more, i.e., there is a higher tolerance of violence toward minority children before judicial intervention occurs.
>
> Minority clients are often assumed to not be as much on the ball as whites.

The whole thing is very subtle--like racism in most of society.

An Hispanic litigator in New York City commented:

> Just go and sit in any of the housing courts. Whites also are subjected to this treatment, but often the color of their skin entitles or gives them the benefit of doubts being resolved in their favor.

An Hispanic litigator in New York City noted the peculiarly convoluted logic employed by one judge in discrediting the testimony of a minority complainant:

> Judge took judicial notice that the [witness] was not of African descent and that the term "Nigger" applied only to those of African descent. Therefore, [witness] was lying when he testified that the police officer called him a "nigger" in spite of fact that [witness] was not white.

Yet another Hispanic litigator in New York City recounted:

> When a judge was about to grant a warrant of eviction, she rationalized her decision by saying, "This family isn't going to be homeless, since they're now living with neighbors; anyway these people are used to doubling up in apartments." Family happened to be black.

A black litigator in New York City noted how cultural stereotypes work against the minority victim:

> A wife abuse case where the defendant stabbed his wife in the stomach, the judge sentenced the defendant to the minimum amount of jail time and said, "these type of people do this all the time, it's no big deal."

A black litigator in New York City noted:

> Assumptions that minority litigants are all homeless, indigent and uneducated.

A white litigator in New York City summarized:

> In general, the system makes the assumption at all levels that blacks and Hispanics are more likely to flee, more likely to be guilty, and less likely to be rehabilitated than their white counterparts.

As can be seen from Table 8a, 14% of all litigators stated that "judges, attorneys, or

courtroom personnel publicly repeat ethnic jokes involving minorities, use racial epithets, or make demeaning remarks about a minority group" "often/very often"; another 23% stated that such behavior occurs "sometimes." Among the six study groups, 8% of white, 25% of black, 19% of Hispanic and 6% of Asian litigators in New York City, and 7% of white and 19% of minority litigators outside of New York City, reported that such behavior occurs "often/very often." Minority litigators outside New York City reported signifi- cantly greater frequency of such behavior than did white litigators outside New York City, but even substantial proportions of white litigators outside New York City reported that such behavior occurs "sometimes" (20%). There are no significant differences among any of the groups in New York City, suggesting that all litigators there, regardless of race, have had similar experiences regarding the frequency with which such behaviors occur. An Hispanic litigator in New York City wrote:

> Civil Court and Housing Court judges constantly make remarks showing disdain and insensitivity about women with children, particularly women of color (e.g., "deadbeats," "rabbits").

A black litigator outside of New York City recounted:

> A judge in Queens told a black defendant to tell him where the other "niggers" are. Some judges mock the speech of black witnesses and litigants.

A black litigator outside of New York City added:

> People use tone of voice, like a Negro dialect, to try to make a statement. It's meant as a put down and happens quite a bit.

A white litigator from outside New York City commented:

> Clearly I have heard ethnic or racial jokes and slurs from white police, court deputies, fellow prosecutors and attorneys. Black remarks are more prevalent. I have only heard such ethnic/racial remarks from one judge, although I [have] been with dozens. Such feelings about minority defendants are shared by

police, court staff, witnesses--who are also minority members themselves.

An Hispanic litigator in New York City stated:

> I've heard judges tell criminal defendants, "[I]n USA we don't steal[,] unlike what you're used to in X Latin American country[.]" I've heard judges talking about "not having a Chinaman's chance" to Asians. One judge advised my jury that they would get my client next time (he was black). The same judge talked of "niggers in the woodshed[.]"

A white litigator in New York City wrote about a judge who allegedly stated:

> "There's another Nigger in the woodpile and I want him."

A black litigator in New York City observed:

> Once in Civil Court Housing Part Kings [County], while representing a black client, the judge, in open court, remarked that the landlord (who was white) was "stuck" with a "tarbaby."

White litigators outside New York City wrote:

> A Family Court . . . attorney repeatedly called party "boy" and Judge refused to admonish.

> Judges and attorneys make references to the injuring of minorities as "one less," or "just another black person" or "should have killed him."

A black litigator outside New York City commented:

> Judge referred to adult black client as "boy" ("you people") etc.

As shown in Table 8a, 10% of litigators reported that "comments are made by the judge about the personal appearance of minority attorneys, litigants, or witnesses, when no comments are made about the appearance of white attorneys, litigants, or witnesses" "often/very often." There are significant differences between white and minority litigators outside New York City, and between both black and Hispanic litigators in New York City and white litigators in New York City. Substantial proportions of litigators reported that

such behavior on the part of judges occurs "often/very often" or "sometimes." Among white litigators in New York City, 4% reported that such comments by judges are made "often/very often" and another 11% reported "sometimes"; among black litigators 21% reported "often/very often" and another 22% reported "sometimes"; among Hispanic litigators, 11% reported "often/very often" and another 27% reported "sometimes"; and among Asians, 11% reported "often/very often" and another 19% reported "sometimes." Among white litigators outside of New York City, only 2% reported "often/very often" and 5% reported "sometimes"; among minorities outside of New York City, 13% reported that such behavior occurs "often/very often" and another 16% said "sometimes." Again, what emerges is a picture of a courtroom climate in which racially biased or insensitive comments are not intolerable nor out of the realm of acceptable or even possible behavior. Such behavior is reported to occur with sufficient frequency that it cannot be considered the rare aberrant behavior of one or several judges. A black litigator outside New York City noted:

> Usually African-Americans and Hispanics have to dress and talk in imitation of whites to receive respect and to have any chance of limited credibility.

An Hispanic litigator in New York City commented:

> [D]ress and lack of a skilled job along with color and race, are factors that play too large a role on [the] part of D.A. and Judge in deciding fate of accused.

Overall, 16% of litigators reported that "minority attorneys, litigants, or witnesses are addressed by first name, while white attorneys, litigants, or witnesses are addressed more formally" "often/very often"; an additional 20% reported that it happens "sometimes." There are significant differences among groups. Six percent of white and 9% of Asian, but 36% of black and 22% of Hispanic, litigators in New York City reported that such behavior

occurs "often/very often." Additionally, 16% of white, 21% of Asian, 29% of black, and 27% of Hispanic litigators in New York City reported that such behavior occurs "sometimes." Outside New York City there are substantial differences between white and minority litigators. Not one white litigator outside New York City reported that the behavior occurs "often/very often," and 7% reported that it occurs "sometimes," while 22% of minority litigators outside New York City reported "often/very often" and an additional 22% reported "sometimes."

The pair of items dealing with the frequency with which court personnel are disrespectful and discourteous to white litigants and to minority litigants show interesting results. Overall, relatively few persons (4%) reported discourtesy toward white litigants by court officers. In fact, fewer persons reported such discourtesy than any other form of discourtesy discussed above. Significantly fewer white litigators outside of New York City than any other group reported discourtesy of court officers toward white litigants; there were no other significant differences. Higher proportions of litigators reported court officer discourtesy to minority litigants. Overall, 24% of litigators reported that discourtesy toward minority litigants occurs "often/very often." There are significant differences among groups. Substantially fewer white (2%) than minority (22%) litigators outside New York City reported that such behavior occurs "often/very often." Relatively fewer white (18%) and Asian (25%) than black (39%) and Hispanic (38%) litigators reported that such behavior occurs "often/very often." It is noteworthy that although more black and Hispanic than white or Asian litigators perceived discourtesy to minority litigants, even white and Asian litigators perceived more discourtesy toward minority litigants than toward white litigants. In fact,

there is a significant difference between the overall average discourtesy scores for white and minority litigants; the latter are reported to be treated with greater discourtesy. A white litigator from New York City reflected:

> Court officers present an especially horrible problem. Some officers are wonderful and treat all defendants equally. However, they are few and far between. Generally, of all court personnel, this group is the most openly hostile and racially biased in the court system. White defendants are treated with a modicum of deference. Minority defendants are treated like scum, cursed and ordered about in a derisive tone and manner. White court officers revel in exercising their power over an individual who is basically helpless and at their mercy. In the seventeen years I have practiced law, I have seen numerous courtroom fights between white court officers and minority defendants (I no longer count these incidents), while the number of fights between white defendants and white court officers is limited in my experience to two, and in both of those cases, the defendants were drunk.

An Hispanic litigator in New York City wrote:

> Client was told by a hearing officer to speak louder [and] to talk as loudly as he does when he's robbing someone on the street. The hearing officer said he was sure the client could do it, that he had experience in such matters.

The following observations are from black litigators in New York City:

> Court officers taking questions from whites, but cutting off questions posed by black individuals.

> In Criminal Court, court officers have told minority defendants who were speaking in the courtroom to go home and come back tomorrow, resulting in warrants being issued, while merely escorting white defendants out of the courtroom and telling them to be quiet when they returned.

> I've seen court officers and clerks treat black defendants, family members of defendants, and complainants rudely and brusquely in criminal court calendar parts where white persons are not treated quite so rudely.

> White court officers telling Hispanic litigants that "they" should have stayed in Colombia.

> White court officers calling minority litigants racially derogatory names.

A white litigator in New York City observed:

> [A] court officer telling a pro se minority litigant that she would be better off if she stopped "screwing around and making more welfare kids."

A minority litigator outside New York City wrote:

> It's common to see clerks and/or court officers rush minority litigants into accepting things (settlements) they don't want.

A white litigator in New York City commented:

> [Criminal] defendants in general are treated like animals--they are 75-80% minorities--jails are overcrowded, holding cells in the courtrooms are too small, the department of corrections officers and the court officers treat defendants like animals--defendants are not given the time it takes to allow them to understand what is happening.

A white litigator in New York City agreed:

> Court officers deal[] with criminal defendants in a way which makes it clear that the defendants are the equal of animals.

The final pair of items presented in Table 8a deals with minority and white defendants' complaints of physical maltreatment while they are in the holding areas within the courts. Overall, 7% of all litigators reported that white defendants complain of maltreatment "often/very often." There are no significant differences among any of the groups. In contrast to the small proportions of litigators reporting that white defendants complain "often/very often," 38% of all litigators said that minority defendants complain "often/very often" of such abuse. There are significant differences among groups. It is important to note, however, that even though relatively fewer white than minority litigators reported that such complaints occur "often/very often," even white litigators reported greater frequencies of occurrence in relation to minority than to white defendants. Thus, 28% of white litigators in New York City reported that minority defendants complain "often/very

often" in contrast to the 6% of white litigators in New York City who reported that white defendants complain "often/very often." Nine percent of white litigators outside of New York City reported that minority defendants complain of physical maltreatment "often/very often"; 5% made the same report regarding white defendants. Much higher proportions of black and Hispanic litigators in New York City and minority litigators outside of New York City reported that minority defendants complain about physical maltreatment "often/very often"; Blacks (New York City)--66%, Hispanics (New York City)--46%, minorities outside of New York City--47%. A white litigator in New York City stated:

> [T]he actions of court personnel on all levels that result in unfair treatment as a result of racial or ethnic bias are rampant. They range from subtle expressions to explicit actions including manhandling of incarcerated clients by court officers.

There is a significant difference between the average physical maltreatment scores of white and minority defendants; minority defendants are reported to receive maltreatment with substantially greater frequency.

The items in Table 8a were combined into a minority treatment scale.[6] The resulting five item scale has high reliability (alpha=.86). Group means are presented in Table 8b. The range is from 0-4 ("never" to "very often"); the higher the mean the more frequent the maltreatment.

[6]For the purpose of this scale, the two items related to treatment of white litigants and one regarding the physical maltreatment of minorities were deleted because of low item-total correlations.

Table 8b. Means and Standard Deviations on the Minority Treatment Scale

	NEW YORK CITY				OUTSIDE NYC	
	White	Black	Hisp.	Asian	White	Min.
N	95	99	95	49	88	70
Mean	1.09	2.12	1.82	1.43	.89	1.79
Std. Dev.	.73	.84	.91	.86	.60	.88

Black and Hispanic litigators in New York City gave significantly higher ratings than did Whites in New York City; minorities outside New York City gave significantly higher ratings than did Whites outside New York City. On average, all minority groups (except Asians) reported that maltreatment of minorities occurs "sometimes" (6-25% of the time), whereas Whites, on average, reported that such behavior occurs "rarely" (1-5%). There were no differences on any of these items between litigators appearing in criminal and those appearing in civil courts.

A regression analysis was run on the minority treatment scale in order to determine the relative strength of association with this scale of variables that have been shown to be related to the perception of biased treatment, as well as other variables which are related conceptually to the scale. First, ascriptive characteristics, namely race/ethnicity and gender, were entered into the model. Being Black emerged as most strongly associated with perceiving biased treatment, followed by being Hispanic, Asian, and female, respectively. Next, a natural log of the number of years since passing the bar exam was included, on the assumption that those litigators with fewer years of experience in the courts might have a different sensitivity to bias. This variable did not meet the .05 criterion for inclusion. The next block included four variables for stepwise inclusion. The first three, employment variables, were being employed by a firm or corporation, as a public defender or by civil

legal services, as a prosecutor, or as Corporation Counsel. The fourth variable was a natural log of the total number of court appearances; this last variable was entered first in the last stepwise block and was positively associated with perceiving bias. Beyond this, only being employed as a public defender or legal services attorney met the .05 criterion for inclusion and was positively associated with the dependent variable.[7]

The regression model assesses how well the independent variables (race, gender, years in practice, employment, amount of time spent in court) explain the propensity to perceive bias in the courtroom. Thus, minority status is the best predictor of perceived bias; being female, being employed as a public defender or in a civil legal services office, and having made more courtroom appearances are also important.

3.0 Treatment of Witnesses

A series of five questions was asked about whether white and minority judges give greater credibility to the testimony of white, than of minority, lay and expert witnesses, and whether attorneys are more respectful of white, than of minority, witnesses in cross-examination. Results are provided in Table 9a.

[7] See Appendix B, Table B-8c, for the regression analysis.

Table 9a. Credibility and Treatment of Witnesses by Judges and Attorneys*
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
White judges give more credibility to white than to minority expert witness.	8 (8.4)	21 (21.6)	68 (70.0)	33 (38.8)	26 (30.6)	26 (30.6)	29 (33.3)	18 (20.7)	40 (46.0)	5 (12.8)	14 (35.9)	20 (51.3)	1 (1.0)	8 (9.8)	76 (89.2)	14 (25.0)	15 (26.8)	27 (48.2)	90 (20.0)	102 (22.8)	257 (57.2)
Whites judges give more credibility to white than to minority lay witnesses.	10 (9.8)	25 (24.3)	69 (65.9)	39 (37.1)	36 (34.3)	30 (28.6)	35 (31.8)	36 (32.7)	39 (35.5)	7 (16.3)	14 (32.6)	22 (51.2)	2 (2.1)	25 (21.8)	86 (76.1)	25 (30.9)	25 (30.9)	31 (38.3)	119 (21.3)	161 (28.9)	277 (49.7)
Minority judges give more credibility to white than to minority expert witnesses.	2 (1.8)	11 (11.5)	81 (86.7)	15 (17.0)	23 (26.1)	50 (56.8)	11 (12.1)	22 (24.2)	58 (63.7)	4 (12.9)	9 (29.0)	18 (58.1)	1 (1.1)	3 (3.6)	71 (95.3)	4 (8.3)	10 (20.8)	34 (70.8)	36 (8.6)	77 (18.2)	312 (73.2)
Minority judges give more credibility to white than to minority lay witnesses.	6 (6.1)	15 (14.9)	80 (79.0)	16 (15.4)	25 (24.0)	63 (60.6)	21 (20.0)	27 (25.7)	57 (54.3)	2 (5.4)	11 (29.7)	24 (64.9)	2 (2.0)	7 (8.3)	74 (89.7)	8 (12.5)	10 (15.6)	46 (71.9)	55 (11.1)	95 (19.2)	344 (69.7)
Attorneys are more respectful of white than of minority witnesses in cross-examination.	12 (9.8)	26 (21.4)	84 (68.7)	53 (45.7)	37 (31.9)	26 (22.4)	26 (22.2)	43 (36.8)	48 (41.0)	11 (21.2)	17 (32.7)	24 (46.2)	5 (3.6)	13 (9.6)	115 (86.8)	27 (29.3)	23 (25.0)	42 (45.7)	134 (21.2)	159 (25.1)	339 (53.7)

* See Appendix B, Table B-9a, for means, standard deviations and tests of significance.

White judges were reported to give more credibility to the testimony of white lay and expert witness than to the testimony of comparable minority witnesses. Overall, 20% of respondents said that white judges give more credibility to white expert witnesses "often/very often" and 21% said white judges give more credibility to white lay witnesses than to minority witnesses "often/very often." There are significant differences among groups. Fewer white litigators outside New York City (1% in relation to expert witnesses; 2% in relation to lay witness) than minority litigators outside New York City, (25% in relation to expert witnesses; 31% in relation to lay witness) reported that white judges find white witnesses more credible than minority witnesses "often/very often." Similarly, fewer white litigators in New York City reported these occurrences than did black or Hispanic litigators in New York City; there was also a significant difference between black and Asian litigators. Thus, 10% of white, 37% of black, 32% of Hispanic, and 16% of Asian litigators in New York City reported that white judges find white lay witnesses more credible than minority witnesses "often/very often." Similarly, 8% of white, 39% of black, 33% of Hispanic, and 13% of Asian litigators in New York City reported that white judges find white expert witnesses more credible "often/very often."

Minority judges are perceived as being more even-handed and less likely to give extra weight to the testimony of white witnesses than are white judges. Overall, 9% of all litigators reported that minority judges give more credibility to the testimony of white expert witnesses "often/very often" as opposed to 20% of litigators reporting such bias among white judges. Similarly, 11% reported that minority judges give more credibility to the testimony of white lay witnesses "often/very often" and 21% said this of white judges. Interestingly, 2% of white,

17% of black, 12% of Hispanic, and 13% of Asian litigators in New York City reported that minority judges give greater weight to white expert witness testimony "often/very often." Similarly, 1% of white, and 8% of minority, litigators outside New York City reported that minority judges give greater weight to white expert testimony. The comparable findings in relation to minority judges' attitudes toward white lay witnesses show that 6% of white, 15% of black, 20% of Hispanic, 5% of Asian litigators in New York City, and 2% of white and 13% of minority litigators outside New York City, reported that minority judges give more credibility to white, than to minority, witnesses "often/very often."

Average differences between the way white and minority judges are perceived are significant. White judges were rated as giving greater credence to the testimony of white, than minority, witnesses (expert or lay) with greater frequency than minority judges. The important point is that minority judges are seen as less likely to give greater credence to the testimony of white, than minority, witnesses.

As shown in Table 9a, overall 21% of litigators reported better treatment of white than of minority witnesses by attorneys conducting cross examination "often/very often". There are significant differences among groups. Whereas only 10% of white litigators in New York City reported that preferential treatment of white witnesses occurs "often/very often," 46% of black, 22% of Hispanic, and 21% of Asian litigators in New York City made such report. Outside New York City, 4% of white, but 29% of minority, litigators reported that white witnesses receive better treatment than minority witnesses "often/very often."

The five witness treatment items were combined into a witness treatment scale. The scale has excellent reliability (alpha=.93). The range is from 0-4, "never" to "very often," respectively.

Table 9b. Means and Standard Deviations on the Witness Treatment Scale

	NEW YORK CITY				OUTSIDE NYC	
	White	Black	Hisp.	Asian	White	Min.
N	91	77	84	27	65	44
Mean	.93	1.93	1.62	1.32	.61	1.31
Std. Dev.	.81	.98	.95	1.04	.66	1.05

Black and Hispanic litigators in New York City had significantly higher mean scale scores than white litigators in New York City. Whites outside New York City were significantly less likely to report biased treatment of witnesses than were minorities outside New York City. On average, black and Hispanic litigators in New York City reported that preferential treatment of minority witnesses occurs "sometimes" (6-25%) whereas other groups on average reported such preferential treatment occurs "rarely" (1-5%).

There were no differences on any of these items between litigators practicing exclusively in civil courts and those practicing in criminal courts. An Hispanic litigator in New York City commented:

> Case where the testimony of five Hispanic witnesses for the defense [was] minimized and the testimony of one white police officer was given excessive credit. I believe the witnesses' testimony was minimized by the judge because they were Hispanic, poor, and did not have a good command of English.

A white litigator in New York City wrote:

> Judge in conference following black expert witness testimony burlesqued imitation of testimony using Amos 'n Andy type of speech.

Another white litigator in New York City wrote:

> I saw a minority judge act most disrespectfully to a minority defense witness during trial, after having offered water, etc. to white prosecution witness.

A black litigator in New York City wrote:

In Family Court in the Bronx, a judge treated my client with such contempt when my client, whose child had been removed, began to cry on the stand. A few minutes later, when a white witness began to testify, the judge actually called a recess and gave the witness water because he coughed.

A black litigator outside New York City recalled:

I once had a minority doctor . . . give expert testimony regarding the treatment given to a person who later died. The DA was allowed to go into the doctor's past brushes with the law, the IRS, his matrimonial problems and drinking/AA treatments. He never asked the doctor about his medical opinion.

Another black litigator outside New York City wrote:

District attorney questioning minority witnesses in "street vernacular" rather than common words. District attorney ridiculing minority nicknames or customs.

A white litigator in New York City wrote:

[The p]rosecution in my experience usually ask[s] defendants where they live[--]which is nowhere near [the] place of [the] crime[--]trying to infer . . . "[W]hat are they doing in that neighborhood?"

A black litigator in New York City commented:

Adversary cross examining minority litigant was permitted to verbally abuse litigant over my objections and was not admonished by white judge at all. Message conveyed was that verbal battering was O.K.

Another black litigator in New York City commented:

I have heard other attorneys speaking to minority witnesses and victims as inferiors and with less respect than with white witnesses and victims.

4.0 Juror Reactions to Victims, Litigants, and Witnesses

A series of six items was asked about the frequency with which white and minority jurors react more positively to white victims and to white litigants, and about the frequency with which the testimony of minority expert and lay witnesses is less effective because of

juror reactions to the witnesses' race. These data are provided in Table 10a.

ble 10a. Juror Reactions to Victims Litigants, and Witnesses*
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
ıite jurors sympathize ıre with a white victim ıan with a minority ictim.	25 (27.9)	39 (42.8)	27 (29.3)	70 (76.1)	15 (16.3)	7 (7.6)	48 (58.5)	22 (26.8)	12 (14.6)	18 (58.1)	9 (29.0)	4 (12.9)	19 (23.4)	30 (37.6)	31 (39.0)	41 (63.1)	13 (20.0)	11 (16.9)	221 (50.1)	128 (29.1)	92 (20.9)
inority jurors sympa-hize more with a white ictim than with a inority victim.	2 (2.6)	24 (26.2)	64 (71.2)	21 (22.6)	35 (37.6)	37 (39.8)	10 (12.2)	33 (40.2)	39 (47.6)	5 (16.1)	8 (25.8)	18 (58.1)	2 (2.7)	13 (17.9)	58 (79.4)	18 (30.0)	18 (30.0)	24 (40.0)	58 (13.6)	131 (30.5)	240 (55.9)
hite jurors react more ositively to a white itigant than to a inority litigant.	24 (25.0)	41 (42.7)	31 (32.3)	60 (62.5)	29 (30.2)	7 (7.3)	43 (51.2)	28 (33.3)	13 (15.5)	12 (36.4)	16 (48.5)	5 (15.2)	18 (24.7)	29 (39.3)	27 (36.0)	39 (58.2)	20 (29.9)	8 (11.9)	196 (43.6)	163 (36.2)	91 (20.1)
linority jurors react nore positively to a white litigant than to a minority litigant.	4 (4.3)	21 (22.8)	69 (72.9)	20 (21.1)	39 (41.1)	36 (37.9)	8 (10.0)	36 (45.0)	36 (45.0)	4 (12.1)	15 (45.5)	14 (42.4)	0 (0)	18 (26.1)	51 (73.9)	14 (23.3)	28 (46.7)	18 (30.0)	50 (11.6)	157 (36.5)	223 (51.8)
The testimony if a mi-nority lay witness is less effective because of juror reactions to the witnesses race.	10 (10.2)	35 (34.0)	57 (55.8)	26 (26.8)	39 (40.2)	32 (33.0)	28 (31.8)	36 (40.9)	24 (27.3)	11 (30.6)	11 (30.6)	14 (38.9)	7 (6.7)	48 (47.3)	47 (46.0)	35 (50.0)	19 (27.1)	16 (22.9)	117 (23.7)	188 (38.0)	190 (38.4)
The testimony of a mi-nority expert witness is less effective because of juror reactions to the experts race.	2 (3.1)	30 (37.8)	48 (59.1)	13 (18.8)	26 (37.7)	30 (43.5)	14 (24.1)	18 (31.0)	26 (44.8)	7 (30.4)	4 (17.4)	12 (52.2)	3 (5.3)	19 (32.0)	37 (62.7)	12 (27.9)	12 (27.9)	19 (44.2)	52 (15.5)	109 (32.9)	171 (51.6)

* See Appendix B, Table B-10a, for means, standard deviations, and tests of significance.

Overall, 50% of litigators reported that "white jurors sympathize more with a white victim than with a minority victim" "often/very often"; 14% reported that "minority jurors sympathize more with a white victim than with a minority victim" "often/very often." There are significant differences among groups. While more blacks and Hispanics than whites in New York City, and more minorities than whites outside New York City, reported that white jurors sympathize with a white victim more than with a minority victim, even substantial proportions of whites reported such juror bias occurs "often/very often." Thus, 28% of white, 76% of black, 59% of Hispanic, and 58% of Asian litigators in New York City, and 23% of white and 63% of minority litigators outside New York City, gave this response. Much smaller proportions of litigators reported that minority jurors sympathize more with a white victim than with a minority victim "often/very often." Overall, 14% of litigators reported that minority jurors are more sympathetic to white, than to minority, victims. Three percent of white, 23% of black, 12% of Hispanic, and 16% of Asian litigators in New York City, and 3% of white, and 30% of minority, litigators outside New York City reported this phenomenon. The only significant differences are between minority and white litigators outside New York City, and between black and white litigators in New York City. A comparison of mean scores on these two items shows that, on the average, litigators believe that white jurors are significantly more likely than minority jurors to sympathize more with a white victim than with a minority victim. An Hispanic litigator in New York City remarked:

> Minority victims of assaults, especially if family related, are often treated very lightly by jurors.

A white litigator from outside New York City commented:

> [B]lack jurors are simply harder to convince of guilt beyond a reasonable doubt--particularly so when the defendant is black and the victim is white.

Overall, 44% of litigators reported that white jurors react more positively to a white litigant than to a minority litigant "often/very often." This is only slightly less than the 50% who stated that white jurors react more positively to a white victim than to a minority victim "often/very often." In general, the response patterns to both items are quite similar. Twenty-five percent of white, 63% of black, 51% of Hispanic, and 36% of Asian litigators in New York City, and 25% of white and 58% of minority litigators outside New York City, reported that white jurors react more positively to a white than to a minority litigant "often/very often." Overall, only 11% of litigators stated that minority jurors react more positively to white than to minority litigants. Mean differences on these two items are significant; more litigators reported that white jurors react more positively than do minority jurors to white litigants as opposed to minority litigants. A black litigator outside New York City stated:

> As far as criminal court is concerned[,] minorities are regularly assumed guilty by juries until proven innocent by defense counsel.

A white litigator outside New York City suggested:

> Black defendants in narcotics cases are often treated differently than white defendants by juries.

In general, it can be concluded that large proportions of all litigators have experienced situations in which white victims and white litigants receive a more positive response from jurors than do minority victims and litigators. Such preferential response of white jurors to white victims and white litigators buttresses the argument for greater minority representation on juries in order to ensure representation of all types of bias--minority as

well as white. Also, while biased jurors are certainly biased before they walk into the courtroom, the behavior of some judges and court officers (as reported by litigators) probably does little to stigmatize such biases.

Race of witnesses was rated to be considerably less important than race of victims and litigants in influencing juror decisions. Thus, 24% of all litigators stated that the testimony of a minority lay witness is less effective with jurors than the testimony of a white lay witness "often/very often"; only 16% of all litigators gave this response to the comparable item about expert witnesses. There are no significant differences among groups in relation to expert witnesses; relatively few attorneys in any group reported that the testimony of minority expert witnesses is less effective than the testimony of white expert witnesses with jurors "often/very often." There are, however, significant differences between minorities and Whites outside of New York City, and among Whites, Blacks, and Hispanics in New York City, in the ratings of whether jurors respond more positively to white than to minority lay witnesses. Ten percent of white, 27% of black, 32% of Hispanic, and 31% of Asian litigators in New York City, and 7% of white and 50% of minority litigators outside of New York City, stated that the testimony of a minority lay witness is less effective because of juror reactions to the witness' race "often/very often."

A six-item Juror Reaction Scale was developed. The scale has a strong reliability (alpha=.87). Means and standard deviations on the scale for each group are provided in Table 3b; the range is from 0-4 (0=biased reactions "never" occur; 4="very often").

Table 10b. Means and Standard Deviations on the Juror Reaction Scale

	NEW YORK CITY				OUTSIDE NYC	
	White	Black	Hisp.	Asian	White	Min.
N	68	56	45	20	36	34
Mean	1.49	2.31	2.03	2.07	1.23	2.30
Std. Dev.	.71	.72	.80	.73	.63	1.00

Black and Hispanic litigators in New York City had significantly higher scale means than white litigators in New York City; among litigators outside New York City, minorities had a significantly higher mean scale score than Whites. On average, minority litigators rated juror biased reactions as a "sometimes" (6-25%) event; white litigators gave average ratings of "rarely" (1-5%).

There were no significant differences between litigators practicing in civil courts and those practicing in criminal courts on the juror reaction scale. An Asian litigator from outside New York City opined:

> Minority jurors have a very strong tendency to favor minority witnesses and parties--they frequently vote against the establishment.

A white litigator outside New York City commented:

> I think the court system is a reflection of society. Efforts should be made to instruct jurors that race has no part in determining the ultimate fact[s] [nor] in assessing a witness' credibility.

5.0 Experience with Courtroom Bias and Efforts to Protest

Litigators were asked, "Have you ever experienced a situation in which you perceived the treatment of minority attorneys, litigators, jurors, or witnesses to be unfair or insensitive or otherwise different from the treatment of whites?" Those who responded in the affirmative were asked, "Have you ever protested unfair or insensitive treatment of a

minority attorney, litigants, juror, or witness to the appropriate authority?" Those who responded in the negative were asked why they had not reported the incident. These data are provided in Table 11.

Table 11. Experiences of Bias and Efforts at Redress*
(Numbers in parentheses are percentages)

		NEW YORK CITY				OUTSIDE NYC		
		White	Black	Hisp.	Asian	White	Minor.	TOTAL
Ever perceived unfair treatment?	Yes	42 (29.2)	83 (64.8)	71 (56.3)	29 (39.2)	41 (27.2)	59 (58.4)	325 (44.9)
	No	101 (70.8)	45 (35.2)	55 (43.7)	45 (60.8)	110 (72.8)	42 (41.6)	398 (55.1)
If so, ever protested?	Yes	18 (42.4)	40 (48.2)	31 (43.7)	6 (20.7)	14 (34.4)	25 (43.1)	134 (41.3)
	No	24 (57.6)	43 (51.8)	40 (56.3)	23 (79.3)	27 (65.6)	33 (56.9)	190 (58.7)
Reasons for not protesting.**	Don't know where to report.	5 (20.8)	11 (25.6)	6 (15.0)	6 (26.1)	4 (14.8)	14 (42.4)	46 (24.2)
	Afraid of reprisal against client.	10 (41.7)	19 (44.2)	18 (45.0)	7 (30.4)	7 (25.9)	11 (33.3)	72 (37.9)
	Afraid of reprisal against self.	10 (41.7)	23 (53.5)	18 (45.0)	9 (39.1)	7 (25.9)	11 (33.3)	78 (41.1)
	Other reasons.	14 (58.3)	23 (53.5)	20 (50.0)	13 (56.5)	13 (48.1)	24 (72.7)	107 (56.3)
Base	Persons not Protesting	24	43	40	23	27	33	190

* See Appendix B, Table B-11, for tests of significance.
** Multiple responses were allowed, therefore totals are greater than 100.0%.

Overall, nearly half (45%) of all litigators reported that they had witnessed biased treatment of a minority person in the courtroom. Minority litigators, both in and outside New York City, were significantly more likely to have witnessed biased treatment than were white litigators. The proportion of litigators who had witnessed such treatment in all groups is, however, striking. Thus, 29% of white litigators in New York City, and 27% of white litigators outside New York City, as well as 65% of black, 56% of Hispanic, and 39% of Asian litigators in New York City, and 58% of minority litigators outside New York City,

ported an experience of bias.

Among those who reported that they had seen biased behavior, less than the majority litigators in any group stated that they had reported the incident. Very similar proportions of all groups, except Asians, reported making a protest. Approximately half as many Asians (21%) as litigators in most other groups protested (42% of whites, 48% of blacks and 44% of Hispanics in New York City, and 43% of minorities outside New York City).

Among those who refrained from protesting, substantial proportions of litigators stated that they do not know to whom they could report biased behavior. Overall, nearly one fourth (24%) of those who made no report gave this response. Even higher proportions--over one third--stated that they refrained from making a report because they were afraid of reprisals against their clients (38%) or against themselves (41%). Among those who offered other reasons for not protesting, 31% stated that such protest is "a waste of effort"; 21% said that the behavior was too subtle or that they lacked proof; and 18% said that the problem was somehow resolved without their making a formal protest. There is no difference between litigators practicing exclusively in civil or criminal courts.

6.0 Courtroom Facilities

Litigators were asked to rate the physical conditions of all the courts in which they practice: "excellent"; "good"; "adequate"; and "poor." If they had no experience in a particular court, they were asked to mark that on the questionnaire. Thus, the sample size of litigators rating each court fluctuates. Mean ratings for all the courts are provided in Table 12: a mean of 4 indicates "excellent"; a mean of 3 indicates "good"; a mean of 2

indicates "adequate"; and a mean of 1 indicates "poor."

Table 12. Means and Standard Deviations of Litigator Ratings of Satisfaction with the Physical Conditions of the Courts by Location of Practice (range 1-4, 4=excellent)

	NEW YORK CITY LITIGATORS			OUTSIDE NYC LITIGATORS			TOTAL			
	N	Mean	Standard Deviation	N	Mean	Standard Deviation	N	Mean	Standard Deviation	Sig. level (where applicable)
Court of Appeals	108	3.70	.64	74	3.75	.48	182	3.72	.58	NS
Appellate Division	271	3.39	.67	176	3.41	.70	448	3.40	.68	NS
Supreme Court	452	2.02	.81	230	2.69	.82	682	2.24	.87	P=.000
Court of Claims	62	2.88	.81	42	3.23	.78	104	3.02	.81	P=.032
Surrogate Court	209	2.72	.84	153	2.80	.81	363	2.75	.82	NS
County Court				184	2.55	.87	184	2.55	.87	
Family Court	257	1.41	.66	186	1.86	.90	442	1.60	.80	P=.000
NYC Criminal Court	294	1.34	.57				294	1.34	.57	
NYC Civil Court	300	1.53	.61				300	1.53	.61	
NYC Housing Court	250	1.14	.39				250	1.14	.39	
District Court				48	2.39	.88	48	2.39	.88	
City Court				168	2.24	.93	168	2.24	.93	

There were no differences between minorities and Whites in their ratings of the courts. The most obvious differences are those among courts. The mean scores for the Court of Appeals, the Appellate Division courts, the Court of Claims, and the Surrogate Courts represent ratings of "good" or "excellent"; the mean scores for other courts are lower. There is a significant difference between New York City and outside-of-New-York-City litigators in their ratings of the conditions of Supreme Court facilities in which they appear. In general, outside New York City, Supreme Courts are rated as "good," whereas in New York City they are rated as "adequate." There is also a substantial difference between the ratings of Family Court in New York City versus Family Court outside New York City.

Thus, family courts outside New York City are rated on average as "adequate," whereas in New York City these courts are on average rated as "poor." The physical conditions of New York City Criminal, Civil and Housing Courts are rated on average as "poor." It is apparent that the physical conditions of those courts in which minorities appear ("ghetto" courts) are substantially worse than the courts in which relatively greater numbers of white litigants appear. A white litigator from New York City wrote:

> Most people only have contact with the judicial system at the lowest level--Housing Courts, Criminal Court, Family Court--and most of the people who have to go to these courts in New York City are probably minority. What message is sent when these courts have facilities that are totally inadequate? A waiting room for 3 or 4 housing parts that has seating for 15 people and a calendar of 150 people? No public water fountains. No hand towels or toilet tissue in the bathrooms. There are no doors on the commodes at the Bronx Family Court. Would this be tolerated at the Appellate Division? It sends a message to the people in these courts that they aren't worth much.

A black litigator in New York City commented:

> The courts and district attorney's office[s] should be clean, decent offices and courtrooms to work in. They should not be rat and roach infested.

An Hispanic litigator in New York City wrote:

> Horrendous physical conditions [exist] for courts where most litigants are minority--i.e., Bronx Housing Court. Waiting rooms are packed with people who look like cattle. Courtrooms are closet sized. The court is in the basement and garbage for the building is brought through the basement. I have witnessed many occasions when litigants have passed out because of the waiting in poor conditions.

A white litigator outside New York City commented:

> In the Family Courts, County Courts, and City Courts people mill around like cattle because there's no place for them and they don't know what's going on. The judges don't have enough time to give any one case. There is no place to talk to a client. Sometimes the restrooms are locked.

In addition to their ratings of the physical conditions of the courts in which they

practice, litigators were asked, "Are there public services that should be provided in the courts in which you practice, but are not provided?" Data relevant to physical facilities and maintenance are provided in Table 13 below; data relevant to services are discussed in Section 7.

Table 13. Number and Percent of Litigators Making Suggestions Regarding Physical Facilities
(Numbers in parentheses are percentages)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Minor.	
Better rooms/ facilities	25 (29.8)	16 (22.9)	6 (8.6)	6 (16.7)	28 (37.3)	14 (25.0)	95 (24.3)
Maintenance/ Physical Conditions	23 (27.4)	15 (21.4)	9 (12.9)	4 (11.1)	12 (16.0)	1 (1.8)	64 (16.4)
Amenities	17 (20.2)	7 (10)	8 (11.4)	7 (19.4)	6 (8.0)	4 (7.1)	49 (12.5)
BASE: Number of litigators in each group who specified a need for any improvement.	84	70	70	36	75	56	391

Overall, approximately half (55%) of all litigators mentioned a need for improvement in physical facilities. Of those, nearly one quarter, (24%) mentioned the need for improved rooms and facilities. The need for improved maintenance was mentioned by 16% of all litigators, but particularly by Whites and Blacks in New York City. One in five white litigators in New York City also mentioned the need for more amenities (e.g., public telephones, drinking fountains).

7.0 Conclusions

The poor treatment of the courts' public users by court professionals (judges, attorneys, and court personnel), and the substandard physical appearance of the courts in which minorities predominantly appear, send a negative message to the users that may undermine their respect for the law and their sense of the fairness of the courts. The

findings strongly support the conclusion that racially-biased treatment of minority litigants and witnesses is not uncommon. Even white litigators report bias in the evaluation of minority litigants' claims and it is apparent that the courts have failed to create an atmosphere in which the use of ethnic jokes or demeaning comments is unthinkable. Even the most basic rules of social etiquette are not always being observed in many courts. The atmosphere of the courts is such that minorities are not infrequently treated with disdain and contempt. Rather than being completely out of the realm of possibility, rude and demeaning discriminatory treatment of minorities is almost routine in its reported frequency. In such an atmosphere it is not surprising that many people believe justice cannot be done.

As is apparent from the data and the many quotes presented in this section, large numbers of litigators have experienced situations of bias. In the interest of fairness, it is important to report that a few litigators specifically indicated that they had not witnessed any bias occurring in New York State courts. A white litigator from outside New York City wrote:

> Perchance I have been too sheltered or perchance the bar, bench, and police are more sophisticated than they were 25 years ago, but I have not observed where the race of a defendant or victim has affected the [case] outcome. I would be ignorant to say it does not have an [affect] on jurors or judges. In all honesty, judicial decisions (hearings, findings of guilt) [and] jury verdicts are, from my experience, fair, based upon the facts of the individual case, rather than on ethnicity or race. The system seems to be fair.

A white litigator in New York City reflected:

> It is my observation, after 18 years of practice in the courts of New York, that the judicial system is color blind. That is, I have never had the impression that a litigant had received an advantage or disadvantage because of race from any official in the court system.

Another white litigator in New York City stated:

> I am disturbed at all the racial problems going on today. They are self-created by the minorities who blame everyone else besides themselves for their problems.

While different persons may reasonably perceive the court system differently, dismissing the concerns of others is problematic. Such attitudes contribute to communication barriers, resulting in unwillingness to discuss race bias and hostility towards those who raise it as a problem. Obliviousness of conditions and behaviors which are problematic to so many makes it difficult to confront, discuss, and deal with these conditions and behaviors.

III. ASPIRATIONS TO THE BENCH AND PERCEIVED IMPORTANCE OF MINORITY REPRESENTATION IN THE JUDICIARY

1.0 Introduction

Minority presence in the judiciary sends a powerful message to minority communities that they are represented among the power-brokers of society. It also dissipates suspicion about the justice system: intuitively, people feel that persons of their own ethnicity are more likely to understand them and to treat them fairly. Finally, minority presence on the bench increases the number of role models available in minority communities and communicates a sense of possibilities. For these reasons, the Commission sought information about minority interest in serving on the bench, the perceived barriers to access to the judiciary, and the importance accorded greater representation of minorities in the judiciary.

2.0 Aspirations to the Bench

Litigators were asked whether they had ever wanted to be a judge and if so, whether they had ever made this interest known to any appropriate nominating committee or authority. If they had not made their interest known, they were asked to report on the reasons why. The findings are presented in Table 14.

Table 14. Numbers of Litigators who Reported an Interest in Judicial Positions and Whether their Interest had ever been Communicated to a Relevant Authority and if Not, Why Not

Numbers in parentheses are percentages

		NEW YORK CITY				OUTSIDE NYC		TOTAL
		White	Black	Hisp.	Asian	White	Min.	
Ever wanted to be a judge.		89 (40.8)	67 (47.7)	54 (49.5)	24 (47.1)	80 (52.7)	70 (70.0)	368 (50.7)
Ever made desire to be a judge known.		24 (22.7)	16 (19.4)	15 (25.9)	11 (19.3)	26 (32.9)	23 (24.0)	105 (22.9)
Why desire not made known. **	Insufficient number of years in practice.	33 (55.0)	27 (30.4)	20 (30.3)	23 (39.7)	37 (56.1)	29 (76.3)	214 (70.2)
	Insufficient litigation experience.	7 (13.0)	10 (21.7)	14 (25.5)	18 (38.3)	9 (13.6)	7 (13.2)	66 (21.6)
	Lack of access to positions from which judges are drawn.	9 (16.7)	11 (23.9)	14 (25.5)	15 (48.4)	15 (22.7)	13 (24.5)	78 (25.6)
	Insufficient academic credentials.	3	2 (4.3)	3 (5.5)	4 (12.9)	0	2 (3.8)	10 (3.3)
	Racial minority unlikely to be appointed or elected.	1 (1.9)	3 (6.5)	7 (12.7)	10 (25.8)	0	6 (20.3)	35 (11.5)
	Lack of political and professional contacts.	20 (37.0)	19 (41.3)	26 (47.3)	23 (74.2)	39 (59.1)	27 (50.9)	154 (50.5)
	Other	17 (31.5)	9 (19.6)	5 (9.1)	2 (6.5)	18 (27.3)	13 (24.5)	65 (21.3)

* See Appendix B, Table B-14, for tests of significance.
** Some respondents gave more than one response, therefore the total percentage is greater than 100.

Overall, just over half (51%) of all litigators answered affirmatively to the question: "Have you ever wanted to be a judge?" Forty-one percent of white, 48% of black, 50% of Hispanic, and 47% of Asian litigators in New York City, and 53% of white, and 70% of minority, litigators outside New York City, reported their desire to become a judge. Among those with an interest in a place on the bench, a large majority (83%) have never made this interest known to any appointing authority or nominating committee. There were no

significant differences among groups: 93% of white, 75% of black, 86% of Hispanic, and 91% of Asian litigators in New York City, and 83% of white and 74% of minority litigators outside New York City, had never made their interest in the bench known.

By far the most common reason for not communicating an interest in being appointed or elected to the bench was an insufficient number of years in practice. Overall, 70% of litigators gave this response. Several of the groups have high proportions of individuals whose admission to practice has been relatively recent--too recent to permit their consideration for the judiciary. For three groups the average number of years in practice is too small: among Hispanics, 8.21; among Asians, 6.56; among minorities outside New York City, 9.25. The mean number of years in practice for the other groups are: Whites in New York City, 12.74; Blacks in New York City, 11.36; and Whites outside New York City, 13.56. Insufficient number of years in practice is the predominant reason among attorneys in all groups for refraining from making their interest in the judiciary known.

Other reasons are interesting because they provide clues to barriers to the judiciary once a few years pass and all of the attorneys in the study have been in practice a sufficient number of years to make them eligible for the bench. More than any other group, Asians reported having insufficient litigation experience, lack of access to positions from which judges are drawn, lack of sufficient academic credentials, lack of political and professional contacts, and that a racial minority is unlikely to be appointed or elected. Approximately twice as many Asians as persons in any other group subscribed to most of these reasons.

An examination of data on the average number of court appearances in the past year for each group shows that Asians have, in fact, made fewer court appearances than have

white attorneys in New York City, but not fewer than attorneys in any other group. Asians are overrepresented among those who believe that they lack sufficient academic credentials for the bench.[8] It is apparent that as more Asians become qualified for the judiciary in terms of number of years in practice, it will become important to be sure that adequate outreach is done in order to overcome the barriers which make them feel that they would not be qualified. In this context, it is important to note that over half of all litigators (51%) rated lack of political and professional contacts as a barrier to the judiciary. Large proportions of litigators interested in the judiciary reported lack of contacts as a barrier.

Comments by litigators regarding lack of contacts as a barrier to the judiciary included the following:

An Asian litigator in New York City stated:

> I live in a city where politicians make the selection. An attorney is not supposed to go after hand outs from politicians, which will destroy our integrity as an effective person in the Administration of Justice.

A white litigator in New York City stated:

> Talk is cheap!! I practice in courtrooms in which the sign reads "In God We Trust" and I was taught that we are a government of laws but it's a big lie!! Incompetent judge[s] prevail. These guys are nothing more than political hacks and they are dominated by overbearing law secretaries who are also political hacks waiting to be made judges. The law has nothing to do with a case. Trial judges believe only the Appellate Division need be concerned with the law. Every day in at least one case the law is put aside and a defendant's race is the dominant factor in how a case is resolved. Please change to merit selection of all judges. The issues are too important to let these idiots run a courtroom. The courthouse is a cross section of New York City. To eliminate racism in the courthouse all people must realize that everyone should be treated with respect just because they are a human being.

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[8] This claim cannot be substantiated by the survey data. Litigators were asked to disclose the name of the law school attended, but not the law school grade point average or whether any degree beyond the J.D. was achieved.

A black litigator outside New York City stated:

> Haven't officially applied [for a judicial appointment]. Usually response to inquiries is very patronizing, or response is--"They already have a black judge in X court, try Y court."

Another black litigator outside New York City commented:

> [I am] a Democrat/liberal in a Republican/conservative county. [There are] no cross endorsements and [the] Democratic party is ineffectual.

A white litigator outside New York City wrote:

> I am not a Republican, [which is] essential to a Nassau County judgeship.

Another white litigator outside New York City wrote:

> [I am] not ready to jump into [the] political field; would prefer merit system for judicial appointments.

An Hispanic litigator outside New York City wrote:

> I am an Hispanic in Buffalo, where [the] Hispanic minority population is small and thus ignored. They will tell you, "Hispanics don't vote, so they don't count."

Another Hispanic litigator outside New York City commented:

> Upstate Hispanics have no chance whatsoever to become Supreme Court justices because they are in a voting minority. Republican and Democratic county chairmen don't want them because they are perceived to be unable to win against the ethnic "balanced tickets" and "name recognition" tickets they like to run. On the other hand, these same county chairmen reward their losing candidates by recommending them for appointment to Court of Claims judgeships as compensation for having conducted a losing campaign.

An Hispanic in New York City commented:

> You need money and connections to be elected and appointed to a judgeship, but Hispanics don't get enough funds.

A white litigator outside New York City commented:

> The judicial selection process in New York State is in need of drastic

correction, both local and statewide. Judges selected on the basis of their political connections lead to a questionable judicial system. In Port Chester the local judges change with each political change. They are appointed by the party in power. This doesn't make for racial or any other fairness. A minority judge is an impossibility.

An Hispanic litigator in New York City stated:

> Political organization's last stronghold is in the court system. Must have the approval of the political head of the county. I recommend Civil Court judges be appointed by the mayor.

3.0 Importance of Minority Representation in the Judiciary and of Racial/Ethnic Sensitivity Training for Judges

Litigators were asked to rate the importance (1="not important"; 2="somewhat important"; 3="important"; 4=very important") of increasing numerical representation of minorities in the judiciary and of racial/ethnic sensitivity training for judges. These findings are presented in Table 15.

able 15. **Importance of Minorities in the Judiciary and Sensitivity Training for Judges***
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Not Impor.	Some-what Impor.	Very Impor./ Impor.	Not Impor.	Some-what Impor.	Very Impor./ Impor.	Not Impor.	Some-what Impor.	Very Impor./ Impor.	Not Impor.	Some-what Impor.	Very Impor./ Impor.	Not Impor.	Some-what Impor.	Very Impor./ Impor.	Not Impor.	Some-what Impor.	Very Impor./ Impor.	Not Impor.	Some-what Impor.	Very Impor./ Impor.
nportance of reater numerical epresentation of inorities on the nch.	44 (30.3)	38 (26.2)	63 (43.4)	0	2 (1.5)	130 (98.5)	0	9 (7.0)	120 (93.0)	2 (2.7)	9 (12.2)	63 (85.2)	25 (16.6)	49 (32.7)	76 (50.7)	3 (3.0)	2 (2.0)	96 (95.1)	73 (10.1)	108 (14.9)	547 (75.0)
nportance of aining for judges cultural/racial nsitivity.	14 (9.8)	42 (29.1)	88 (61.1)	5 (3.8)	3 (2.3)	123 (93.9)	1 (.8)	15 (11.7)	112 (87.6)	1 (1.4)	13 (17.6)	60 (81.0)	23 (15.5)	44 (29.3)	83 (55.3)	1 (1.0)	5 (5.0)	95 (94.1)	45 (6.2)	122 (16.7)	560 (77.1)

See Appendix B, Table B-15, for means, standard deviations, and tests of significance.

Three quarters of all litigators rated greater minority representation on the bench as "important/very important." There were significant differences among groups. Ninety-nine percent of black, 93% of Hispanic, 85% of Asian, and 43% of white litigators in New York City, and 51% of white, and 95% of minority, litigators outside New York City, rated such an increase in minority representation as "important/very important." Differences between both groups of white litigators and all minorities are significant; the difference between black and Asian litigators is also significant.

Litigators offered commentary asserting the importance of greater minority representation on the bench. An Hispanic litigator outside New York City commented:

> It is difficult to have racial fairness in our court system when there is a lack of minority (Hispanic, Black, Asian, etc.) judges. In this district there are only two minority judges, neither of [whom is] Hispanic. The current system of selection and appointment of our judges is a sham. The selection of our judges is controlled solely by the political parties and other influential lobby groups. Minority litigants who must appear in court lack any insight or understanding of the system. They have no role models. A better balance must be reached before we can really state that there is racial fairness in our judicial system.

A white litigator outside New York City commented:

> In the up-state, rural area where I practice, the small number of judges magnifies whatever problems may exist in the judicial system. There are no minority judges assigned, and no minority court personnel at all. If minority judges were given temporary assignments in counties like Ulster, this might ease the fears of minority litigants, who understandably see the judicial system as a white bastion.

A black litigator outside New York City stated:

> There continues to be this great cloud of mystery within the New York court system, which is perpetuated by overt and subtle racism. For example, [in] the counties in which I practice, among the 30 or so Supreme Court judges, there are no African Americans, Hispanics, or Asians.

An Hispanic litigator in New York City wrote:

> An increase in the numbers of minority judges, attorneys, and court personnel is needed to address the reality and perception of racism in the court system.

A black litigator in New York City wrote:

> Housing Court: There are more minority judges (%) in Housing Court than any other court system (Appellate, Federal, Supreme, etc). Unfortunately there are still very low numbers of minority judges. Housing Court respondents are ninety percent Black and Hispanic.

An Asian litigator in New York City commented:

> I have not witnessed any blatant or clear forms of racial bias in the courts during my short tenure as a litigating attorney. I do believe that racial "tension" exists in the courthouses because there are so few minority persons who are in positions of power in the courts. [There are t]oo few [minority] judges, and lawyers place the rare exceptions in a harsher light and under more stringent scrutiny.

A white litigator in New York City with a different opinion wrote:

> I have not noticed any racial unfairness. The use of incompetent minority (and white) judges is very destructive to the system. Many judges are of average or below average intelligence and their reading and writing skills are poor. There is a greater percentage of this among black judges.

Slightly more than three quarters (77%) of all litigators rated sensitivity training for judges as "important/very important." The majority of litigators in all groups gave this rating: 61% of white, 94% of black, 88% of Hispanic, and 81% of Asian litigators in New York City, and 55% of white, and 94% of minority, litigators outside New York City. Black litigators in New York City and minority litigators outside of New York City both were significantly more likely to attach importance to this issue than were Asian and white litigators (both in and outside of New York City). Additionally, Hispanic litigators felt sensitivity training to be more important than white litigators in New York City. But the

important finding is that the majority of litigators in all groups see a need for sensitivity training of judges and subscribe to its importance. On average, all groups rated this item as "important" or "very important."

Several litigators commented on the need for sensitivity training for judges. An Hispanic litigator in New York City wrote:

> The white judges must be more sensitive to the cultural differences and sensitivity of minorities.

Another Hispanic litigator in New York City commented:

> Judges' experiences are often so remote from those of our clients that they should be encouraged to go see conditions for themselves. They are too reticent to put landlords in jail for their contempt of court orders.

An Asian litigator in New York City commented:

> In my over 5 years in Housing Court, I believe most white male judges treat minority litigant-tenant-respondents harsher than white respondents. Latinos are treated as if they are [n]aive or ignorant of the legal process that they are faced with, while Blacks are presumed to know the process but are just "using" the system. I think these judges (one of whom is quite old, the others were recent appointments) believe the Latinos, due to the language difference, can't understand, and the Blacks know, but won't accept. White respondents in these court rooms are joked with and usually spoken to humanely (as humanely as is possible).
> --No judge is sensitive to the problems of the street and how they affect the poor, usually of color, who have no real meaningful means to combat them.
> --Family Court is a white judge telling, usually a woman of color, how to raise her kids, as if they were living in the judge's world. That is racially biased.

An Asian litigator outside New York City wrote:

> Judge X has deep and unwavering gender and racial biases. If you are not a white male, he can be rude, obnoxious, and unfair. In a criminal trial involving an Hispanic male, the defendant's father needed a translator to testify. Judge X railed loudly and long against people who "come here and have no respect and can't learn English." I feel the defendant did not have a chance. When a black male from a poor and black Long Island neighborhood appears before X on a drug charge, the judge usually goes on

and on about blacks and drugs. Most female attorneys try not to go into his chambers alone. I do not think the Judge is malicious. He is the product of his socio-economic racial class. He needs to learn mutual respect, however. His veneer of politeness and cordial behavior cannot indicate his biases.

A black litigator in New York City commented:

> Many of the white judges in the New York State Court System reflect the racial bias of the white lawyers that appear before them.

An Hispanic litigator in New York City wrote:

> I believe judges should be required to take psychology courses in developmental psychology and cultural differences in behavioral responses. I represent mostly females in Supreme Court Civil cases. I believe judges need more training and awareness of the effect on women as single parents and heads of household.

A white litigator in New York City recalled a case:

> [The judge] is in a part where he gets only murder cases. He was sent a case (one of the few) where a white cop was indicted for assaulting several minority people. Throughout the trial, the Judge--who is normally precise--somehow got "confused" and kept referring to the victims as the "defendants." The defendant was never called that but was always referred to by his title, "Officer" Doe. This "confusion" was contrived but apparently worked: the cop was acquitted.
>
> This is but one example. I think the recent attacks of the United States Supreme Court on affirmative action, the posture of the federal government and attacks on gains of the civil rights of the 60's have had an effect on the courts. Insensitivity, unequal treatment, and outright racism all too often prevail.

A Native American litigator outside New York City commented:

> [S]ensitivity to socioeconomic and psychological dynamics is necessary in order for the system to work for my clients. This requires lawyers of the same ethnic background, along with judges who can understand and respond appropriately and effectively to the needs and concerns of all litigants, including those of minority descent. [. . .] With far greater representation of minority litigators in the bar and on the bench, I expect age old misunderstandings and bias will eventually disappear. Education through association and discussion is extremely important within the legal community

in order to enlighten us all as to the psychosocial problems which exist in peoples from different ethnic and cultural backgrounds. [This] is particularly important in tailoring sentences or alternative sentences which address the root problems which lead to recidivist, antisocial behaviors. In a time when our systems and citizenry are already taxed to the "max", it is critically important that we try harder to understand each other and our problems in order to improve the efficiency of the system in place. Greater representation of minority litigators and judges will certainly help accomplish this goal and will contribute towards the elimination of racial bias within the New York Unified Court System.

A white litigator in New York City commented:

> Some judges routinely link Hispanics with drug possession and sale. In one case an Hispanic youth was charged with robbery (of a 13-yr. old's bicycle) and the white judge, insisting on a prison term rather than probation, was only persuaded to confer youthful offender treatment when reminded that if it had been his son, that would be the result.

A black litigator outside New York City commented:

> Judges in these cases, if they don't like you or your client, can sway jurors by gestures, facial gestures, that never get on record. Judges reprimand (minority) client, in front of the jury, but not white witness, although both may be acting up.

An Hispanic litigator in New York City commented:

> I have found the white judges to be subtle in their racist attitudes while, at the same time, I have found the minority judges, especially the older minority judges, to be harsher in their treatment of minority defendants to the point of being heavy handed and heartless.

A black litigator in New York City stated:

> Generally most judges participate in the "old boy" system, minority and white judges alike. I have found, unfortunately, that minority judges appear biased toward minority litigants and attorneys because they want to appear unbiased toward white lawyers.

An Asian litigator in New York City wrote:

> I do not see a problem with the state court system, at least in Queens, Bronx, and Manhattan. I think that the judges are fair and even-handed. If there's

any bias at all, they're probably more pro-plaintiff (from my point of view as a defense attorney for the city) than pro-city. But that's unrelated to race.

While litigators as a whole believe that increasing the number of minorities on the bench and sensitivity training for judges are both important, comparison of the strength of the endorsement for each proposition by the six study groups reveals interesting differences. White litigators, both in and outside New York City, more strongly endorsed the notion of sensitivity training (61% and 55%, respectively) than increasing minority representation in the judiciary (43% and 51%, respectively). This preference for sensitivity training over increasing minority representation on the bench may reflect the wariness of some Whites about altering judicial appointment/election practices. In contrast, all groups of minority litigators were more likely to favor increasing minority representation in the judiciary than they were to endorse sensitivity training. Minority litigators may be more wary of the more uncertain effects on racial fairness of sensitivity training than of the assured affects of increasing minority representation on the bench.

4.0 Conclusions

There is considerable interest among litigators in obtaining a seat on the bench, but the vast majority have not made this interest known primarily because they have not yet been in practice for a sufficient number of years. The findings suggest that there are other barriers which will come into play once these litigators become eligible in terms of numbers of years in practice.

The majority of litigators favor greater minority representation on the bench, including a majority of white litigators outside New York City. Cultural sensitivity training for judges is favored by even greater numbers of white litigators.

IV. THE ADEQUACY AND AVAILABILITY OF LEGAL REPRESENTATION

1.0 Introduction

The Commission's review of the literature on legal representation[9] clearly indicates problems with both criminal and civil representation, and that these problems have a disproportionate impact on minorities because of their overrepresentation among the poor. Given these findings and the wide-spread concern in the legal community about the adequacy of legal representation for low-income defendants in the criminal and civil courts and about the availability of representation in the civil courts, the Commission sought to obtain the opinions of litigators on these issues.

2.0 Adequacy of Legal Representation

Litigators were asked two questions regarding the relative frequency ("never," 0%; "rarely," 1-5%; "sometimes," 6-25%; "often," 26-50%; and "very often," 51-100%) with which minority and white litigants receive inadequate legal representation. These findings are presented in Table 16.

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[9] See Review of the Literature on Legal Representation, New York State Judicial Commission on Minorities, Volume 5.

ıble 16. Litigators Assessment of the Adequacy of Legal Representation for White and Minority Litigants*
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
nority litigants t inadequate gal represen-tion.	38 (30.8)	53 (43.5)	31 (25.8)	79 (62.7)	39 (31.0)	8 (6.3)	67 (57.8)	34 (29.3)	15 (12.9)	28 (46.7)	26 (43.3)	6 (10.0)	24 (17.6)	55 (40.3)	57 (42.1)	44 (46.8)	33 (35.1)	17 (18.1)	280 (42.7)	240 (36.7)	135 (20.6)
ite litigants t inadequate gal represen-tion.	14 (10.9)	66 (52.5)	46 (36.5)	14 (12.2)	57 (49.6)	44 (38.3)	10 (9.5)	54 (51.4)	41 (39.0)	7 (11.1)	38 (60.3)	18 (28.6)	16 (11.6)	71 (51.3)	51 (37.1)	7 (8.0)	45 (51.7)	35 (40.2)	68 (10.7)	331 (52.2)	235 (37.1)

ıee Appendix B, Table B-16, for means, standard deviations, and tests of significance.

Overall, significantly more litigators reported inadequate legal representation for minority, than for white, litigants. Thus, 11% of white litigators in New York City reported that white litigants receive inadequate legal representation "often/very often;" almost three times as many white litigators (31%) gave this same response in relation to minority litigants. Minority attorneys reported an even larger disparity in quality of legal representation for white and minority litigants. Among black litigators, 12% reported inadequate representation for whites, but 63% reported inadequate representation for minorities "often/very often." Among Hispanics, the comparable percentages are 10% for white, and 58% for minority, litigants; among Asians, the percentages are 11% for white, and 47% for minority, litigants. Among minorities outside New York City, the percentages are 8% for white, and 47% for minority, litigants; among Whites outside New York City, 12% for white, and 18% for minority, litigants.

There are no significant differences among groups regarding the frequency with which white litigants receive inadequate representation. The overall mean for all the groups is 1.69, which represents an average rating in the "sometimes" range. Thus, on the average litigators in all groups agreed that white litigants receive inadequate legal representation "sometimes"--or 6-25% of the time. Although greater numbers of litigators in all groups stated that minorities get inadequate legal representation, there were significant differences among groups regarding the magnitude of the problem. Thus, black and Hispanic litigators rated inadequate representation of minorities as a more frequent occurrence than did white litigators either inside or outside of New York City. Asian litigators in New York City, and minority litigators outside New York City, differed significantly from white litigators outside

New York City, but not from white litigators in New York City. Asian, Hispanic, and black litigators gave average frequency ratings ranging from 2.50-2.90, suggesting an average response of "often" for the inadequate representation of minorities. A black litigator from outside New York City wrote:

> The dismantling of the Legal Services Program has severely impacted the delivery of legal services to poor and disadvantaged people from around the country.
>
> The disenfranchised and powerless are legion. Access to the legal/ judicial system is primarily limited to those fortunate enough to be able to afford it. The growing gap between the rich and the poor, black and white, is intensified in criminal or civil proceedings where, ironically, "equal protection" in the halls of justice is to a large part separate and unequal.

A black litigator in New York City stated:

> The inability of our justice system to handle its mushrooming case load has meant that minority criminal defendants must spend more time in jail before trial. Minority civil litigants must wait years before their claims are tried or settled, and the Legal Aid Society must refuse its services to mothers seeking either protection from their husbands or an increase in child support payments.

This same attorney further asserted:

> Most white litigants can afford a private attorney, who will usually provide more adequate representation than his overworked and overloaded legal aid counterpart, who represents most of the minority litigants.

A Native American litigator from outside New York city commented:

> My clients have backgrounds of various ethnicity, but are mostly black and Hispanic. The vast majority of them are poor. By the time I meet them, they have frequently been in contact with many social agencies. They may have been incarcerated as a result of an earlier plea bargain which now comes back to haunt them or because of a trial during the course of which they were too scared or uncertain to tell the previous lawyer the true facts in order to help them in the preparation of an adequate defense.
>
> In either case, sensitivity to socioeconomic and psychological dynamics is

necessary in order for the system to work for my clients. This requires lawyers of the same ethnic background, along with judges who can understand and respond appropriately and effectively to the needs and concerns of all litigants, including those of minority descent.

A white litigator in New York City wrote:

> I believe that inadequate legal representation of poor and middle class people is one of the basic causes of racial unfairness in the New York State Unified Court System, since most minorities are poor or middle class and often cannot find or afford a competent lawyer to represent them in times of need. Until Legal Aid/Legal Services for the poor is greatly expanded and until Legal Aid/Legal Services is made available and affordable for the middle class, the vast majority of minority people will either not get their day in court when they need it or else will not be well represented by competent counsel when they do get their day in court.

An Asian litigator in New York City stated:

> Almost all 18B attorneys are white, and insensitive and unaware of the cultural issues of the extended Latino family which are important in the context of child placement.

A white litigator in New York City wrote:

> I've spent four years in Kings County Family Court and believe the 18B process is unconstitutional. There are no experts available to testify on behalf of respondents and only government and adversaries put witnesses on. (This pertains to neglect and abuse cases). This is not a defense--in 95% of the cases the result is a foregone conclusion.

Another white litigator in New York City stated:

> If you're poor and a minority you're going to get screwed unless you get an attorney who is willing to give 100% and put his ass on the line, which rarely happens.

An Hispanic litigator in New york City commented:

> As far as the Hispanic community, I feel that there are an inadequate number of native Hispanic attorneys available to represent Hispanics who only speak Spanish. Most of my clients feel comfortable with someone who is able to communicate with them in their native tongue.

A white litigator from outside New York City wrote:

> One problem that I have observed is the lack of effective representation of minority defendants in the Buffalo City court system. Defendants are handled by the public defender's office. But because of the number of matters and budget constraints, most matters are resolved by plea and not every case is able to be handled in the same manner that an individual attorney would provide. I believe that an assigned counsel program would provide more effective representation.

3.0 Availability of Representation in Civil Cases

Data on the next pair of items, having to do with white and minority lack of representation in civil cases, are presented in Table 17.

Table 17. **Litigators' Assessment of the Representation in Civil Cases for White and Minority Litigants*** (Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
Minority litigants are unrepresented in civil cases.	20 (24.6)	23 (28.2)	38 (47.2)	55 (53.4)	34 (33.0)	14 (13.6)	58 (65.9)	15 (17.0)	15 (17.0)	22 (40.0)	25 (45.5)	8 (14.5)	27 (27.3)	29 (28.5)	44 (44.3)	33 (42.3)	34 (43.6)	11 (14.1)	215 (42.6)	159 (31.6)	130 (25.8)
White litigants are unrepresented in civil cases.	9 (10.6)	31 (37.0)	44 (52.4)	7 (7.1)	31 (31.6)	60 (61.2)	10 (11.8)	30 (35.3)	45 (52.9)	6 (10.5)	29 (50.9)	22 (38.6)	15 (13.8)	39 (36.7)	53 (49.5)	3 (4.1)	38 (51.4)	33 (44.6)	50 (9.8)	198 (39.3)	257 (50.9)

See Appendix B, Table B-17, for means, standard deviations, and tests of significance.

Significantly more litigators in all groups rated lack of representation of minority litigants in civil cases as a more frequent phenomenon than lack of representation of white litigants in such cases. Among white litigators in New York City, more than twice as many (25%) reported that lack of representation of minority clients, as contrasted with lack of representation of white clients (11%), happens "often/very often." Among black litigators, 53% stated minorities are unrepresented, and 7% stated Whites are unrepresented, "often/very often." Among Hispanics, 66% stated minorities are unrepresented, and 12% stated whites are unrepresented, "often/very often." Among Asians, 40% gave this response for minority, and 11% for white, clients. Among white litigators outside New York City, 27% gave this response for minorities and 14% for whites; among minority litigators outside New York City, the comparable figures are 42% for minorities and 4% for whites.

Litigators in all groups are in agreement regarding the frequency with which white litigants are unrepresented in civil cases. There are no significant differences among groups. The overall mean for all groups is 1.51, suggesting an average rating between "rarely" and "sometimes" as the frequency with which white litigants are unrepresented in civil cases. There are significant differences among groups in terms of their ratings of the frequency with which minority clients are unrepresented. White litigators in New York City reported such lack of representation for minorities as being less frequent than did black, Hispanic, and Asian litigators in New York City or minority litigators outside New York City. White litigators outside New York City perceived less frequency than did black and Hispanic litigators. Thus, while white litigators, on the average, perceived the lack of representation of minority litigants as a "sometimes" phenomenon, black and Hispanic litigators, on the

average, reported such a lack of representation "often."

Taken together the findings support a conclusion that the absence of civil representation falls disproportionately on minorities. Large proportions of litigators in all groups are in agreement that minority litigants are more likely to lack representation than are white litigants. An Hispanic litigator in New York City stated:

> It is very common to see majority judges treat minority litigants, who are invariably pro se, in a condescending fashion. Such explain to/judges often exhibit impatience and anger with minority litigants and fail to inform these litigants of their rights or options.

An Hispanic litigator in New York City commented:

> Essentially, my comments relate to the manner in which minorities, particularly poor pro se defendants, are treated in Housing Court. Although I have found some court staff, clerks, [and] law assistants [who] have endeavored to be helpful, I have also found unsympathetic judges and, in some cases, judges who apparently go by some rather offensive stereotypes. . . It is often evident in cases where a judge impatiently discounts the veracity of a pro se tenant's complaint because the tenants may be inappropriately attired, perhaps not fluent in English, whereas the agent for the landlord is appropriately attired and almost invariably appears with an attorney.

A black litigator in New York City commented:

> Pro se litigants are held to the same standard as attorneys. Judges do not have the patience to listen to a pro se litigant who may not be as articulate or concise as an attorney.

An Hispanic litigator in New York City recounted:

> Judge speaking to pro se minority litigant: "Ms. X, you have to demonstrate both an excusable default and meritorious defense in this . . . hearing." Litigant has a blank look on her face. She obviously doesn't understand what the judge is talking about and the judge just looks at her and says, "Proceed with your case."

Another Hispanic litigator in New York City commented:

> In Brooklyn's Housing Court, unrepresented minority litigants are routinely treated disrespectfully by certain court personnel and attorneys (and sometimes by the judges).

A white litigator in New York City recalled:

> A judge telling his court clerk not to explain to a pro se minority litigant what an adjournment was.

An Asian litigator in New York City wrote:

> [Judge] told a poor Hispanic female pro se tenant that he was going to give her more time to pay the amount owed and then something to the effect [that] a good looking woman like her could get a waitressing job and have no problem getting good tips.

An Hispanic litigator outside New York City stated:

> In family court, minority families tend to have poor legal representation and, therefore, many times must wait longer to have their children returned to them.

A black litigator in New York City commented:

> Housing court respondents are ninety percent black and Hispanic. Ninety-five percent of the respondents are pro se minority litigants who are signing agreement[s] which may not take into account their rights, such as abatement claims, warranty of [habitability], a lease in their own name, etc. . . . . How can a person who is unfamiliar with their rights[] interpose a defense to a legal proceeding. No one tells the pro se litigant the rules of the "game."

An Hispanic litigator in New York City wrote:

> Insensitivity is built into the system where high volume of cases and limited resources are involved. Housing Court is a case in point. Majority of respondent litigants are minorities and not represented by counsel; spanish speaking or other non-english speaking respondents are at a great disadvantage. Non-english speaking landlord[s] are also at a disadvantage. They cannot effectively present their cases or communicate with counsel--there are a limited amount of interpreters.

An Hispanic litigator in New York City commented:

> In Civil Court, the minute I walk in the Puerto Rican tenants come over to

me. Many cannot speak English and have no money for a lawyer. False judgements are ruled against them because they didn't know where to go. The lawyers for the landlord have already default judgements, and they need a lawyer to open the case again. There are not enough pro bono and Legal Services lawyers. They have no protection in Civil Court at all.

nother Hispanic litigator in New York City stated:

> For poor people in general, and African Americans and Latinos in particular, a bottom line issue . . . is access to the courts for dispute resolution, and/or adequacy of representation. Minorities generally have limited access to the courts, or cannot obtain the "best possible" representation because of limited monetary resources. The justice system as a whole continues to work most favorably for those with the most money and/or status.

nother Hispanic litigator in New York City commented:

> The New York City Housing Court has numerous problems: Most of the tenants in the Bronx and Manhattan are minorities and are not represented. Language is definitely a barrier even with court interpreters. Those with counsel still have a difficult time expressing themselves if their counsel is not bilingual. . . . Tenants who speak English have an advantage over non-English speaking tenants. Judges do not receive the entire picture.

Yet another Hispanic litigator, from outside New York City, wrote:

> For the most part, people who opt to defend themselves are at a critical disadvantage vis-a-vis the prosecuting attorney's legal expertise and familiarity with legal proceedings and court practice.

An Asian litigator in New York City wrote:

> As a whole, pro se litigants of color fare poorly with landlords, usually represented by white attorneys, due to total insensitivity to the plight of poor folks.

4.0 Minority Litigant Preference for Minority Attorneys

Finally, litigators were asked how frequently "minority clients express greater satisfaction when they are represented by a minority lawyer." These findings are presented in Table 18.

ıble 18. Litigators' Assessment of the Satisfaction of Minority Clients when Represented by Minority Lawyers*
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
inority clients xpress greater atisfaction when ney are repre-ented by a inority lawyer.	7 (7.7)	32 (33.5)	56 (58.8)	41 (35.7)	62 (53.9)	12 (10.4)	59 (53.2)	43 (38.7)	9 (8.1)	23 (37.7)	22 (36.1)	16 (26.2)	13 (18.3)	27 (39.1)	30 (42.6)	36 (39.1)	35 (38.0)	21 (22.8)	179 (32.9)	221 (40.6)	144 (26.4)

See Appendix B, Table B-18, for means, standard deviations, and tests of significance.

It is apparent that there are marked differences among groups. Eight percent of white, 36% of black, 53% of Hispanic, and 38% of Asian litigators in New York City, and 18% of white, and 39% of minority, litigators outside New York City, reported such greater satisfaction among minority clients occurs "often/very often." There are significant differences between both groups of white litigators and all other litigators.

5.0 Conclusions

The findings strongly support the conclusion that there is a serious problem with the adequacy of legal representation for minorities and the availability of representation in civil cases. Litigators in all groups reported more frequent poor quality or absent representation for minorities than for Whites. Poor quality representation for minorities and lack of representation in civil cases are viewed as routine occurrences by a majority of minority litigators and by large numbers of white litigators.

V. REPRESENTATION OF MINORITIES IN THE NONJUDICIAL WORK FORCE

1.0 Introduction

The Commission heard repeated testimony during its public hearings about the minority sense of alienation from, and distrust of, a justice system in which most personnel are white. Data on the representation of minority personnel in each judicial district are presented in the Commission's main report. The Commission was interested in litigators' perceptions regarding minority representation in the work force and in their awareness of the importance of this issue.

2.0 Minority Representation in the Nonjudicial Work force

Litigators were asked to report on the frequency ("never," 0%; "rarely," 1-5%;

"sometimes," 6-25%; "often," 26-50%; "very often," 51-100%), with which "a case involving a minority litigant is heard in a courtroom in which all nonjudicial personnel (clerks, court officers, and court reporters) are white." Findings are presented in Table 19.

Table 19. Frequency With Which Minority Litigants Appear in Courtrooms where all Personnel are White*
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
A case involving a minority litigant is heard in a courtroom in which all nonjudicial personnel are white.	29 (21.9)	45 (34.6)	57 (43.5)	80 (66.1)	24 (19.8)	17 (14.0)	52 (45.2)	35 (30.4)	28 (24.3)	29 (46.0)	14 (22.2)	20 (31.7)	78 (59.4)	26 (19.6)	27 (20.9)	86 (89.6)	7 (7.3)	3 (3.1)	354 (53.8)	151 (23.0)	153 (23.2)

* See Appendix B, Table B-19, for means, standard deviations, and tests of significance.

Overall, 54% of litigators stated that minorities appear in all-white courtrooms "often/very often." Not surprisingly, there is marked variation among groups. Thus, 22% of white, 66% of black, 45% of Hispanic, and 46% of Asian litigators in New York City, and 59% of white, and 90% of minority, litigators outside New York City, reported that minority litigants appear in all-white courtrooms "often/very often." The ratings of minority litigators outside New York City are significantly higher than the ratings of all other groups; there is also a significant difference between the response of white litigators in and outside New York City. More than twice as many white litigators outside New York City as in New York City characterized all-white courts as a very frequent phenomenon. This supports data from the Office of Court Administration utilization analysis (see Commission's main report), which shows an underrepresentation of minorities in many positions in courts outside New York City. There are also significant differences between black litigators in New York City and between white and Asian litigators; the response of Hispanic litigators in New York City is also significantly different from the response of white litigators in New York City.

It seems likely that the discrepancy between the white and minority views of the prevalence of white courtrooms is a function of differential sensitivity to, and salience of, the issue. Thus, a minority litigator is more likely to be aware of the all-white nature of the personnel in the courtroom; the white litigator is probably less likely to notice. Moreover, such an event is probably of greater importance to the minority litigator; she may, therefore, overestimate the frequency with which the phenomenon occurs. The white litigator may underestimate it. Thus, neither set of reports should be taken as conclusive, but it is apparent that all-white courtrooms are a common occurrence, particularly outside of New

York City. Numerous litigators offered comments regarding this finding. An Hispanic litigator in New York City stated:

> There is a feeling, a perception I have, that in an all-white courtroom, in reaction to my minority client, people are saying, "Mhmmm, sure he didn't do it." They won't look you directly in the eye.

Another Hispanic litigator in New York City commented:

> When you face an all-white court and judge, you lose confidence in the system. These people don't know your background, and you spell your name 15 times.

A Native American litigator outside New York City noted:

> There are no minority court personnel in the courts in which I practice most often in St. Lawrence County.

A white litigator outside New York City commented:

> Blacks can get a fair trial, but I can see how the Black community thinks they cannot. There are no Black court personnel--everyone is white.

A black litigator outside New York City commented:

> The paltry numbers of minority support personnel at all levels, law secretaries, courtroom, calendar and motion clerks, as well as administrative support staff, is appalling!

3.0 The Importance of Greater Numerical Representation of Minorities and of Training in Cultural/Racial Sensitivity

Litigators were asked to rate the importance of "greater numerical representation of minorities among nonjudicial personnel in the courtroom" and of "the training for nonjudicial personnel on cultural\racial sensitivity." Ratings were "very important," "important," "somewhat important," and "not important." These data are provided in Table 20.

Table 20. The Importance of Greater Representation of Minorities and Sensitivity Training for Nonjudicial Personnel*
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Impor/ Impor	Some-what Impor	Not Impor	Very Impor/ Impor	Some-what Impor	Not Impor	Very Impor/ Impor	Some-what Impor	Not Impor	Very Impor/ Impor	Some-what Impor	Not Impor	Very Impor/ Impor	Some-what Impor	Not Impor	Very Impor/ Impor	Some-what Impor	Not Impor	Very Impor/ Impor	Some-what Impor	Not Impor
Importance of greater minority representation among nonjudicial personnel.	51 (35.5)	45 (31.5)	47 (33.0)	119 (90.2)	13 (9.8)	0	99 (76.8)	28 (21.7)	2 (1.6)	48 (64.9)	17 (23.0)	9 (12.2)	62 (41.5)	53 (35.6)	34 (22.9)	91 (90.1)	7 (6.9)	3 (3.0)	470 (64.5)	164 (22.4)	96 (13.1)
Importance of training nonjudicial personnel on racial/cultural sensitivity.	86 (59.7)	41 (28.9)	17 (11.5)	117 (89.3)	8 (6.1)	6 (4.6)	109 (84.5)	16 (12.4)	4 (3.1)	48 (64.8)	23 (31.1)	3 (4.1)	75 (49.6)	46 (30.7)	29 (19.7)	85 (84.2)	13 (12.9)	3 (3.0)	519 (71.3)	147 (20.2)	62 (8.5)

See Appendix B, Table B-20, for means, standard deviations, and tests of significance.

Overall, nearly two-thirds (65%) of litigators stated that increasing the number of minority personnel is "important/very important." Thirty-six percent of white, 90% of black, 77% of Hispanic, and 65% of Asian litigators in New York City, and 42% of white, and 90% of minority, litigators outside New York City, rated increased minority representation as "important/very important." Significantly more Asian and Hispanic than white litigators gave "importance" ratings to this issue; the response of Blacks in New York City and minorities outside New York City was significantly different from the White and Asian response. It is apparent that this is an issue of considerable importance to minority litigators. Although the Asian response is often milder than the black response, it is noteworthy that nearly two thirds of Asian litigators rated this issue as "important/very important."

Litigators expressed opinions pertaining to the minority representation among nonjudicial personnel. An Hispanic litigator in New York City stated:

> Court personnel needs to be much more representative of the people serviced therein. Court officers who are Black and Hispanic need to be hired, especially in the Criminal Courts. It is embarrassing to think that a minority person can come into a court room (a foreign environment), see so many strange faces, and expect them to feel like they will get fair treatment under the law.

A black litigator outside New York City wrote:

> The New York State Unified Court System cannot achieve anything close to racial fairness so long as its decision and policy making bodies continue to be dominated by non-minorities. Most, it not all, highly visible positions in the Court System are held by non-minorities. This exclusion is seemingly based on lack of experience of minority candidates. Minorities cannot acquire experience when they are consistently denied job opportunities based on racial considerations. An effort might be made to hire minorities who are otherwise qualified based on education and training. Any lack of experience should be made up by an accelerated on-the-job training program.

Another black litigator outside New York City commented:

A concentrated effort should be made to get more minorities on juries, the bench, the bar and court personnel.

A white litigator in New York City wrote:

> I believe it is important that minorities fill all job slots the system has to offer--visible jobs like judges, clerks and court officers, as well as prosecutors, counselors and probation officers.

An Hispanic litigator in New York City stated:

> There are too few minority court personnel, too few [minority] judges and minority attorneys. [There are] no recruitment efforts to get more minorities into the court system.

An Asian litigator in New York City stated:

> As a prosecutor here in Manhattan, I make appearances in Criminal Court everyday. In the past year, I have yet to see an Asian Criminal Court judge or court personnel. And I am aware of no Asian judges in Superior Courts. In an area as racially diverse as Manhattan, that is hard to believe.

A white litigator outside New York City stated:

> It would help immensely to have more minority hearing examiners, and law enforcement and court personnel who are Hispanic/black, in all courts.

Another white litigator outside New York City wrote:

> The courts are very white male oriented with thinly veiled maneuvers to keep non-whites and women out of power. . . . I am alarmed to hear racist jokes are increasingly acceptable and I am dismayed at the scant number of minority judges, lawyers, and court personnel.

A white litigator in New York City stated:

> The racism in the courts continues to astound me. In the 12 years I have practiced, I have seen some improvements--more minority court personnel, more minority attorneys--but it is clearly too little.

Another white litigator in New York City commented:

> My practice is predominantly in the Bronx. We have a majority of minorities in our lower courts as defendants. Housing court tenants are mostly Black

and Hispanic. But so is the makeup of court personnel--other than judges and attorneys. I think this has caused the more blatant situations to be reduced.

Another white litigator in New York City wrote:

> In my three primary boroughs [New York, Bronx, Kings,] the minority representation on the bench and with court personnel as well as litigants is probably a majority representation. The attitudes toward minorities [are] basically fair. . . . In Queens, Richmond, and Westchester counties there is a complete reversal of [this].

Comments were also offered illustrating different opinions regarding non-judicial personnel. A white litigator in New York City commented:

> I do not feel that race ought to play a part in appointing a person to a judgeship or for a court personnel job. The position should be filled because of the person's qualifications whether that person be female or male, white or black, Hispanic, Asian, etc. . . . . Our system is based on the best people for the job. We must not deviate from this, or our system will fail. What we must do, so that our system will thrive with minorities, is to educate our youth equally so that the person on 165th street [in] the Bronx has the same education and opportunities as does the person on Park Ave.

A white litigator outside New York City commented:

> Many minority judges and personnel display bias against any others who are <u>not</u> part of their minority. This behavior is as reprehensible as if white judges or personnel displayed such attitudes towards minorities. It would appear that training as to "color blindness" is needed for <u>all</u>.

A white litigator in New York City wrote:

> [A]s far as practice within the five boroughs is concerned, minority representation at all levels (court personnel, juror, judge, etc.) is significant and pervasive. The suggestion that court personnel or jurists have a racial bias or manifest a racial bias is an insult and an unwarranted premise.

Seventy-one percent of all litigators rated training for nonjudicial personnel on cultural/racial sensitivity as "important" or "very important." The majority of litigators in every group gave this rating: 60% of white, 89% of black, 85% of Hispanic, and 65% of

Asian litigators in New York City, and 50% of white and 84% of minority litigators outside New York City.

4.0 Conclusions

The findings strongly support a conclusion that there is widespread awareness among litigators of the fact that minorities frequently appear as litigants in courtrooms staffed exclusively by Whites. Perceptions regarding the frequency with which this occurs are very different, highlighting how differently people can view the same phenomenon based on its importance to them. Despite differences between white and minority litigators, the majority of litigators recognize the importance of increasing minority representation in the nonjudicial work force and of providing training on cultural/racial sensitivity.

VI. RACE-RELATED DISPARITIES IN CIVIL CASE OUTCOMES

1.0 Introduction

Race-related disparities in civil outcomes pose a serious threat to the integrity of the justice system. For this reason, the Commission sought to mine the experiences of litigators with civil court experience.

2.0 Civil Court Outcomes

Litigators were asked to rate the frequency with which different types of disparities in civil case outcomes occur ("never," 0%; "rarely," 1-5%; "sometimes," 6-25%; "often," 26-50%; and "very often," 51-100%. These findings are presented in Table 21.

le 21. Litigator Responses to Questions about Civil Outcomes*

(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
ivil case is re-ded by attorneys or urance companies as s 'winnable' be-se the injured ty is minority.	8 (9.4)	22 (27.2)	51 (63.4)	37 (44.6)	26 (31.3)	20 (24.1)	22 (36.7)	20 (33.3)	18 (30.0)	6 (15.0)	14 (35.0)	20 (50.0)	15 (20.4)	20 (27.1)	39 (52.5)	32 (54.2)	12 (20.3)	15 (25.4)	120 (30.1)	114 (28.7)	164 (41.1)
relief award to a te plaintiff in a e is more than the ief awarded to a ority plaintiff in omparable case.	6 (8.4)	14 (19.1)	52 (72.5)	55 (67.9)	18 (22.2)	8 (9.9)	22 (34.4)	23 (35.9)	19 (29.7)	9 (28.1)	16 (50.0)	7 (21.9)	11 (16.1)	22 (33.0)	34 (50.9)	34 (65.4)	9 (17.3)	9 (17.3)	137 (37.3)	102 (27.7)	128 (35.0)
ld support awards e vigorously en-ced for whites n for minorities similar cumstances.	2 (7.5)	4 (12.5)	27 (80.0)	20 (34.5)	13 (22.4)	25 (43.1)	16 (32.0)	15 (30.0)	19 (38.0)	3 (21.4)	5 (35.7)	6 (42.9)	3 (3.9)	9 (13.8)	54 (82.4)	19 (31.1)	15 (24.6)	27 (44.3)	63 (22.4)	61 (21.7)	157 (55.9)
estic violence es involving whites treated more seri-ly by the courts n those involving orities in similar cumstances.	12 (17.6)	24 (35.0)	3 (47.4)	38 (47.5)	19 (23.8)	23 (28.8)	32 (41.0)	18 (23.1)	28 (35.9)	7 (29.2)	6 (25.0)	11 (45.8)	8 (8.4)	13 (13.4)	76 (78.2)	28 (40.6)	15 (21.7)	26 (37.7)	125 (30.1)	95 (22.8)	196 (47.2)

ee Appendix B, Table B-21, for means, standard deviations, and tests of significance.

Overall, 30% of litigators with civil court experience reported that a "civil case is regarded by attorneys or insurance companies as less 'winnable' because the injured party is minority" "often/very often." In New York City, Whites reported a significantly less frequent occurrence of this type of bias than Blacks and Hispanics, and Asians reported a less frequent occurrence than Blacks. Outside New York City, minority litigators reported a significantly greater frequency of bias against minority injured parties than did white litigators. Nine percent of white, 45% of black, 37% of Hispanic, 15% of Asian litigators in New York City, and 20% of white, and 54% of minority, litigators outside New York City reported that civil cases with minority victims are regarded as less 'winnable' "often/very often."

Thirty-seven percent of all litigators reported that "the relief awarded to a white plaintiff in a civil case is more than the relief awarded to a minority plaintiff in a comparable case" "often/very often." Only 8% of white, but 68% of black, 34% of Hispanic and 28% of Asian litigators in New York City, and 16% of white, and 65% of minority, litigators outside of New York City stated that such inequities occur "often/very often." There are significant differences between Whites and all minority litigators in New York City and between black and Hispanic and Asian litigators. There is also a significant difference between white and minority litigators outside New York City.

Twenty-two percent of all litigators with family court experience stated that "the court enforces a child support award for a white child more vigorously than it does for a minority child in similar circumstances" "often/very often." Eight percent of white, 35% of black, 32% of Hispanic, and 21% of Asian litigators in New York city, and 4% of white, and 31% of

minority, litigators outside New York City reported that such unequal outcomes in family court dispositions occur "often/very often." Differences between Whites in New York City and all minority groups in New York City are significant; the ratings of black litigators are also significantly higher than those of Asian and Hispanic litigators. There is also a significant difference between white and minority attorneys outside New York City.

Overall, 30% of all litigators who handle domestic violence cases reported that "the court treats a domestic violence case involving a white couple more seriously than one involving a minority couple in similar circumstances" "often/very often.". Eighteen percent of white, 38% of black, 41% of Hispanic and 29% of Asian litigators in New York City, and 8% of white, and 41% of minority, litigators outside New York City said that this occurs "often/very often." There are significant differences between white litigators and black and Hispanic litigators in New York City, and between minority and white litigators outside New York City.

In general, it can be concluded that a large proportion of minority litigators reported that disparities in civil outcomes occur frequently. While fewer white litigators reported such disparities, substantial numbers of them are no strangers to such inequities. A few litigators chose to make further comments about disparities in civil outcomes.

A black litigator in New York City stated:

> In civil cases, white plaintiffs are very often awarded more relief than minorities--it is a socio-economic issue because the white middle class has a higher income than the black middle class, and the courts take into account income factors. The only time a black plaintiff may receive a fair reward is when the city is the defendant. Otherwise, in commercial litigation or malpractice, awards are based upon socio-economic status.

A black litigator outside New York City wrote:

> I have always found that African-American and Hispanic clients have been viewed as less worthy of significant financial awards in personal injury cases than similarly situated white clients by judges and jurors. For some reason, African-American and Hispanics are just not as valuable a resource as whites in the eyes of the legal system.

An Asian litigator in New York City commented:

> In my early years, the judges usually dismissed issues of rent abatement for issues of habitability when raised by minorities more readily than for whites. My guess was due to a preconceived assumption that minorities should live in those kinds of situations when whites shouldn't because they shouldn't expect any better.

A white litigator in New York City commented:

> In Manhattan, Kings and Bronx counties, I don't see much discrimination or disrespect. The three worst counties I have practiced in are Queens, Nassau and Westchester. I've had judges say "If he wasn't a Black he would be worth much more money." You get much less, especially in Westchester, for a Black or Hispanic.

A black litigator in New York City commented:

> Minorities do well with personal injury in the Bronx. It's well known if a minority is injured in Westchester or Rockland county, you might as well settle for what you can get.

A white litigator outside New York City wrote:

> [I]n Nassau and Suffolk counties, with regard to civil plaintiffs[, t]he one thing I seek to avoid is a jury trial if I have a minority plaintiff. My experience is that a minority plaintiff will receive an unfair jury award.

A white litigator in New York City wrote:

> [I]n Civil Parts, minority litigants are offered less, pressured more to settle, [and are] more likely to have favorable verdicts reduced by judges.

A black litigator in New York City commented:

> In civil cases, sometimes the relief awarded a white plaintiff is more than the relief awarded a minority plaintiff in a comparable case. In cases of wrongful death it becomes apparent that the lives of whites are more highly valued than

lives of minorities.

A black litigator outside New York City commented:

> There is great disparity in personal injury cases and the judgements awarded to minorities vs. whites--minority life or limb is less important than white.

3.0 Conclusions

Substantial numbers of litigators believe that there are marked disparities in various types of civil court outcomes. This is a serious problem on which it is impossible to gather empirical information due to the absence of race data in civil court cases. Unlike race-related disparities in criminal case outcomes, which have received a great deal of research attention, civil outcome disparities have received no attention in New York State.

VII. THE AVAILABILITY AND ADEQUACY OF INTERPRETER AND OTHER COURT-PROVIDED SERVICES

1.0 Introduction

Problems related to the lack of availability of court-appointed interpreters were attested to repeatedly during the Commission's Public Hearings. For a litigant who does not understand English, the absence of an interpreter or the presence of a poor-quality interpreter makes a mockery of the very idea of justice. Problems associated with transportation and the absence of other ancillary human services may also have a disparate impact on minority clients. It was felt that it would be especially important to obtain litigators' perspectives on these problems.

2.0 Interpreter Problems

Litigators were asked to report the frequency with which the lack of availability and low skill level of interpreters adversely affects Hispanic, Asian, and Haitian litigants ("never,"

0%; "rarely," 1-5%; "sometimes," 6-25%; "often," 26-50%; and "very often," 51-100%). Data on these two items are provided in Table 22.

Table 22. Availability and Quality of Interpreters*
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
The lack of readily-available interpreters adversely affects Hispanic, Asian, and Haitian litigants.	32 (25.8)	29 (23.6)	63 (50.5)	49 (41.9)	31 (26.5)	37 (31.6)	57 (47.5)	31 (25.8)	32 (26.7)	33 (52.4)	15 (23.8)	15 (23.8)	24 (20.3)	31 (25.5)	65 (54.2)	38 (43.2)	23 (26.1)	27 (30.7)	233 (36.9)	160 (25.3)	239 (37.8)
The low level of interpreter skills, when available, adversely affects Hispanic, Asian, and Haitian litigants.	35 (28.5)	29 (24.1)	58 (47.3)	34 (30.9)	27 (24.5)	49 (44.5)	58 (48.3)	33 (27.5)	29 (24.2)	30 (46.9)	17 (26.6)	17 (26.6)	11 (9.6)	26 (23.0)	75 (67.4)	25 (31.6)	22 (27.8)	32 (40.5)	192 (31.7)	154 (25.4)	260 (42.9)

* See Appendix B, Table B-22, for means, standard deviations and tests of significance.

Overall, 37% of litigators reported that lack of interpreters adversely affects their clients. There are significant differences in the frequency ratings of white litigators and all minority litigators. Thus, while 26% of white litigators in New York City reported such adverse effects as occurring "often/very often," 42% of black, 48% of Hispanic, and 52% of Asian litigators made such report. Outside of New York City, 20% of white, but 43% of minority, litigators reported such frequent adverse impact on clients. It is striking that Asian litigators, whose responses are not significantly different from those of white litigators in New York City on most items, reported adverse impact in this area in much higher proportions than did Whites; twice as many Asian (52%) as white litigators in New York City (26%) reported adverse impact associated with lack of interpreters.

Similar proportions of litigators reported that the low skill level of interpreters adversely affects their clients "often/very often." Thus, 32% of all litigators gave this response; 29% of white, 31% of black, 48% of Hispanic, and 47% of Asians in New York City, and 10% of white, and 32% of minority, litigators outside New York City gave this response. A number of litigators commented on the need for interpreters. An Hispanic litigator wrote:

> Non-English speaking litigants/victims etc. are on the whole treated insensitively and many times unfairly. Often they are forced to argue or settle on matter[s] which they truly do not understand and do not realize what they are agreeing to.

An Asian litigator commented:

> There are instances when impatience is exhibited due to the attorney's, litigant's or witness's inability to convey their messages and/or thoughts in English.

Another Asian litigator noted:

> In a criminal trial involving an Hispanic male, the defendant's father needed a translator to testify. The Judge railed loudly and long against people who "come here and have no respect and can't learn English." I feel the defendant did not have a chance.

A white litigator gave this example:

> A Black, West Indian expert witness was testifying. His accent made it difficult to understand his words. The judge simply rolled his eyes. The Court reporter stated to the attorney that it would be impossible to give a complete transcript.

Another white litigator in New York City provided another example:

> Asian litigant did not understand what an adjournment meant and thought she lost custody of her children. When she reacted by crying and screaming, the judge threatened to hold her and/or her attorney in contempt.

Yet another white litigator remarked:

> With interpreters, it's a catch as catch can basis. We can get someone from the Spanish Action League sometimes, but they are people off the street and there is a wide variance in dialect spoken. The judge will make an interpretation of person's ability to understand English based on a few simple questions, without going into their real ability. For example, Probation Officers sometimes send a report with no basis in fact because of bad interpreters.

A black litigator stated:

> The interpreter problem is especially serious for Spanish and Chinese defendants (Chinese because there are so many dialects). Lack of communication and problems because of colloquialisms adversely affect minority defendants. Even if an interpreter is certified, he or she is not necessarily qualified.

Many Hispanic litigators commented on the availability and quality of interpreters and how non-English speaking individuals are adversely impacted. A few examples are provided below:

> The most significant problem that I perceive is the lack of qualified interpreters. It is my experience that judges and other court personnel make

the mistake of assuming that fluency in languages is the equivalent of competency as an interpreter. This is not the case because of the legal "concepts" that must be interpreted.

We need to upgrade the interpreters' status. There exists a lack of permanent, qualified interpreters and a co-existing use of unqualified, per diem interpreters.

[T]here is a strong need for good interpreter[s]. Good, meaning that they can interpret the proper English version of the law into the proper Spanish version.

[L]ack of English language ability, irrespective of race or color, also contributes greatly to discrimination in the courts.

The New York City Housing Court has numerous problems . . . . Language is definitely a barrier, even with court interpreters. Those with counsel still have a difficult time expressing themselves if their counsel is not bilingual. On the whole, the majority of the interpreters are good but some may lack adequate language skills to perform more competently. Tenants who speak English have an advantage over non-English speaking tenants. Judges do not receive the entire picture.

The credibility of a Spanish speaking client was attacked. The court made statements about the person's apparent understanding of "some English" in ruling on trial objections based on badgering questions posed by my adversary. The court allowed more badgering than would otherwise have been tolerated.

I recommend that efforts be made to certify and continually train all court interpreters. Bilingual personnel should be available in all trial parts and information booths in the courts.

Availability of translators isn't the problem, it's competence.

The lack of reliable interpreters is a serious problem in the court rooms and grand jury . . . the translators just murder them (the litigants). Little translations and dialect are wrong; and especially in front of grand juries, all the information must be accurate.

It is difficult to find an interpreter for a court other than city court. It takes a few days.

I feel it is important to have translators who are not only familiar with the language but also with the culture and the particular variations in language

associated with the individual's particular community.

- **Transportation Problems**

Litigators were asked to report on the frequency with which transportation problems ause delays for minority and for white clients. Findings relevant to these two items are rovided in Table 23.

ble 23. Frequency of Transportation Problems for Minority and White Litigants*
(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare ly/ Never
nsportation blems cause ays for white igants.	6 (6.2)	24 (23.9)	71 (69.9)	2 (2.3)	28 (31.8)	58 (65.9)	5 (5.6)	29 (32.6)	55 (61.8)	3 (6.7)	11 (24.4)	31 (68.9)	5 (3.9)	42 (35.0)	73 (61.1)	4 (5.1)	22 (27.8)	53 (67.1)	25 (4.8)	156 (29.9)	341 (65.3)
nsportation blems cause ays for minor- litigants.	36 (34.7)	25 (23.9)	43 (41.3)	48 (48.5)	21 (21.2)	30 (30.3)	42 (45.2)	28 (30.1)	23 (24.7)	11 (23.9)	14 (30.4)	21 (45.7)	21 (18.8)	45 (40.1)	47 (41.1)	40 (49.4)	19 (23.5)	22 (27.2)	199 (37.0)	152 (28.4)	186 (34.6)

e Appendix B, Table B-23, for means, standard deviations, and tests of significance.

Significantly smaller proportions of all litigators reported that transportation problems have an impact on white (5%) than minority (37%) clients "often/very often". There are no significant differences among groups in their experiences regarding white client transportation problems. There are also no differences among litigators in New York City regarding the frequency of problems for minority clients. Thus, 35% of white, 49% of black, 45% of Hispanic, and 24% of Asian litigators in New York City reported transportation problems for minority clients "often/very often." Fewer white (19%) than minority (49%) litigators outside New York City reported a high frequency of transportation problems for minority litigants. As a whole, litigators reported a significantly greater frequency of problems for minority than for white litigants. An Hispanic litigator noted, "[There is t]otal insensitivity to problems of minority litigants." He observed a situation in which a litigant arrived late to court:

> Litigant: "I was late, judge, because I couldn't get someone to babysit and I needed to borrow the carfare."
>
> The judge replied: "Well, I can't do anything about that; you should have come to court anyway. That isn't the [opposing party's] problem."

4.0 Other Service Problems

Litigators were also asked, "Are there public services (e.g., child care, information booth) that should be provided in the courts in which you practice, but are not provided?" The findings are provided in Table 24.[10]

[10] Data pertaining to services and information are provided in this section. Data pertaining to physical maintenance and facilities are presented in Section II on treatment.

Table 24. **Services That Litigators Want Provided in the Courthouses in Which They Practice***

(Numbers in parentheses are percentages)

	New York City				OUTSIDE NYC		
	White	Black	Hisp.	Asian	White	Minor.	TOTAL
Child Care	35 (41.7)	36 (51.4)	36 (51.4)	12 (33.3)	43 (57.3)	35 (62.5)	197 (50.4)
Public Information	50 (59.5)	42 (60.0)	38 (54.3)	20 (55.6)	33 (44.0)	23 (41.1)	206 (52.7)
Social Services	6 (7.8)	2 (2.9)	2 (2.9)	3 (8.3)	1 (1.3)	3 (5.4)	16 (4.1)
Legal Services	6 (7.1)	5 (7.1)	5 (7.1)	4 (11.1)	4 (5.3)	2 (3.6)	26 (6.6)
Other	11 (13.1)	11 (15.7)	22 (31.4)	5 (13.9)	6 (8.0)	7 (12.5)	62 (15.9)
Base: number of persons in each group who mentioned any service.	84	70	70	36	75	56	391

* Numbers add up to a total greater than the base, and percentages add up to a total greater than 100 because of multiple responses.

Fewer than half of all litigators mentioned the need for any additional services. Among those who mentioned any service need, child care and public information received the largest number of mentions. This is not surprising given that these two services were prompted in the wording of the question. Small proportions of litigators mentioned any other services. The "other" category includes mentions of interpreters, more/better staff, and improved attorney support; none of these was mentioned by more than ten persons in any group. There are no differences among groups.

5.0 Conclusions

The findings strongly support the conclusion that there is a lack of adequate interpretation services, both in quantity and quality, in the courts. Large numbers of litigators who could be assumed to have the most knowledge of this issue, i.e., Hispanics and Asians, reported that these gaps in court-provided services affect minorities "often/very often." Transportation problems clearly have a greater impact on minority than on white

gants. Large numbers of litigators in all groups reported transportation problems for nority clients.

II. RACE-RELATED DISPARITIES IN PRETRIAL PROCESSING AND CRIMINAL COURT OUTCOMES

0 Introduction

The Commission's review of the research on race-related disparities in pretrial rocessing and criminal court outcomes suggested that it would be important to obtain tigators' views on these issues.[11] It is apparent that race-related disparities in the criminal ourts undermine the very idea of justice.

.0 Racially-Disparate Treatment of Criminal Defendants

Litigators were asked a series of seven questions regarding the frequency with which white defendants receive preferential treatment in the criminal courts; possible ratings were 'never," 0%; "rarely," 1-5%; "sometimes," 6-25%; "often," 26-50%; and "very often," 51-100%. Findings relevant to these seven questions are provided in Table 25a.

[11] See Review of the Literature on race-related disparities in pretrial processing and sentencing, New York State Judicial Commission on Minorities, Volume 5.

Table 25a. Differential Treatment of Criminal Defendants*

(Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TO	
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY				
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	So ti
white defendant is released, with or without bail, pending trial in a situation that would lead to detention for a minority defendant.	25 (38.7)	24 (37.0)	16 (24.3)	56 (81.2)	9 (13.0)	4 (5.8)	44 (59.5)	17 (23.0)	13 (17.6)	8 (36.4)	6 (27.3)	8 (36.4)	15 (17.8)	34 (40.9)	35 (41.3)	41 (64.1)	13 (20.3)	10 (15.6)	189 (50.1)	1 (27
wer bail is set for ite than for min. defs. cused of similar crimes th similar records and mmunity ties.	19 (31.5)	18 (30.5)	23 (38.0)	53 (80.3)	9 (13.6)	4 (6.1)	37 (52.1)	19 (26.8)	15 (21.1)	8 (36.4)	7 (31.8)	7 (31.8)	10 (11.5)	26 (30.1)	50 (58.4)	33 (55.0)	19 (31.7)	8 (13.3)	160 (43.8)	(26.
ite defendants are more kely to be released on eir own recognizance an are minority defen- nts accused of the same mes with similar re- ds and community ties.	21 (32.4)	24 (35.9)	21 (31.7)	53 (79.1)	10 (14.9)	4 (6.0)	39 (52.7)	21 (28.4)	14 (18.9)	9 (37.5)	7 (29.2)	8 (33.3)	14 (16.3)	21 (24.9)	50 (58.7)	40 (62.5)	15 (23.4)	9 (14.1)	176 (46.4)	98 (25.
ense attorneys view minal case as more nnable" when the endant is white.	22 (32.9)	30 (44.5)	15 (22.6)	36 (53.7)	16 (23.9)	15 (22.4)	34 (47.2)	20 (27.8)	18 (25.0)	7 (30.4)	8 (34.8)	8 (34.8)	23 (27.6)	31 (37.2)	30 (35.2)	35 (59.3)	16 (27.1)	8 (13.6)	157 (42.2)	121 (32.6
secutors view criminal es as more "winnable" the victim is white.	27 (41.7)	22 (34.6)	15 (23.8)	48 (72.7)	8 (12.1)	10 (15.2)	33 (48.5)	20 (29.4)	15 (22.1)	7 (30.4)	9 (39.1)	7 (30.4)	23 (29.0)	25 (31.4)	32 (39.6)	39 (65.0)	12 (20.0)	9 (15.0)	177 (49.0)	96 (26.7
sel a wider range of osition alternatives often for white than rity defendants.	22 (33.6)	16 (23.9)	28 (42.4)	43 (63.2)	15 (22.1)	10 (14.7)	30 (42.9)	24 (34.3)	16 (22.9)	6 (27.3)	9 (40.9)	7 (31.8)	8 (9.5)	27 (31.7)	50 (58.8)	30 (47.6)	20 (31.7)	13 (20.6)	139 (37.2)	111 (29.6
e defendants are less ly to receive prison ences than minority ndants given similar ds and conviction.	21 (32.0)	23 (35.1)	22 (32.9)	50 (73.5)	13 (19.1)	5 (7.4)	34 (47.9)	22 (31.0)	15 (21.1)	5 (22.7)	9 (40.9)	8 (36.4)	13 (14.7)	21 (24.9)	52 (60.3)	42 (65.6)	14 (21.9)	8 (12.5)	165 (43.7)	103 (27.2)

Appendix B, Table B-25a, for means, standard deviations, and tests of significance.

Litigators were asked to rate the frequency with which "a white defendant is released. with or without bail, pending trial, in a situation that would lead to detention for a minority defendant." Overall, 50% of litigators reported that such preferential treatment of white defendants occurs "often/very often." While black litigators in New York City reported a significantly greater frequency of this type of treatment than white litigators in New York City, and minorities out of New York City reported a significantly greater frequency than Whites out of New York City, the proportions of all litigators giving this response are high. Thus, 39% of white, 81% of black, 60% of Hispanic, and 36% of Asian litigators in New York City, and 18% of white, and 64% of minority, litigators outside New York City reported that preferential treatment of white defendants occurs "often/very often." If there were no, or almost no, bias in the treatment of white and minority defendants in pretrial release, the response from all litigators would have been "rarely/never"--i.e., such preferential treatment rarely or never happens. In fact, only 23% of all litigators responded in this manner: 24% of white, 6% of black, 18% of Hispanic, and 36% of Asian litigators in New York City, and 41% of white, and 16% of minority, litigators outside of New York City. Thus, fewer than half of respondents in any given group perceived preferential treatment of white defendants as a rare occurrence. Preferential treatment of white defendants in terms of pretrial release is seen as a common occurrence.

Litigators were asked to report the frequency with which "lower bail is set for white defendants than for minority defendants accused of similar crimes with similar records and similar community ties." Overall, 44% of litigators reported that preferential bail treatment for Whites occurs "often/very often." There are significant differences among groups, but

substantial proportions of all litigators responded that preferential bail treatment for Whites is a frequent occurrence. Thus, 32% of white, 80% of black, 52% of Hispanic, and 36% of Asian litigators in New York City, and 12% of white, and 55% of minority, litigators outside New York City gave this response. In a bias-free court system the response of all litigators would have been that lower bail is "never/rarely" set for white defendants. In fact, only 29% of litigators gave this response: 38% of white, 6% of black, 21% of Hispanic, and 32% of Asian litigators in New York City, and 58% of white, and 13% of minority, litigators outside New York City gave this response.

The item regarding more likely release of Whites than of minorities on their own recognizance shows the same pattern. Overall, 46% of litigators reported that this happens "often/very often"; 32% of white, 79% of black, 53% of Hispanic, and 38% of Asian litigators in New York City, and 16% of white, and 63% of minority, litigators outside of New York City gave this response. Only 28% of litigators reported that preferential treatment of Whites "never/rarely" occurs; 32% of Whites, 6% of blacks, 19% of Hispanics, 33% of Asians in New York City, and 59% of white, and 14% of minority, litigators outside New York City gave this response. Many litigators provided examples of preferential treatment. A white litigator stated:

> Clearly in the Criminal Term, bails are higher, plea offers are higher, jail terms are longer for minorities. It is a sick fact of life that almost invariably when a criminal defense attorney (or D.A.) hears of an unusually low bail or sentence, the first question is "Were they white?"

Another white litigator wrote:

> My perception is that minority clients are detained more frequently than non-minority clients . . . .

ack litigator commented:

> Bail is used against blacks, if the judge feels blacks shouldn't be on the streets. Drug bails are so high, they can't get out. Yet a white who has committed a murder can make bail--a low bail they can afford.

ıther black litigator stated:

> My observations of bail proceedings convince me that white defendants are treated more leniently than minority defendants.

: another black litigator commented:

> Very often black defendants are forced to plead guilty to crimes when they cannot make bail because they will spend a longer time in jail if they fight the case.

ı Hispanic litigator commented:

> I think the statistics speak for themselves. Certainly in Bronx County, more defendants in criminal matters dispose of their cases by way of guilty pleas with incarceratory sentences than I believe is really necessary.

ıother Hispanic litigator stated:

> During arraignments, [a defendant with] similar charges, similar ties, similar criminal history, different race, [will get] different bail, i.e. ROR for white and bail [for] minority.

Litigators were asked how frequently a "criminal case is regarded by defense attorneys ; more 'winnable' because the defendant is white." Overall, 42% of litigators reported that ıch preferential case assessment for white litigants occurs "often/very often." The only gnificant difference is that minority litigators outside of New York City reported a higher ;equency than white litigators outside New York City. Large proportions of all litigators ırovided this response: 33% of white, 54% of black, 47% of Hispanic, and 30% of Asian itigators in New York City, and 28% of white, and 59% of minority, litigators outside New York City. Only 25% of litigators reported that defense attorneys "never/rarely" regard

criminal cases as more "winnable" because the defendant is white: 23% of white, 22% of black, 25% of Hispanic, and 35% of Asian litigators in New York City, and 35% of white, and 14% of minority, litigators outside of New York City.

Litigators were asked how often "a criminal case is regarded by prosecutors as more 'winnable' because the victim is white." Overall, 49% of litigators stated that prosecutors find criminal cases more winnable when victims are white "often/very often." Although there are some significant differences among groups, large proportions of litigators in all groups gave this response. Thus, 42% of white, 73% of black, 49% of Hispanic, and 30% of Asian litigators in New York City, and 29% of white, and 65% of minority, litigators outside New York City reported that prosecutors regard cases with white victims as more winnable "often/very often." If there were no bias in the criminal courts, litigators would have responded "never/rarely" to this item. In fact, only 24% made such response: 24% of white, 15% of black, 22% of Hispanic, and 30% of Asian litigators in New York City, and 40% of white, and 15% of minority, litigators outside New York City.

Litigators were asked the frequency with which "in the case of a white defendant the court is encouraged by counsel to consider a wider range of dispositional alternatives (e.g., drug treatment programs, community service programs, private placements or treatment programs, supervised home release) than that presented in cases involving minority defendants." Overall, 37% of litigators stated that white defendants have available a broader range of dispositional alternatives "often/very often." While there are some significant differences among groups, large proportions of all litigators gave this response. Thus, 34% of white, 63% of black, 43% of Hispanic, and 27% of Asian litigators in New York City, and

of white, and 48% of minority, litigators outside of New York City gave this response. rall, only 33% of litigators responded that preferential treatment for Whites in ositional alternatives "never/rarely" occurs: 42% of white, 15% of black, 23% of Hispanic, 32% of Asian litigators in New York City, and 59% of white, and 21% of minority, ;ators outside New York City.

Litigators were asked to note the frequency with which "white defendants are less ely to receive prison sentences than are minority defendants with similar records convicted the same crimes." This item about bias in sentencing speaks to the heart of the fairness the criminal justice system. It is striking that 44% of all respondents reported that Whites e less likely to receive a prison sentence "often/very often"; only 29% of respondents stated at this "never/rarely" happens. And again, while there are differences among groups, large oportions of all litigators have experienced biased sentencing on a regular basis. Thus, 2% of white, 74% of black, 48% of Hispanic, and 23% of Asian litigators in New York ity, and 15% of white, and 66% of minority, litigators outside New York City reported that entencing that favors Whites occurs "often/very often." Moreover, fewer than half of all tigators in New York City (33% of white, 7% of black, 21% of Hispanic and 36% of Asian tigators), and 60% of white, but 13% of minority, litigators outside of New York City stated hat this "never/rarely" occurs.

Commenting on the likelihood that a minority defendant will receive a prison sentence in a situation in which a white defendant will not, a white litigator wrote:

> Most racial discrimination in the courts is not overt. Rather, it is manifested by decisions which are influenced by attitudes which may not even be consciously held. Certainly, there is a greater reluctance to hold white defendants in jail, or to sentence them to substantial incarceration, than there

is to incarcerate black defendants; coupled with this is a greater willingness to regard white defendants as "kids who got into trouble" as opposed to budding career criminals. Also, jail is perceived as a natural part of ghetto culture, and there may be a feeling that incarcerating a ghetto black is less an imposition on him or her than incarcerating a white from an intact nuclear family, where actually the opposite may be true, particularly where children are dependent on the incarcerated person. To prove in any particular case that these attitudes have influenced a decision is well-nigh impossible; to deny the phenomenon in the face of years of courtroom experience would be blindness.

A white litigator wrote:

> I have seen blacks convicted of petit larceny, a Class A misdemeanor, get a full year in jail--but a white get off with probation.

A black litigator remarked:

> [In] car cases--whites will be charged with unauthorized use, whereas "minorities" are charged with grand larceny.

A white litigator stated:

> Black defendants [in a particular court] are often held on bail, . . . sometimes past the maximum sentence, where white defendants would be released on own recognizance.

A black litigator commented:

> Minority criminal defendants are, without qualification being treated differently than non-minorities, particularly at sentencing.

An Hispanic litigator stated:

> A.D.A.s will give different plea offers to minorities charged with similar crimes as whites. The offers will be more harsh even though [defendants] have similar backgrounds and lives.

A black litigator recounted:

> A judge released a white client on his own recognizance after stating 'He does not look like the typical defendant, he probably won't make it in jail.'

The seven items discussed in this section were combined into the Criminal Penalties

ıle. The scale has high reliability (alpha = .94). The range is from 0 (never) to 4 (very en); the higher the mean, the greater the reported frequency of preferential treatment · white defendants. Means and standard deviations for each of the study groups are esented in Table 25b.

ıble 25b. Means and Standard Deviations for Criminal Penalties Scale
(Range=0-4; 4=frequent preferential treatment for Whites)

	New York City				OUTSIDE NYC	
	White	Black	Hispanic	Asian	White	Minority
N	53	59	63	19	69	52
Mean	2.15	3.02	2.58	1.89	1.64	2.73
S.D.	.98	.76	1.06	1.04	.90	.89

There is a significant difference in the average response of black and white and Asian itigators in New York City. There is also a significant difference between the response of ninority and white litigators outside of New York City. On average, white (both in and out of New York City) and Asian litigators responded in the "sometimes" (6-25%) range; Blacks, Hispanics, and minorities outside New York City, on average, responded in the "often" (26-50%) range.

3.0 Conclusions

There seems to be widespread experience with racial bias in the criminal courts. Even white litigators are no strangers to such bias. Black and Hispanic litigators in New York City and minority litigators outside New York City routinely experience such bias. It is apparent that the problem is serious and cannot be set aside as an occasional miscarriage of justice.

IX. REPRESENTATION AND TREATMENT OF MINORITIES IN THE LEGAL PROFESSION

1.0 Introduction

Examining the treatment of minority attorneys in the legal profession and in the courts is central to the Commission's work. The litigators' study provided an ideal opportunity to examine these issues because of the inclusion of samples of different minority groups and because of the focus on attorneys appearing regularly in the courts.

Data provided in this section are relevant to the following:

- Minority attorney recruitment efforts;
- Perceived opportunities for minorities within organizations;
- Treatment of minority attorneys within the courts;
- Perceived importance of increased minority representation among attorneys and of cultural racial sensitivity training for attorneys;
- 18B panel participation;
- Fiduciary appointments;
- Attorney disciplinary proceedings;
- Bar association participation;
- Malpractice insurance; and
- Satisfaction with professional opportunities.

2.0 Recruitment of Minority Attorneys

Of the 740 litigators in the study, 414 worked within organizations rather than solo practice; those working within organizations were asked to provide information about the

pes of recruitment efforts that their organizations/firms do in order to increase the umbers of minority lawyers working in those entities. These findings are presented in ables 26a and 26b. Table 26a provides data on the responses of each group about each pe of recruitment effort. Table 26b provides data on the means and standard deviations or each group on a scale constructed from the recruitment items.

able 26a. Percent Reporting Recruitment Efforts of Organizations/Firms Targeted to Minorities*

(Numbers in parentheses are percentages)

	NEW YORK CITY				OUTSIDE NYC		
	White (N=76)	Black (N=73)	Hisp. (N=77)	Asian (N=41)	White (N=82)	Minor. (N=65)	TOTAL (N=414)
Outreach to minority student organizations at majority law schools	33 (43.6)	33 (45.2)	38 (49.4)	11 (26.8)	13 (15.8)	8 (12.3)	136 (32.9)
Participation in minority-sponsored job fairs	20 (26.1)	34 (46.6)	23 (29.9)	7 (17.1)	9 (10.9)	10 (15.4)	103 (24.8)
Minority summer internships	21 (27.3)	31 (42.5)	20 (26)	4 (9.8)	7 (8.8)	12 (18.5)	95 (22.9)
Interviews at minority law schools	17 (22.4)	14 (19.2)	13 (16.9)	4 (9.8)	4 (5.1)	2 (3.1)	54 (13.1)
Advertisements in minority media	3 (3.3)	11 (15.1)	10 (13)	1 (2.4)	5 (6.2)	7 (10.8)	37 (8.8)
Other recruitment efforts	12 (15.8)	5 (6.8)	15 (19.5)	3 (7.3)	2 (2.4)	12 (18.5)	49 (11.9)
Any of the above recruitment efforts	48 (62.9)	53 (64.9)	50 (64.9)	17 (41.5)	20 (24.4)	26 (40.0)	214 (51.6)

* See Appendix B, Table B-26a, for tests of significance.

Overall, 52% of litigators reported that their organizations have some type of minority

recruitment effort. The activity reported by the largest number of litigators is outreach to minority student organizations at majority law schools. Overall, one third of litigators reported that their organizations engage in such activity. Similar proportions of white (44%), black (45%), and Hispanic (49%) litigators in New York City reported such activity; substantially lower proportions of Asians (27%) and all litigators outside New York City (white [16%] and minority [12%]) reported such targeted outreach.

Participation in minority-sponsored job fairs is the second most common activity--overall, one fourth of litigators said that their organizations participate in such fairs. A relatively high proportion of black New York City litigators (47%) reported such activity; relatively low proportions of persons in organizations outside New York City reported any such participation.

Significantly more black litigators in New York City (43%) than any other litigators reported that their organizations sponsor minority summer internships. Much lower proportions of litigators in other groups, ranging from 9% of white litigators outside New York City to 27% of white litigators in New York City, reported such activity.

Interviews at minority law schools were cited by very few attorneys as a recruitment strategy. Interestingly, Whites and Blacks in New York City had the highest proportions reporting such interviews; significantly lower proportions of Asians in New York City and of all litigators outside New York City reported any such recruitment effort at historically black law schools.

Advertisements in minority media were reported by only 9% of all litigators.

Twelve percent of litigators reported that their organizations engage in other types

of recruitment activities, including "word of mouth," contacts with leaders in the minority community, outreach to minority organizations (e.g., minority bar associations, NAACP) and outreach to judges and law firms.

The Minority Recruitment Scale was developed in order to provide a more powerful measure of organization-targeting efforts. The four-item scale[12] has good reliability (alpha=.73) and can be used to score organizations on the extensiveness of their minority recruitment efforts. The range is from 0-4, with 0 indicating no activity and 4 indicating a maximum of activity.

Table 26b. Means and Standard Deviations on the Minority Recruitment Scale (Range is 0-4)

	NEW YORK CITY				OUTSIDE NYC	
	White	Black	Hisp.	Asian	White	Min.
N	75	73	77	41	82	65
Mean	.30	.38	.31	.16	.10	.12
Std. Dev.	.35	.32	.33	.25	.23	.23

As can be seen from Table 26b, the average for all groups is less than one; most organizations/firms make no systematic efforts to recruit minority lawyers. White, black, and Hispanic litigators in New York City have statistically higher means than white and minority litigators outside New York City; there is also a significant difference between the response of black and Asian litigators in New York City. It is apparent that outside New York City there is virtually no effort to recruit minority attorneys; there is a somewhat higher, but still very meager, level of effort in New York City.

At first glance, it is surprising to find that responses to the minority recruitment

[12] The four items in the scale are the first four items in Table 26a. "Advertisements in minority media" was dropped from the scale because of low item correlation with the total.

questions differ by race. Unless black litigators in New York City are more likely to be employed in minority-owned law firms which are more likely to actively recruit minority attorneys (that question was not asked), race differences probably have to do with raced-based differences in awareness of these recruitment efforts. That is, among employees of the same organization, minorities are more likely to know of minority recruitment efforts than are whites. This is plausible since minority attorneys themselves 1) may have been brought into the organization as a result of such efforts, 2) may be more likely than their white colleagues to participate in recruiting minority applicants, and 3) may be more curious about whether recruitment efforts do exist and therefore, more likely to seek out information about them.

An Hispanic litigator in New York City wrote:

> I firmly believe that the N.Y. D.A.'s office is committed to hiring minority prosecutors and does an admirable job in that area. I am, however, troubled that few, if any, minority assistant D.A.'s rise to supervisory positions.

An Hispanic litigator outside New York City wrote:

> I am not aware that any medium to large law firms in this area [Albany] ha[ve] made a determined effort to recruit minority persons. That does not surprise me since it is my observation that the legal, and other professional communities in this area, are closed to "outsiders."

A black litigator in New York City commented:

> There was affirmative action in the Criminal Appeals Bureau of Legal Aid, but they go to top-tier law schools and look at Law Review. They're slow to shake elitist and narrow standards in hiring lawyers.

A white litigator in New York City charged:

> Our office's performance has not been so good in the area of general recruitment for entry level positions. Although the union has an affirmative action provision in the collective bargaining agreement and has established an

affirmative action committee, management has not always been willing to share information needed to monitor the organization's affirmative action efforts . . . . Management explains its failure to provide information necessary for monitoring compliance by citing concerns about confidentiality and the privacy of applicants. Many of us believe these explanations to be spurious . . . . In at least one instance, a minority applicant was told that no position was available; shortly thereafter, a white applicant was hired without any posting of the position, in violation of earlier affirmative action agreements.

white litigator outside New York City wrote:

> We currently have Asian, Indian and Pakistani attorneys, but no Blacks or Hispanics, though we have in the past. We need to keep working at it!

black litigator outside New York City said:

> Minority law firms remain small and cannot hire additional minority attorneys because of lack of resources of firm, due to no large retainers.

black litigator outside New York City wrote:

> My perception of the N.Y.S. Unified Court System regarding racial fairness is that racial bias is widespread in both legal and quasi-legal employment practices. My perception is based upon my personal observations of minorities working within the Buffalo City Court, Erie County Court, and State Supreme Court. In addition, my personal experience in attempting to obtain employment within the N.Y.S. Unified Court System was unpleasant and I believe "unfair." I believe that their attempts to implement an affirmative effort to hire minorities was, and is, less than sincere.

A black litigator in New York City wrote:

> I know white attorneys who are sought out to become law secretaries or for management positions within the government where qualified minorities are not.

A black litigator in New York City wrote:

> Legal Aid is one of the most elite and racist representatives of the indigent (at least as far as criminal appeals is concerned). Minority attorneys are underrepresented and undervalued. Recruitment of minority staff--especially supervisory staff, is a joke.

A black litigator outside New York City said:

> The lack of opportunity for minorities in private practice in this area is stunning. The notion that minority lawyers need anything other [than] opportunity in order to succeed sickens me (i.e., extra help programs in law firms, "Take-a-chance" hiring programs, etc.).

A white litigator outside of New York City remarked:

> I do not believe "affirmative action" is the proper method for addressing so-called racial imbalances. It leads only to quotas and double standards.

An Hispanic litigator in New York City commented:

> Minority attorneys do not get work from the city . . . or corporations. Those of us in private practice know that affirmative action is a farce. We no longer respond to request[s] from affirmative action officers for resumes.

An Hispanic litigator outside New York City asserted:

> The good firms, the higher-paying government law jobs, and the various DA's offices, are closed to anything more than token minority representation.

A black litigator in New York City wrote:

> When you send your resume to the agencies that state they are affirmative action employers you don't even get a response.

A black litigator in New York City lamented:

> The opportunity for me [to go] from government service to the private sector is not very good. There is still racial bias in the hiring practices of firms.

An Hispanic litigator in New York City charged:

> Attorneys of color[] seem to be "pigeon holed" into . . . Legal Aid, legal services, and other public interest positions. Private sector firms only hire if they're forced to[--]i.e. quotas or pressure from big clients.

A black litigator outside of New York City wrote:

> Black law students have great difficulty obtaining job opportunities with white employers in Rochester. Particularly this is true of native Rochesterians. White employers in Rochester, when they do hire Blacks, will go outside the community for the Blacks they hire rather than give job opportunities to native black Rochesterians. The state, federal, and county government

employers are worse, or just as bad, on this score as are the private firms.

)lack litigator outside New York City wrote:

> Minority attorneys in Erie County are not hired by larger white law firms.

Hispanic litigator in New York City noted:

> Based upon my experience interviewing for attorney positions, I am convinced that there have been many instances where a decision to not hire me has been premised on factors other than my objective qualifications.

ı Hispanic litigator in New York City wrote:

> In my experiences upon graduation from law school, I discovered that the larger law firms were more interested in your background and who you knew. This attitude would have a negative effect on those minorities who have not yet reached a higher social/economic level. There seem to be fewer hispanic professionals in the field.

black litigator in New York City charged:

> There [do not appear to be] many agencies/law firms pursuing qualified African-American female attorneys, especially with work experience from the Legal Aid Society.

0 **Opportunities for Attorneys in Organizations**

Litigators in organizations were asked to agree or disagree with a series of nine atements dealing with minority hiring and professional and social opportunities within their rganization. These findings are provided in Tables 27a and 27b.

Table 27a. Percent in Agreement with Experiences of Attorneys in La Firms/Organizations*
(Numbers in parentheses are percentages)

ITEM	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
In order to be hired, minority lawyers have to have higher grade point averages and academic qualifications than non-minority lawyers.	5 (7.1)	60 (80)	34 (43.1)	16 (34.8)	5 (6.5)	35 (56.4)	154 (38.6)
Minority lawyers are sometimes given hiring preference over academically better qualified non-minority lawyers.	27 (45.4)	12 (16.2)	21 (28)	13 (29.5)	33 (54.5)	10 (16.9)	116 (31.1)
Minority lawyers have fewer opportunities than white lawyers to participate in continuing education or training opportunities.	0 (0)	23 (31.5)	20 (25)	8 (17.4)	2 (3.2)	15 (24.2)	68 (17)
Minority lawyers are less likely to be included in social events.	4 (5.1)	51 (69)	22 (26.2)	13 (26.5)	10 (13.7)	27 (40.9)	127 (30.2)
Minority lawyers lack mentors.	20 (29.4)	67 (82.7)	58 (65.2)	24 (50)	19 (31.9)	45 (67.1)	233 (56.3)
Minority lawyers receive less feedback about their work because nonminority lawyers are uncomfortable criticizing them.	13 (19.3)	30 (42.9)	25 (33.8)	16 (33.4)	20 (33.3)	22 (35.5)	126 (32.9)
Minority lawyers tend to be assigned more limited, less complex cases.	4 (5.9)	47 (64.3)	37 (46.9)	16 (32)	3 (4.7)	29 (45.3)	136 (33.8)
Minority lawyers have fewer opportunities for advancement.	11 (15.1)	73 (90.1)	51 (59.3)	25 (58.2)	16 (21.7)	48 (70.6)	224 (52.5)
A minority lawyer in the organization is less likely than a white lawyer with comparable experience to make partner/supervisor.	17 (27.2)	65 (90.3)	49 (67.2)	22 (59.4)	14 (26.3)	39 (69.7)	206 (58.4)

* See Appendix B, Table B-27a, for means, standard deviations, and tests of significance.

Overall, 39% of attorneys "agreed" with the statement, "in order to be hired, minority lawyers have to have higher grade point averages and academic qualifications than

minority lawyers." There are highly significant differences in the proportions of white minority lawyers agreeing with this statement. Thus, for example, at the extremes, only of white attorneys in New York City agreed, while 80% of black attorneys in New York agreed. Each of the minority groups had a significantly different response from each he white groups: the black response was also significantly different from the Hispanic and ian response. A black litigator outside New York City wrote:

> Minority lawyers are still judged by different standards. In the private sector opportunities with corporations and law firms are limited even when you're better qualified and harder working.

An Asian litigator in New York City wrote:

> I feel that [] minority law student[s], prior to having the opportunity to prove themselves in a job setting, have to have exceptional grades prior to being offered a job with a prominent, predominantly white law firm.

A black litigator in New York City wrote:

> [I]t seems that minorities have to be twice as qualified to get to certain points in their legal career and often find themselves working with other members of the profession who have weaker credentials. For example, the only two Blacks in my agency (myself & one other) have the strongest education and legal background (myself--Wellesley College and NYU Law, He--Tufts Univ. and NYU Law). All the other members attended local law schools and none have any Ivy League undergraduate backgrounds.

A black litigator outside New York City wrote:

> I . . . strongly believe that minority lawyers must work twice as hard as non-minority lawyers in order to succeed and obtain respect both from other attorneys and members of the minority community.

A black litigator in New York City wrote:

> Minority attorneys have to have all "i's" dotted and all "t's" crossed if they expect to prevail.

An Asian litigator in New York City stated:

> I felt that during the interviewing process, in the 2nd and 3rd years of law school, many prominent law firms did not consider my application seriously due to my ethnicity. And[] those minority applicants who received job offers from big firms had to be from the top of the class. However, once I'm practicing, my skills and ability demonstrate to others that I'm as proficient and competent as . . . non-minority attorneys. For minority attorneys, the most difficult hurdle is to get into the door.

An Asian litigator in New York City said:

> I tried to gain access to . . . big white firms, but I was rejected most of the time . . . . Unless you have a big resume and a big law school, it's very difficult for a minority attorney to establish himself. There is no room for new minority attorneys to get in.

A black litigator in New York City wrote:

> As a minority practitioner, I am of the opinion that we are all classified as products of affirmative action programs and are constantly forced to defend and prove ourselves as attorneys both by the system and by our non-minority colleagues.

A black litigator outside New York City wrote:

> I've been denied employment for many years only because of race. I am a lifelong resident of Rochester, N.Y. and have a JD-MBA degree and was not able to obtain employment in any firm or corporation in Rochester.

Thirty-one percent of all respondents agreed with the statement, "Minority lawyers are sometimes given hiring preference over academically better qualified nonminority lawyers." Significantly greater proportions of white (45% in New York City, 55% outside New York City) than black (16%), Hispanic (28%), and Asian (30%) litigators in New York City, and minority litigators outside New York City (17%), agreed with this statement.

Taking the two statements just discussed together, it can be seen that there is a large gap in the perceptions of white and minority, but particularly black, litigators in relation to hiring opportunities or barriers. Most black litigators feel their credentials have to be extra-

in order to be hired; large numbers of white litigators feel that hiring standards are ed for minority attorneys.

Only 17% of litigators overall agreed with the statement that "minority lawyers have : opportunities than white lawyers to participate in continuing education or training ırtunities." The majority of lawyers in all groups disagreed with this statement. :rtheless, there are significant differences between minority and white litigators in New ‹ City; thus, whereas 100% of white litigators disagreed with this statement, 69% of k, 75% of Hispanic, and 83% of Asian litigators disagreed. Similarly, 97% of white ıtors outside New York City, in contrast to 76% of minority litigators outside New York , disagreed with this statement. A black litigator outside New York City wrote:

> Minorities cannot acquire experience when they are consistently denied job opportunities based on racial considerations. An effort must be made to hire minorities who are otherwise qualified based on education and training. Any lack of experience should be made up by an accelerated on-the-job training program.

›lack litigator outside New York City wrote:

> Minority attorneys do not have the broad range of options available to non-minority attorneys for professional development and advancement.

Hispanic litigator in New York City wrote:

> Minority attorneys for the most part may not have a business background. The lack of a role model forces the young attorney to learn as he goes. Professional isolation creates a difficult environment for law practice.

Overall, nearly one third (30%) of litigators agreed with the statement that "minority wyers are less likely to be included in social events." Again, there are significant fferences between the perceptions of white and minority, particularly black, litigators. ıus, 95% of white litigators in New York City, and 86% of white litigators outside of New

York City, disagreed with the statement, while only 31% of black, 74% of Hispanic, and 74% of Asian litigators in New York City, and 60% of minority litigators outside New York City disagreed. An Asian litigator in New York City remarked:

> I am a very Americanized Asian. Most of my colleagues don't notice my ethnicity. Many times, I don't even think in ethnic terms. I happen to be the only Asian prosecutor in my office and I've had no problems.

There are also significant differences in the proportions of litigators who agreed with the statement that "minority lawyers lack mentors." Thirty percent of white, but 83% of black and 65% of Hispanic litigators in New York City agreed. Also, proportionately more black than Asian litigators (50%) agreed with this statement. Outside of New York City, more than twice as many minority (67%) as white (32%) litigators agreed with the statement. An Asian litigator in New York City suggested:

> Mentor programs should be established with affirmative action, to have firms hire minority attorneys for a few years.

A black litigator in New York City wrote:

> I have been successful in my personal practice because of several mentors, both black and white, who have taken a special interest in my career.

An Asian litigator in New York City commented:

> I'm very disappointed with the legal system as it exists. It's very difficult to gain access to the established white firms, clubs, or government agencies . . . . It would be helpful to young minority lawyers if they are helped through some kind of mentor program.

An Hispanic litigator in New York City wrote:

> I have few if any contacts, no mentor and no one to turn to in considering other avenues of law that may interest me or that may be interested in me.

Overall, 33% of attorneys agreed with the statement that "minority lawyers receive

ss feedback about their work because nonminority lawyers are uncomfortable criticizing ıem." Approximately one third of Hispanic (34%) and Asian (33%) litigators in New York ity, and white (33%) and minority (36%) litigators outside New York City, agreed with this tatement. The only significant difference was between the proportions of black (43%) and vhite (19%) litigators in New York City who agreed with the statement.

Overall, 34% of litigators agreed with the statement that "minority lawyers tend to be ıssigned more limited, less complex cases." There are highly significant differences among groups. Whereas 6% of Whites in New York City and 5% of Whites outside New York City agreed with the statement, 64% of Blacks, 47% of Hispanics, 32% of Asians in New York City, and 45% of minorities outside New York City agreed. An Hispanic litigator in New York City charged that:

> There is . . . much discrimination against minority attorneys in law firms; e.g., in hiring practices and in case assignments.

A Native American litigator in New York City commented on:

> [t]he inability to tap into the traditional or more successful systems for obtaining substantial cases or to break down those systems in favor of a more equitable merit-oriented approach.

Overall, 53% agreed with the statement that "minority lawyers have fewer opportunities for advancement." Again, there were highly significant differences among groups. Thus, only 15% of white, but 90% of black, litigators in New York City agreed with this statement. Differences among other groups were less extreme: 60% of Hispanic, 58% of Asian, and 71% of minorities outside of New York City agreed. Interestingly, more than one in five (22%) Whites outside New York City agreed with this statement. A black litigator in New York City wrote:

> I have . . . seen minority attorneys with equal [or] superior qualifications passed over for promotions and more complicated prosecutions based solely on race.

A black litigator outside New York City wrote:

> I experience[d] unfair promotions wherein a non-minority was moved along after I was assigned to provide "on-the-job training" for this attorney.

An Hispanic litigator outside New York City wrote:

> Advancement at work is highly unlikely[;] also private firms and other state agencies treat minority lawyers as if they are less qualified.

A black litigator in New York City wrote:

> I have excellent skills and see other attorneys who are nonminority move into positions that I was not even granted an interview for.

A black litigator in New York City wrote:

> Simply stated, given my education, training, and experience, had I been white, treatment, deference, and opportunities would have been greater, or at least comparable to what I perceive to be accorded my white counterparts similarly situated.

A black litigator outside New York City wrote:

> While I find my work as a prosecutor challenging and rewarding, I am troubled by the lack of opportunities for advancement in the New York county DA's office.

A white litigator outside New York City wrote:

> I worked closely with a[n] Hispanic attorney that I feel was held to a higher standard because he was Hispanic[,] resulting in poor performance by him partly because of . . . the unfair way in which he was treated and mocked by his coworkers in some cases.

A black litigator outside New York City wrote:

> After graduating from an Ivy League law school, I've found that the only opportunity available to me at the time I applied for a job[] was this lousy, dead-end state job. There is absolutely nowhere to go here.

An Hispanic litigator in New York City reported:

> Disparate treatment re minority lawyers' bonuses vis-a-vis whites with less tenure and experience working for the same law firm.

An Hispanic litigator in New York City wrote:

> The plight of the Hispanic practitioner is largely dependent on how much drive and motivation he has to succeed. Your "spurs" still have to be earned, regardless of your race, creed or color.

There were also highly significant differences in the proportions of whites and minorities agreeing with the statement "A minority lawyer in the organization is less likely than a white lawyer with comparable experience to make partner/supervisor." More than one quarter of whites in New York City (27%) and outside New York City (26%) agreed with this statement. Ninety percent of Blacks, 67% of Hispanics, and 60% of Asians in New York City, and 70% of minorities outside New York City, agreed. An Hispanic litigator in New York City wrote:

> During my three years in the office, I know of only three [minority] assistant D.A.s who assumed supervisory positions. Two of those positions were, in my belief, created so that the office could claim that minorities are in supervisory roles.

A black litigator in New York City believes:

> With my legal education and experience I would be a partner at a major firm if I were white.

A black litigator outside New York City wrote:

> Due to racial bias, regardless of qualifications, minority attorneys have little access to corporate, partnership, and other visible and lucrative positions. This is even true in government.

A white litigator in New York City wrote:

> My office has made substantial efforts in the last year or two to promote

minority group members to supervisor. Two blacks have been promoted in that period. One of them was persuaded to return to our office from another part of the organization specifically to be made a supervisor.

The items just discussed were combined into a Minority Professional Opportunities Scale.[13] This scale has a high reliability (alpha = .92) and was used to compare differences among groups in terms of perceptions regarding opportunities within organizations. The higher the mean score, the greater the perception of minority opportunities; the range is from 0-4. Mean scores and standard deviations for each group are provided in Table 27-b.

Table 27b. Means and Standard Deviations on the Minority Professional Opportunities Scale
(Range is 0-4)

	NEW YORK CITY				OUTSIDE NYC	
	White	Black	Hisp.	Asian	White	Min.
N	40	46	52	24	38	38
Mean	3.26	2.02	2.54	2.65	3.31	2.46
Std. Dev.	.48	.57	.72	.70	.55	.77

It is readily apparent that Whites, both in and out of New York City, believe that the opportunities for minorities are greater than minorities believe such opportunities to be. In fact, the means of both groups of Whites are significantly different from that of the responses of any other group. Moreover, black attorneys in New York City have a significantly lower average score than Hispanic or Asian attorneys. These disparities indicate the extent of the gap between how minorities, especially Blacks, and Whites perceive the professional opportunities for minorities in law firms and other organizations.

[13] The item "minority lawyers are sometimes given hiring preference over academically better qualified nonlawyers" was deleted from the scale due to low correlation with the total.

Treatment of Attorneys in the Courts

A series of eleven items was asked about possible preferential treatment of white torneys in the court system. Attorneys were asked how frequently such preferential eatment occurs ("never," 0%; "rarely," 1-5%; "sometimes," 6-25%; "often," 26-50%; and ery often," 51-100%). These findings are provided in Table 28a.

Table 28a. Treatment of Minority Attorneys in the Courts* (Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never
ty attorneys ikely to be if they are ieys	29 (23.6)	33 (27.3)	60 (49.1)	112 (84.8)	11 (8.3)	9 (6.8)	78 (62.4)	23 (18.4)	24 (19.2)	32 (43.8)	16 (21.9)	25 (34.2)	13 (11.4)	26 (23.5)	72 (65.1)	59 (63.4)	14 (15.1)	20 (21.5)	323 (49.1)	123 (18.8)	210 (32.0)
ty attorneys ikely to be ed to pass h a screen-vice or to dentifica-han white eys	11 (9.7)	12 (11.5)	86 (78.8)	80 (62.0)	22 (17.1)	27 (20.9)	49 (40.2)	28 (23.0)	45 (36.9)	17 (25.0)	13 (19.1)	38 (55.9)	3 (2.6)	11 (12.0)	81 (85.3)	32 (36.8)	7 (8.0)	48 (55.2)	191 (31.3)	94 (15.4)	325 (53.3)
ty attorneys ikely to be oned about credentials	11 (10.2)	21 (18.9)	79 (70.9)	96 (72.7)	20 (15.2)	16 (12.1)	63 (52.1)	26 (21.5)	32 (26.4)	20 (28.2)	18 (25.4)	33 (46.5)	4 (4.0)	10 (9.0)	92 (87.1)	39 (42.4)	18 (19.6)	35 (38.0)	234 (36.9)	113 (17.8)	287 (45.3)
pay more on or give edibility ements of ttorneys those of y attorneys	6 (4.4)	30 (23.1)	93 (72.5)	75 (57.3)	35 (26.7)	21 (16.0)	40 (32.8)	46 (37.7)	36 (29.5)	18 (25.0)	20 (27.8)	34 (47.2)	2 (1.4)	10 (8.8)	106 (89.8)	33 (34.0)	31 (32.0)	33 (34.0)	173 (25.9)	172 (25.7)	324 (48.4)
ttorneys e respect peration her attor-an do attorneys	9 (6.9)	35 (27.4)	85 (65.7)	86 (65.6)	35 (26.7)	10 (7.6)	48 (39.3)	41 (33.6)	33 (27.0)	20 (28.2)	30 (42.3)	21 (29.6)	3 (2.3)	32 (25.6)	88 (72.0)	43 (45.3)	27 (28.4)	25 (26.3)	209 (31.1)	200 (29.8)	262 (39.1)

ible 28a. (Continued)*

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Ra l Ne
ite jurors espond more avorably to white torneys	21 (23.7)	36 (40.4)	32 (35.9)	58 (57.4)	33 (32.7)	10 (9.9)	40 (46.0)	32 (36.8)	15 (17.2)	12 (32.4)	17 (45.9)	8 (21.6)	10 (14.2)	28 (39.0)	34 (46.8)	39 (57.4)	16 (23.5)	13 (19.1)	180 (39.7)	162 (35.7)	11 (24
inority jurors espond more avorably to white ttorneys	5 (5.4)	24 (27.7)	58 (66.9)	24 (23.8)	44 (43.6)	33 (32.7)	13 (14.9)	32 (36.8)	42 (48.3)	5 (13.9)	19 (52.8)	12 (33.3)	3 (4.2)	11 (16.7)	54 (79.2)	15 (24.6)	23 (37.7)	23 (37.7)	65 (14.7)	153 (34.9)	22 (50
ourt officers ffer assistance o white ttorneys	56 (41.8)	53 (39.5)	25 (18.7)	75 (58.1)	43 (33.3)	11 (8.5)	52 (42.6)	53 (43.4)	17 (13.9)	24 (34.8)	30 (43.5)	15 (21.7)	71 (51.1)	41 (29.3)	27 (19.6)	53 (60.9)	22 (25.3)	12 (13.8)	330 (48.7)	241 (35.5)	10 (15
ourt officers ffer assistance o minority ttorneys	49 (39.6)	48 (38.4)	28 (22.1)	29 (22.3)	76 (58.5)	25 (19.2)	27 (22.0)	69 (56.1)	27 (22.0)	20 (28.2)	35 (49.3)	16 (22.5)	58 (46.5)	46 (37.1)	20 (16.4)	37 (39.4)	32 (34.0)	25 (26.6)	220 (33.0)	306 (45.9)	14 (21
ourt Officers all cases of hite attorneys head of cases of inority attorneys	2 (1.8)	11 (8.5)	116 (89.7)	41 (34.5)	35 (29.4)	43 (36.1)	23 (19.5)	33 (28.0)	62 (52.5)	5 (7.6)	9 (13.6)	52 (78.8)	2 (1.6)	2 (1.4)	120 (97.1)	15 (16.9)	16 (18.0)	58 (65.2)	88 (13.7)	106 (16.4)	45 (69
ourt personnel re more respect-ul of white at-orneys than of inority attorneys	6 (4.7)	36 (26.9)	91 (68.5)	86 (66.2)	19 (14.6)	25 (19.2)	48 (37.8)	40 (31.5)	39 (30.7)	18 (25.4)	24 (33.8)	29 (40.8)	6 (5.1)	19 (14.9)	101 (80.0)	39 (41.1)	21 (22.1)	35 (36.8)	204 (29.8)	159 (23.2)	32 (46

See Appendix B, Table B-28a, for means, standard deviations, and test of significance.

Examination of all the items shows that relatively small proportions of white litigators, in or outside of New York City, compared to minority litigators are aware of the kinds of maltreatment represented by these items. Thus, for example, whereas 85% of black, 62% of Hispanic, and 44% of Asian litigators in New York City reported that "minority attorneys are more likely than white attorneys to be asked whether they are attorneys" "often/very often," only 24% of white attorneys in New York City gave this response. Similarly, 11% of white, as compared to 63% of minority, litigators outside of New York City reported this response. Of course, it is hardly surprising that minority attorneys would be more aware of treatment as second-class citizens than would white attorneys. In the first place, the behavior is directed toward minorities; Whites may not even have the opportunity to observe it. In the second place, even if a white attorney is in the vicinity when such an interaction occurs, she may simply not notice the interaction or process its meaning. Many minority attorneys provided examples of such incidents. For example, a black litigator in New York City recalled:

> In criminal court in N.Y. County I was grabbed from behind (in a chokehold) around the throat by a court officer who "assumed" that I was a defendant approaching too close to [the judge]. . . . who had motioned to me to approach the bench. . . I physically defended myself.

A black litigator in New York City wrote:

> I have been practicing law for thirteen years; nothing has changed. First and foremost I am mistaken for a defendant, court clerk, or probation officer.

A black litigator in New York City stated:

> When I appear for the first time before a white judge, I am often asked if my attorney will be present. This occurs even though I am appropriately dressed, carrying a briefcase, and addressing the court as would any white attorney.

An Hispanic/black litigator in New York City observed:

> In some instances minority attorneys are thought to be clients or clerks; the value of their case is lowered because they are handling it.

A black litigator in New York City wrote:

> I approached the court officer and asked whether my case had been done yet by the catcher. (Legal Aid and the 18-B panel both assign "catchers" to the Narcotics parts, and if a case is called before the attorney arrives or while he or she is out of the courtroom, the catcher will handle it). I approached the catcher (a white female), who was on the telephone discussing the very case I was to handle. When she hung up I said, "I wanted to talk to you about the case you were just discussing." She immediately replied, "Are you the defendant's mother?" She also apologized profusely.

A black litigator in New York City wrote:

> The problem manifests itself primarily in Housing and Family Courts. Attorneys of color are often not thought to be attorneys.

A black litigator in New York City wrote:

> Upon entering the courtroom, the white attorney is allowed to approach the judge's rail because [he/she has] a suit on[;] the assumption is that he/she is an attorney. The black attorney is stopped and questioned.

A black litigator in New York City wrote:

> While sitting in the first row awaiting a case to be called, Court Officers have directed me to "wait in the next row for your lawyer."

A black litigator in New York City stressed that:

> Generally, unless a black or African-American person or anyone who is non-white is known to the court personnel, that person is presumed to be the litigant and the white person is presumed to be the lawyer. African-American lawyers must constantly prove that they are attorneys. They must prove this to everyone, to whites, to non-whites. After the attorney is known to the court personnel, then he is generally treated fairly.

A black litigator in New York City wrote:

> Often times when you are physically present in the courtroom, white people

automatically assume that you are not an attorney, especially if you are a woman . . . .

A black litigator in New York City complained:

> This happens to me systematically almost every time I go to court (especially Supreme and Bronx Surrogate Court) even though I dress like, and conduct myself as an attorney. Oftentimes, upon entering the Criminal Courts I am asked if I am the defendant, and I am sometimes asked whether I am a social worker when entering Family Courts. Once inside the courtroom, I am often approached by court officers (both black and white) and told that I must change my seat because the front row is reserved for attorneys only. Indeed, I am never even asked whether or not I am an attorney; rather, the assumption is always made that I am not.

A black litigator in New York City stated:

> When I first came to Family Court, the white court officers thought I was a respondent mother in a neglect and/or abuse case. They never even thought I was an attorney.

A black litigator outside New York City added:

> If an assumption is necessary as to whether one is an attorney or a litigant, the latter usually prevails. . . . It happens all the time, it's part of the system, consciously or unconsciously.

A black litigator in New York City wrote:

> A young, Black, female attorney answered a calendar call in the Surrogate's Court. As she approached the bench, the Surrogate stated that only attorneys can answer the calendar. The statement was not made to any of the other 50 or 60 white attorneys present.

A black litigator in New York City recalled:

> In September, 1989, I appeared in Part 62, Supreme Court, New York County. The courtroom is small, so the attorney's row was filled on both sides of the courtroom. I sat in the second row, where other attorneys were also seated. I noticed a white woman attorney staring at me from across the aisle. She began to wave at me as if to get my attention and finally got up and walked over to me. She asked, "Are you X?" I asked who X was and she said a social worker from Brooklyn who was supposed to meet her in court. I said that I was an attorney, not a social worker. Minutes later, a black male

attorney came in and managed to find space in the front row. A white male attorney approached him and asked if he was the Ethiopian interpreter.

)n being mistaken for another court professional, a black litigator in New York City wrote:

> Obviously, there is nothing wrong with these professions (interpreter, detective, social worker), but the mistake that is made is an assumption based solely on color and this is racist and insulting.

Similar disparities occur with regard to all of the professional treatment items. Thus, 52% of the black, 40% of Hispanic, and 25% of Asian litigators, as contrasted with 10% of white litigators in New York City, and 37% of minority, as contrasted with 3% of white, litigators outside New York City reported that minority attorneys are more likely than white attorneys to be required to pass through a screening device or to show identification "often/very often." A black litigator in New York City charged:

> It matters not if I'm looking lawyer-like, with a suit and briefcase . . . . I'm stopped by court officers and police and searched. I'm challenged each and every time I sit in the attorney's area.

A black litigator in New York City wrote:

> Minority attorneys often [are] asked . . . to show corrections identification to prove [they are an attorney].

An Hispanic litigator outside New York City observed:

> Minority attorneys [are] asked to go through metal detectors.

A black litigator in New York City relayed the following:

> A black male attorney who practices frequently in the Bronx and Manhattan on criminal cases said he is often asked if he is a detective or from the corrections or probation department. This attorney was on his way to conduct a trial when a court officer (female, Hispanic) stopped him at the metal gate (despite the fact that he displayed his Dept. of Corrections attorney I.D. card), took the card from him, examined the card, showed it to other court officers and had them examine the card, and with great reluctance, let him through. He challenged her behavior; she apologized.

A black litigator in New York City wrote:

> Young black females are stopped at [the] courthouse entrance and ordered to either show an ID and/or go through the detection device [and] have their handbag searched, while young white females, white males and some black males are allowed to pass the devices unsearched.

More minority than white attorneys also reported that "minority attorneys are more likely than white attorneys to be questioned about their credentials" "often/very often." Thus, 73% of black, 52% of Hispanic, and 28% of Asians, as compared to 10% of white, litigators in New York City, and 42% of minority, as compared to 4% of white, litigators outside New York City, made such response. An Hispanic litigator in New York City wrote:

> The clerk's office in Supreme Court scrutinizes minority pleading[s] and legal documents [more] than [those] of their white counterparts.

An Asian litigator in New York City observed:

> [F]requent questioning of attorney's knowledge of court procedure and credentials.

An Hispanic litigator in New York City wrote:

> Generally, I often perceive an attitude on the part of judges [and] court personnel towards me as [an] hispanic female attorney which reflects skepticism about my legal ability. Conversely, these same individuals appear overly impressed by my articulateness.

A black litigator in New York City asserted:

> An employee of this office went to get information at the warrant room in Kings County Criminal Court. His credentials were questioned and when shown to be valid, he was handcuffed and threatened by white court officers.

An Hispanic litigator in New York City wrote:

> Often clerks require minority attorneys to undergo more scrutiny of their papers, e.g., orders to show cause, than white attorneys . . . . Also in one case a clerk would not take my attorney's check and insisted that it be certified while white attorneys' checks did not have to be [certified].

More minority than white lawyers also reported that "judges pay more attention or give more credibility to statements of white attorneys" and that "white attorneys get more respect and cooperation from other attorneys than do minority attorneys" "often/very often." Regarding attention paid by judges, 57% of black, 33% of Hispanic, and 25% of Asian, as compared with 4% of white, litigators in New York City, and 34% of minority, as compared with 1% of white, litigators outside New York City reported preferential treatment for white over minority litigators "often/very often." Regarding respect from other attorneys, two thirds of black, 39% of Hispanic, and 28% of Asian, as compared to 7% of white, litigators in New York City, and 45% of minority, as compared to 2% of white, litigators outside New York City reported greater professional courtesy for white attorneys occurs "often/very often." A black litigator in New York City recalled:

> When a minority attorney was addressing the court, the white attorney interrupted saying (using the attorney's first name) she is "just frustrated," then the judge interrupts saying to the minority "let me hear what really happened[,]" and turned to the white attorney and said "tell me what really happened."

A black litigator outside New York City

> [o]verheard [a] judge refer to [a] minority male attorney as "the boy."

Another black litigator outside New York City stated:

> White attorney argues case law without citing cases fully [and] Judge will accept his argument. Minority att[orne]y in same situation--Judge demands case law.

A white litigator in New York City wrote:

> Judges have often criticized the choice of words used by minority attorneys, i.e., [saying] "Please speak English."

A black litigator in New York City noted:

> Judges permit white attorneys [to] speak before minority att[orne]ys.

An Hispanic litigator outside New York City recalled:

> Supreme Court Judge in Part 76 Brooklyn and Albany County Supreme Court challenged minority lawyer in specific case[] but did not challenge 'white' att[orne]y re: retainer. White attorney was embarrassed at judge [and] clerk's tactics through trial.

An Asian litigator in New York City commented:

> One judge refused to grant costs for motion. The law provided for the cost, yet he refused it . . . . Affects my morale.

Another Asian litigator in New York City wrote:

> Judges pander to big firms' att[orne]ys, possibly [because] future employment is an issue.

A black litigator in New York City charged:

> Judges in civil parts try to force minority attorneys to trial even if they are actually engaged elsewhere. Recommendation of settlements for minority attorneys [and] litigants are always substantially lower.

A black litigator outside New York City wrote:

> Often times, during my own appearances in Special Term, I am [] asked to repeat myself by a WHAT? from the Judge. My white cohorts are addressed by their last names preceded by Ms. or Mr.

Another black litigator outside New York City recalled:

> Once during a conference in a Judge's chambers, the judge referred to me by saying "Hi Brownie."

A black litigator in New York City complained of:

> [a] failure to grant recesses/adjournments re: minority witnesses/att[orne]ys.

An Asian litigator in New York City wrote:

> I have seen minority attorneys chastised by judges for arguing with the witness on cross-examination numerous times, versus judge[s] simply telling white

attorneys to move on, without comment.

An Asian litigator in New York City wrote:

> Judge X, Westchester County made obnoxious comments about my Chinese name and law school training [and] legal experience.

An Asian litigator in New York City noted:

> There were instances where judge refused to grant motion costs to me when I won the motions.

An Hispanic litigator in New York City remarked:

> Judge wanted to proceed as quickly as possible and did not give me the courtesy of cross after ADA's redirect.

A white litigator outside New York City wrote:

> Judge constantly berated minority attorneys in the presence of their clients but never said anything to white attorneys.

An Hispanic litigator in New York City noticed:

> Minority attorney had to corroborate statement he made on record, whereas white counterpart's statement was accepted because he was [an] "officer of the court."

A white litigator outside New York City commented on a judge's patronizing attitude:

> A minority attorney with a minority client was given unnecessary help by the judge, suggesting [the attorney] didn't know what he was doing. The attorney was actually well experienced [and] competent.

An Asian litigator in New York City offered the following examples:

> A Judge in Brooklyn Civil Court would make racially and ethnically derogatory statements to minority attorneys. She once went on a diatribe about Chinese [and] laundr[ies] to a Chinese-American lawyer and in front of me she said (about black litigants in Housing Court), "They all bring their babies thinking that I'll be more sympathetic but who knows if the babies are theirs." . . . [I]t is hard to assess whether the treatment is because one is a minority or because the person is in a bad mood. I once had a Judge mark a case final against me when the other side asked for an adjournment. Although

subjectively I believe it was because I am a minority attorney, I have not observed him enough to figure out if the reason was because he is prejudice[d].

A black defense attorney outside New York City recalled:

> Recently, in a Village Court in Erie County, the Judge, the prosecutor [and] complainant entered chambers to discuss a disposition of a criminal matter without call[ing] me in. I immediately rose to go to chambers when the door opened with a belated request for my presence.

An Hispanic litigator in New York City opined:

> Getting a fair disposition of a case frequently entails a personal appeal by a client's lawyer or D.A. to the judge. The ability to interact on a personal level is impeded by a lack of identification with the Judge who is frequently white. This leads to less favorable dispositions for the minority attorney and therefore perpetuates the belief by the public at large that minority [lawyers] are less capable.

An Asian litigator in New York City wrote:

> Opposing counsel once said to me at a deposition that I was supposed to be "inscrutable." When I objected, he told me I had no sense of humor.

An Asian litigator in New York City remarked:

> I had an EBT of a [plaintiff] represented by a firm whose name I would not mention. She complained on the record that my questions were fumbling, badly phrased, etc., suggesting that my command of the English language was inadequate. I can't wait to try a case against her!

An Hispanic litigator in New York City wrote:

> An attorney (white) told me that I don't understand English [and] should go back to P[uerto] R[ico]. (I have been in the U.S. 39 years[, was] educated here [and] was an "A" & "B" student in all of the English classes I have taken.)

A black litigator outside New York City observed:

> Young att[orne]ys appear[] to have difficulty in negotiating w[ith] black att[orne]ys. On two separate instances the court had to "indicate" to opposing att[orne]y that att[orne]y "should" try to "work it out" with me. Older att[orne]ys seem to be better willing to relate to black att[orne]ys on a 1-to-1

basis. One young att[orne]y had the court clerk place the court file in the judge's chambers so I could not have access.

A black litigator in New York City told this story:

> In early 1986 I was employed by the Civil Court as a Law Assistant. I conferenced a case with a group of tenants who were pro se, the landlord's attorney, and the managing agent for the apartment. The judge I was assigned to permitted a break in the conference. The managing agent and I were in the audience portion of the courtroom with the landlord's attorney. The apartment building was located in the Washington Heights area of Manhattan. I mentioned to the managing agent that I had formerly worked in that neighborhood (to let her know I was familiar with the neighborhood). The attorney (white, male) interjected, saying "Perhaps I can get you an apartment in the building," to which I replied, "I already have a place to live, thank you." He then said, "Where did you work, on the streets or on the corner?" At this point, heated words were exchanged between the attorney and myself. I reported the incident to the judge to whom I was assigned. The judge reprimanded the attorney and ordered him to apologize. The attorney made a half-hearted apology which was tantamount to no apology at all. He later followed up with a letter of apology. I made a formal complaint to the disciplinary committee, attaching the attorney's letter of apology as proof. After the standard procedures of the attorney's reply and my rebuttal, the matter was closed by the committee with no action being taken. I felt the attorney should have been censured or reprimanded by the disciplinary committee. I believe that this attorney would never have made this remark to a white woman and that, had I been white, the committee would have been more likely to take action against him.

A black litigator in New York City commented:

> I worked at the appellate level, criminal defense appeals, so most of my clients were black or Latino . . . . Given the race of my clients, my race would have an impact on the appellate court's decision to uphold convictions and to not look seriously into transgressions of my clients' rights . . . . I was not accorded the same level of respect as white counsel.

A black litigator outside New York City wrote:

> I have . . . observed successful black and Hispanic defense attorneys [being] call[ed] sleazy by white judges and lawyers. Successful white attorneys are admired.

A black litigator in New York City wrote:

> I have practiced for about forty-one years. The N.Y. Court system is very biased [and] prejudiced in its full treatment of African-American attorneys. In a few rare instances you may have a white friend who will assist. In the majority of the matters you are treated as a second[-] or third-class citizen, and attorney assignments, recognition, and treatment are reluctantly, and often contemptuously, given. Whites are pompous and well insulated against the biased treatment by judges and lawyers.

A black litigator outside New York City wrote:

> Respect for, and recognition of minority attorneys as attorneys is particularly lacking upstate and in Nassau and Suffolk counties. While discrimination against minority attorneys exists in New York City, it is much worse upstate and in places that are conservative or have few minority attorneys.

A white litigator outside New York City noted:

> Sometimes judges [and] lawyers can be insensitive to minority lawyers when they believe that the lawyer is too closely allied with a minority client.

An Asian litigator in New York City wrote:

> White judges [and] attorneys exhibit a superior attitude when dealing with minority attorneys, witnesses [and] litigants.

Another Asian litigator in New York City remarked:

> As an Asian-American attorney born in the United States, I am often offended by remarks from judges and white attorneys that I speak English without an accent. I am also often told that I must be "unusual" because I am an Asian and [a] woman who is practicing law. The implication is that I must be a "freak."

An Hispanic litigator in New York City wrote:

> Minority litigants [and] attorneys are generally treated with less respect by judges and court personnel. I am forever being asked if I am an attorney. . . . White attorneys frequently call me Maria, although my name is not Maria.

An Asian litigator in New York City added:

> Some non-Asian attorneys, judges and litigants believe that I am less experienced than I am. . . .

white litigator outside New York City wrote:

> As a female I am occasionally mistaken for the court steno[grapher] and often both judges and other attorneys are patronizing[,] all of which affects advancement opportunities.

An Hispanic litigator in New York City wrote:

> Based upon my three years of experience as an attorney, I do not believe there is racial fairness in our New York Court System. Often, I am confused for a pro se litigant and am not taken seriously by adversaries and judges. Subsequently, these individuals seem either surprised or perhaps just taken aback when I present cogent arguments and substantive analyses of the law. These reactions are, in my view, persuasive evidence that they hold stereotypical views of minorities. They have no basis for expecting anything less than what is otherwise assumed that a member of the bar should be able to produce.

A white litigator outside New York City observed:

> I want to emphasize that I am speaking practically and not as a racist . . . the intellectual skills, reasoning ability, and general communication skills of the minority attorneys is just not equal to that of "majority" attorneys. In my 15 years of practice I have only met three minority attorneys who I would truly trust with a significant case.

A black litigator in New York City summarized his court experiences:

> I have experienced several incidents in the course of 14 years. I find that the older white males (55+) are very upset when they must come into litigation, a professional relationship with me. White male judges are clearly racist in their remarks and demeanor. I have witnessed extreme racial prejudice whenever I have represented white clients.

A Native American litigator outside New York City wrote:

> Minority lawyers are viewed by judges, lawyers, and laymen as being unable to attain or acquire the same status as non-minority lawyers. It is an absolute fact that minority lawyers are viewed as not able to maintain the ethical and professional standards expected and required of the bar.

A black litigator outside New York City wrote:

> Most legal practitioners are far too sophisticated to let their "red necks" show

in the presence of a minority or on the "record." Nevertheless, like most aspects of professional life in America, I believe that minority attorneys are presumed to be less skilled and competent by those within and without the profession.

An Hispanic litigator in New York City wrote:

> Having most of my cases assigned to Bronx County, I often deal with minority judges and court personnel. Another interesting factor to consider is reverse discrimination, which can sometimes be a problem. Otherwise, I believe that until society changes its values, it will still be a problem for a minority attorney, like me, to try a case in a county like Nassau, where the judges, juries, and court personnel are extremely biased against minorities.

A black litigator in New York City wrote:

> It is always obvious upon entering the courts in the State of New York, the different treatment afforded attorneys because they are minority. One tries to avoid being paranoid and allow the benefit of the doubt. However, some acts are so blatant that they cannot be overlooked. The most damaging part of the exercise is that the attitude necessarily effects the decision/award to your client.

A white litigator outside New York City observed:

> Racial fairness most severely affects the ability of attorneys to effectively prosecute their case. I see this from personal experience in Nassau and Suffolk County with regard to civil plaintiffs.

An Asian litigator in New York City observed:

> I have not witnessed any blatant or clear forms of racial bias in the courts during my short tenure as a litigating attorney. I do believe that racial "tension" exists in the courthouse because there are so few minority persons who are in positions of power in the courts. Too few judges and lawyers place that rare exception in a harsher light and under more stringent scrutiny. There are also greater possibilities of mistaking minority attorneys for litigants or court personnel (such as a reporter). Such mistakes heighten the sense of tension and threaten the dignity of the attorneys.

An Hispanic litigator outside New York City wrote:

> Albany County is a political environment. It does not matter what color you are. What really matters is the amount of connections you have.

A white litigator in New York City noted:

> It is the private attitudes expressed off the record and not in open court which are frequently heard. On the record treatment is usually ok.

An Asian litigator in New York City wrote:

> I have not personally experienced any outward discrimination due to my race during my short time in practice . . . .

An Asian litigator outside New York City had this to say:

> I wonder if my experience is unique. I have never encountered overt racial bias in the courts in this or any other state . . . . In fact, being (American born) Asian has probably benefited me in a reverse bias sort of way. I expect that black lawyers have radically different experiences.

A black litigator in New York City wrote:

> I have found, unfortunately, that minority judges appear biased toward minority litigants and attorneys because they want to appear unbiased toward white lawyers.

A white litigator outside New York City wrote:

> I feel that judges are less likely to criticize a black attorney for making a mistake.

An Hispanic litigator outside New York City wrote:

> Unfortunately, a large number of minority attorneys suffer from the reputation of those who are incompetent.

A white litigator in New York City wrote:

> I have never seen a lawyer discriminated against in open court because of the color of his or her skin.

A white litigator in New York City wrote:

> On the whole, it is my opinion that attorneys and judges are very sensitive to race and make a special effort to avoid any impropriety or the appearance thereof.

A white litigator in New York City wrote:

> I have never noticed discrimination in any of the Civil Parts of the Court System in any county.

A white litigator in New York City wrote:

> As a personal injury litigator, I can say truthfully that I have not experienced undue prejudice in the court where I practice--on any level.

An Hispanic litigator outside New York City wrote:

> I have never encountered bias practicing before any of the judges in the Family Court because I am Hispanic, but that may be because I am not "Hispanic looking." However, another attorney who has practiced with me, who is obviously Hispanic, has never had a problem [either].

An Hispanic litigator in New York City wrote:

> Since there are relatively few minority attorneys practicing in the court system, those that are polished and articulate are well regarded.

An Hispanic litigator in New York City wrote:

> More than racial unfairness between attorneys and the bench, I have encountered situations where treatment was unequal because of 1) sex 2) age (e.g. defense attorneys and judge are older) 3) cronyism between defense attorneys and judge. Sometimes this can be misinterpreted as racially motivated.

Overall, 40% of litigators reported that white jurors respond more favorably to white attorneys "often/very often"; 15% of all litigators made the same report concerning the response of minority jurors to white attorneys. More than twice as many black litigators reported that white jurors respond more favorably to white attorneys (57%) as reported and that minority jurors respond more favorably to white attorneys (24%) "often/very often." Among Hispanic attorneys, 46% reported favoritism toward white attorneys by white jurors, as contrasted with 15% reporting such favoritism by minority jurors, "often/very often."

ıong Asians, nearly one third (32%) reported a more favorable response toward white orneys by white jurors, and 14% reported such a response by minority jurors, "often/very ten." White attorneys in New York City were less likely to report more favorable response white jurors (24%) than any of the minority groups in New York City but still perceived ıat such a preferential response occurs more frequently among white than among minority 5%) jurors. The comparable response among white litigators outside New York City was 4% reporting preferential response to white attorneys by white jurors and 4% by minority urors "often/very often. Among minority litigators the comparable percentages are 57% for white jurors and 25% for minority jurors.

Similar proportions of white litigators both in and outside New York City reported that court personnel offer assistance to both white and minority litigants "often/very often." Thus, reports by white litigators in New York City of frequent assistance to white attorneys (42%) and to minority attorneys (40%) parallel the proportions of white litigators outside New York city reporting frequent assistance to both white attorneys (51%) and to minority attorneys (47%). Similarly, Asian litigators in New York City reported equally frequent assistance to both white attorneys (35%) and to minority attorneys (28%). By contrast, Blacks and Hispanics in New York City, and minorities outside New York City, reported frequent assistance to white attorneys (58%, 43%, and 61%, respectively) in much higher proportions than they reported frequent assistance to minority attorneys (22%, 22%, and 39%, respectively). An Hispanic litigator in New York City wrote:

> I discern one disadvantage at the "personnel-with-authority" level/supervisory level at the clerks' offices of the different courts. Sometimes these people know the procedural and technical rules better than many judges. These folks are not generally friendly or helpful, and this is especially true as to minority

lawyers . . . . I would like to see a friendlier, more cooperative attitude from the different court clerks.

An Asian litigator in New York City wrote:

> I am disturbed that certain attorneys and/or firms (all white, male attorneys or firms) are permitted to sit at the front of the courtroom, by virtue of their familiarity with the court personnel, to answer the calendar and argue their cases while the rest of us have to sit in the general public seating section. There seems a club in all courts . . . of the attorneys who are insiders or have favored status. As far as I can tell, no women or minorities are part of this club.

An Hispanic litigator in New York City wrote:

> Clerk stated to attorney (Hispanic) "uno momento" when attorney insisted on getting a courteous answer.

An Hispanic litigator in New York City wrote:

> Court personnel [] treated minority attorney with disrespectful and disdainful remarks.

A black litigator in New York City told this story:

> I went to the clerk's office, Supreme Court Criminal Term, to examine a file and to photocopy information from the file. I was accompanied by a white, male court officer to whom I had previously shown my Dept. of Correction Attorney. I.D. and who introduced me as an attorney to the two clerks (black males) behind the window. The court officer left the room, and the two clerks refused to allow me to see the file and said that if I were really the attorney I would have gotten the information in question previously. They called in a white, female clerk who was abusive in tone of voice and attitude. An argument ensued. I said that as an attorney I had every right to see the file. At that point her attitude changed completely, she became very pleasant and invited me to come behind the counter, to be seated and to examine the file. She said there was no way she could have known initially that I was an attorney. I said that the two other clerks knew and should have informed her. Both clerks began to "back each other up," saying that they doubted I was really an attorney and thought I had been "running a scam."

A black-Hispanic litigator in New York City wrote:

> [A] white plain-clothes officer, assigned to Bronx Criminal Court asserted that

as a minority lawyer, I was not entitled to request the production of certain court records.

A black litigator in New York City wrote:

> Most of the court personnel (court officers) in the courts are polite. However, here are two examples: for a five week criminal trial the officers never once provided water for me or my client; Family Court officers constantly ask me who am I or mistake me for the caseworker.

A black litigator in New York City wrote:

> In August, 1989, I appeared on a matter in Supreme Court, New York County, Criminal Term, Part 76. I entered the courtroom and sat in the attorneys' row on the left side. The court officer was not seated at his desk, therefore I could not check-in. Rather, the officer was standing in the doorway leading to the jury room (at the back of the courtroom near the judge's bench). I had been sitting there for approximately 10 minutes when a white, male attorney entered the courtroom. The officer immediately walked to the front of the courtroom and said, "What's the name of your case, counselor?" He then went back to the doorway, where he was chatting with two other officers. (This officer was a white male.) There was no opportunity to approach this officer or the clerk (also a white male, who was seated at his desk located at the back of the well) since the judge was on the bench and conducting a proceeding with two attorneys. Immediately upon concluding the proceeding, the judge remarked that I had been waiting patiently for a long time and asked me if I was the Spanish interpreter. I replied that I was the attorney for "John Doe," defendant. The judge apologized profusely and said that the clerk had told her that the attorney for "John Doe" was not in the courtroom. I believe that the judge was sincere, because none of the personnel bothered to determine who I was and I had no chance to approach them without disrupting the proceeding which was ongoing from the time I came into the courtroom. The judge later apologized several times. The clerk also apologized, but the court officer never did.

An Hispanic litigator in New York City wrote:

> Court clerk expressed amazement that a large "Jewish" N[ew] Y[ork] law firm hired me as an attorney b[ecause] I was Hispanic.

A black litigator in New York City wrote:

> Trial attorneys in the state courts are in frequent contact with court officers. I view most court officers as "wanna be" police officers who will often use and

abuse their authority, or apparent authority, in the court room. The court officer will demand respect and even homage from the attorney regardless of that attorney's ethnicity. If they receive that respect, the attorney will be treated fairly, but cross them, or insult their fragile egos and they will make the attorney pay dearly.

An Asian litigator in New York City wrote:

> I have had nothing but positive and extremely professional reactions from all of those involved in the Surrogate's Court in Queens County, as well as other counties. Court appearances, hearings, EBTs, depositions, etc., have been very professional. I have always received courteous and respectful treatment from all court personnel as well as other attorneys.

An Hispanic litigator in New York City wrote:

> Although most court clerks' offices are manned by whites, they generally tend to be helpful regarding procedures of their particular court.

A black litigator in New York City wrote:

> The answers to questions which refer to the racial or ethnic make up of the courts and judges and to attitudes of the judges and [court] employees are very different from county to county. In New York County it would be unheard of for a court officer to be discourteous to a Black attorney or litigant. Whether this is the case in Suffolk or Westchester, I don't know.

A white litigator outside New York City wrote:

> I frequently observe black men and women who are wearing suits and carrying briefcases being accorded the utmost respect by court personnel, fellow attorneys, and court officers. White women similarly attired are, however, often questioned and assumed to be litigants.

Relatively fewer white (2%) and Asian (8%) litigators responded that "court officers call cases of white attorneys ahead of cases of minority attorneys" "often/very often," compared to the responses of black (35%) and Hispanic (20%) litigators in New York City; few minority (17%) and white (2%) litigators outside New York City reported such preferential treatment of white attorneys as a common event.

two thirds of black, 58% of Hispanic, and [illegible]

white, litigators in New York City, and 41% of minority, as contrasted with 5% of white, litigators outside New York City, reported that "court personnel are more respectful of white than of minority attorneys "often/very often." A black litigator in New York City wrote:

> A minority attorney received unfair treatment from a law clerk, who took it upon himself to berate and shout at her in the presence of the general assembly, switched a hearing date at the sole request of a white opponent and also failed to notify the minority attorney of the change.

An Asian litigator in New York City wrote:

> [W]hite court officers give priority to white defense attorneys' cases where black defense attorneys arrived in court first.

A black litigator in New York City wrote:

> Having signed in a civil matter to be conferenced, the clerk passed over my case several times.

A black litigator in New York City wrote:

> Black activist attorney representing minority defendant in Kings Criminal Court, was consistently skipped over despite his timely signing of attorneys' sign-in sheet. Court officer spoke to him in a derogatory manner when he challenged [the] treatment.

A black litigator in New York City wrote:

> I have watched min[ority] att[orne]ys [and] their cases put to the bottom of the calendar, etc.

A black litigator in New York City wrote:

> [C]ourt officers in busy court rooms are put under tremendous pressure by equally busy attorneys to call their case. Many times the court officer does not have the authority he appears to have and is in fact just doing the Judge's bidding. For a particular reason, or for no particular reason, a judge may direct the court officer to hold a particular case. So the attorney will wait thinking he has been slighted by the court officer, who is just following instructions. To complicate matters, there are the needs of the corrections

officers in the back, who might be pressing the judge and the court officer to have the jail cases called first so that they can ship the prisoners back at the noon break. In short, the fact that a minority attorney is treated unfairly by a court officer may have nothing to do with either the attorney's race or with the court officer's racial attitude.

Again, there is an enormous gap between the experiences of white and minority, particularly black, attorneys in terms of the treatment of minority attorneys. Most white attorneys seem to be unaware of the second-class status accorded many of their minority colleagues. The extent of minority, particularly Black, experiences of not being given equal status as professionals in the courts is striking. With few exceptions, every item positing preferential treatment of white attorneys was reported by a majority of black attorneys to take place "often/very often."

The individual items just discussed were developed into a nine-item Minority Attorney Treatment Scale.[14] The M.A.T.S. has excellent reliability (alpha = .94); Table 28b provides the mean scores for each group on the M.A.T.S.

Table 28b. Means and Standard Deviations on the Minority Attorney Treatment Scale (Range is 0-4)

	NEW YORK CITY				OUTSIDE NYC	
	White	Black	Hisp.	Asian	White	Min.
N	73	87	78	34	55	54
Mean	1.13	2.77	2.11	1.70	.79	2.18
Std. Dev.	.73	.73	.96	.95	.52	.89

The higher the mean score, the greater the degree of minority maltreatment. A mean close to "0" would indicate that maltreatment "never" occurs, a mean close to "1" indicates "rarely," a mean close to "2" indicates "sometimes," a mean close to "3" indicates

[14] The two items dealing with court officer assistance to white and minority attorneys were deleted due to low correlations with the totals.

often," and a mean close to 4 indicated very [illegible]

higher mean scores than any other group and, on average, perceive themselves as receiving unfair treatment "often." Hispanics, Asians, and minorities outside New York City are, on average, closer to the "sometimes" range; Whites both in and out of New York City, on average, reported that they receive preferential treatment over minority attorneys "rarely." The differences between Whites, both in and out of New York City, and all other groups are significant. It is apparent that minority attorneys, particularly Blacks, experience lack of professional courtesy with some frequency and that most white litigators are unaware of this differential treatment.

5.0 Increased Minority Representation Among Attorneys and Cultural/Racial Sensitivity Training

Attorneys were asked to rate the importance of "greater numerical representation of minorities among attorneys appearing in the courts" and of "training for attorneys on cultural/racial sensitivity." The numbers of attorneys who rated these items as "important/very important" are provided in Table 29.

Table 29. Percent Stating that Greater Numerical Representation of Minorities Among Attorneys & Training Regarding Cultural/Racial Sensitivity is "Important/Very Important"*
(Numbers in parentheses are percentages)

	NEW YORK CITY				Outside N.Y.C.		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
Greater numerical representation of minorities among attorneys appearing in the courts.	71 (49.7)	128 (97.0)	121 (95.3)	57 (77)	81 (54.8)	95 (94.1)	533 (76.3)
Training for attorneys on cultural/racial sensitivity.	72 (50.2)	111 (84.7)	102 (79.7)	51 (68.9)	71 (47.5)	87 (86.2)	494 (68.0)

* See Appendix B, Table B-29, for means, standard deviations, and tests of significance.

Overall, slightly more than three quarters (76%) of all attorneys stated that increasing the numerical representation of minority attorneys appearing in the courts is "important/very

important." While there are significant differences between the proportions of Whites and each of the minority groups in New York City, and between minorities and Whites outside of the city, the high proportions of all groups giving an "important" rating to this item is striking. More than 50% of all Whites reported that they think there should be greater representation of minorities among attorneys. A Native American litigator outside New York City offered:

> My clients have backgrounds of various ethnicity, but are mostly black and Hispanic . . . . [S]ensitivity to socioeconomic and psychological dynamics is necessary in order for the system to work for my clients. This requires lawyers of the same ethnic background . . . . There are few minority litigators . . . . With far greater representation of minority litigators in the bar and on the bench, I expect age old misunderstandings and bias will eventually disappear. . . . Greater representation of minority litigators . . . will contribute towards the elimination of racial bias within the New York Unified Court System.

An Hispanic litigator in New York City stated:

> I would like to see more minorities as attorneys and on the bench, and I would like to see them get there based on strong academic or professional credentials and legal skills rather than merely filling a quota. In law school, very few of the Hispanic law students were on the dean's list or at the top of the class.

A white litigator outside New York City pointed to "the need for minority attorneys in rural counties." A black litigator in New York City wrote:

> We are underrepresented in the court system as well as in the private sector . . . . There are few, if any, minority attorneys practicing before the Civil Supreme Court and particularly in the area of negligence and malpractice.

An Hispanic litigator in New York City added:

> I believe that more minorities must enter the legal system. In the New York City Housing Court, e.g., it is shocking to see so many Spanish-speaking tenants deal with a system that is quite complex without the aid of an attorney.

hite litigator in New York City noted:

> I do not find an adequate number of minority lawyers in practice in the courts. However, I do not feel that this is a court problem, but a law school problem that has not admitted a sufficient number of minority students.

white litigator outside New York City wrote:

> Improving the educational background and skill level of minority attorneys is much more important than having more minority lawyers--because the more "bad" minority lawyers there are the longer stereotypes of racial prejudice will exist . . . .

Overall, slightly more than two thirds (68%) of all respondents rated training for torneys on cultural/racial sensitivity as "important/very important." In general, minority torneys were somewhat less likely to endorse the importance of sensitivity training than of ctual increases in representation. Minority attorneys outside New York City found ıcreasing minority representation among attorneys significantly more important than did heir white counterparts. Similarly, white litigators had a significantly lower mean mportance score than did any of the minority groups. Significantly more black and Hispanic han Asian litigators reported such increased representation to be important. A black itigator in New York City wrote:

> Fellow minorities are sometimes as guilty as whites of stereotyping.

A Native American litigator outside New York City wrote:

> Education through association and discussion is extremely important within the legal community in order to enlighten us all as to the psychosocial problems which exist in peoples from different ethnic and cultural backgrounds . . . . [I]t is critically important that we try harder to understand each other and our problems in order to improve the efficiency of the system in place.

A black litigator in New York City, however, rejected this notion:

> I have found that sensitivity sessions just mask racism.

6.0 18-B Panel Participation

Attorneys were asked whether or not they are on an 18B panel.[15] If "No," they were asked the reason for nonparticipation; if "Yes," they were asked to report on the percentage of their caseload made up of 18B cases. These findings are presented in Table 30.

Table 30. Membership in 18B Panels*
(Numbers in parentheses are percentages)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
YES - Participate	31 (25.3)	32 (26.7)	25 (22.1)	3 (4.3)	46 (37.3)	28 (32.2)	166 (26.0)
Percentage of total caseload 0 - 5%:	6 (19.4)	12 (37.5)	11 (44.0)	2 (66.7)	14 (30.2)	13 (46.4)	58 (34.9)
6 - 50%:	10 (22.6)	10 (31.3)	6 (24.0)	1 (33.3)	23 (50.5)	9 (32.1)	59 (35.5)
51 - 100%:	14 (45.2)	10 (31.3)	8 (32.0)	0 (0.0)	9 (19.4)	6 (21.4)	47 (28.3)
No Response:	1 (3.2)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	1 (6.0)
NO - Do Not Participate	93 (75.0)	88 (73.3)	88 (77.9)	66 (95.7)	78 (62.9)	59 (67.8)	471 (73.9)
Would be interested	14 (15.4)	28 (31.8)	26 (29.5)	16 (24.2)	8 (10.4)	17 (28.8)	109 (23.1)
Uninterested	74 (80.1)	56 (63.6)	60 (68.2)	45 (68.2)	66 (85.0)	40 (67.8)	341 (72.4)
Applied but rejected	1 (1.1)	3 (3.4)	1 (1.1)	4 (6.1)	1 (1.1)	0 (0.0)	10 (2.1)
Other	4 (4.3)	1 (1.1)	1 (1.1)	1 (1.5)	3 (3.6)	2 (3.4)	11 (2.3)
TOTAL	124	120	113	69	124	87	637

* See Appendix B, Table B-30, for tests of significance.

There are no differences among groups in terms of the proportions of attorneys who serve on 18B panels, with the exception of Asians, who were least likely to serve.

[15] In New York State 18B panel attorney supplement the Legal Aid Society in order to provide criminal defense to indigent persons.

proximately similar proportions of Whites (25%), Blacks (27%), and Hispanics (22%) in w York City, and Whites (37%) and minorities (32%) outside of New York City, serve 18B panels. Among those serving on 18B panels, a relatively greater proportion of hites than Blacks or Hispanics in New York City have a clientele which is 51-100% mprised of 18B cases. Among minorities outside of New York City who have any 18B ients, as contrasted with Whites, a slightly smaller proportion have large numbers of 18B ients.

Among attorneys who do not participate on 18B panels, relatively large proportions f minorities compared to Whites say they would be interested. Thus, for example, pproximately twice as many black (32%) and Hispanic (30%) as white (15%) litigators said hey would be interested. Very small proportions of attorneys in any group say that they were rejected from 18B service. The majority of those who do not participate on 18B panels do not do so because they are not interested. A black litigator in New York city suggested:

> Since many criminal cases are 18-B assigned, I think a sincere and determined effort should be undertaken by the Appellate Division to recruit minority attorneys and women attorneys for the panel.

7.0 Fiduciary Appointments

Attorneys were asked whether they had "ever applied to be on a list from which judges make appointments to fee-generating positions" and if 50, whether they had been appointed to a "fee generating position within the last two years" and whether "minority attorneys tend to be awarded the same fees as nonminority attorneys for similar work." These findings are presented in Table 31.

Table 31. Participation in Fiduciary Appointments* (Numbers in parentheses are percentages)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
YES, APPLIED	19 (14.7)	33 (27.7)	15 (13.2)	5 (7.7)	38 (31.1)	32 (37.6)	141 (22.3)
Yes, assigned case in last two years.	9 (48.8)	30 (90.9)	12 (80.0)	3 (60.0)	29 (77.4)	21 (65.6)	104 (73.7)
Yes, race bias in fees awarded.	3 (15.8)	5 (15.2)	4 (26.7)	1 (20.0)	6 (15.8)	17 (53.1)	37 (26.2)
NO, DID NOT APPLY	108 (85.3)	86 (72.3)	99 (86.8)	60 (92.3)	84 (68.9)	53 (62.4)	491 (77.7)
Do not know how.	26 (24.1)	35 (40.7)	45 (45.5)	24 (40.0)	15 (17.9)	18 (34.0)	163 (33.2)
Not interested.	75 (69.4)	36 (41.9)	43 (43.4)	33 (55.0)	60 (71.4)	30 (56.6)	278 (56.6)
Small chance of being appointed.	7 (6.5)	15 (17.4)	11 (11.1)	3 (5.0)	9 (10.7)	5 (9.4)	50 (10.2)

* See Appendix B, Table B-31, for tests of significance.

Higher proportions of Blacks (28%) in New York City and Whites (31%) and minorities outside New York City (38%) than Whites (15%), Hispanics (13%), or Asians (8%) in New York City had ever applied to be fiduciaries. Among those who did apply, white attorneys in New York City represented the smallest proportion of attorneys who had been assigned a case in the past two years; 91% of black attorneys in New York City who applied for a fiduciary appointment had been assigned a case, compared to 47% of white attorneys in New York City.

Higher proportions of minorities than Whites felt that there is racial bias in the fees awarded minority attorneys; this response was particularly strong among minority attorneys outside of New York City.

Among those who did not apply, greater proportions of minority than of white attorneys were hindered by a lack of knowledge as to how to apply. In fact, approximately

approximately twice as many black, Hispanic, and Asian as white attorneys in New York City, and twice as many minority as white attorneys outside New York City, reported that they do not know how to apply. A black litigator in New York City wrote:

> Non-minority attorneys and other attorneys who have contributed to the Judges' campaigns get most, if not all of the decent appointments. The fees awarded these attorneys [are] always much greater than fees awarded to minorities.

A black litigator in New York City remarked:

> The racial nature of the court system becomes most prevalent when the services and benefits are meekly given out to minorities. I have yet to be appointed to a fee generating case by a white judge.

8.0 Attorney Disciplinary Proceedings

Litigators were asked whether they know of any "attorneys whose professional behavior has been reviewed by a Grievance Committee or Disciplinary Committee of any of the Appellate Divisions of New York State." Those who answered "Yes" were asked to identify the numbers of minority and majority cases known to them and whether it is their "belief that the race of the attorney affected the initiation or the outcome of any of the disciplinary proceedings." These data are provided in Table 32.

Table 32. **Experiences with Attorney Discipline Committees*** (Numbers in parentheses are percentages)[16]

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
Litigators who know attorneys who have been disciplined.	91 (63.0)	78 (60.5)	49 (38.9)	26 (35.1)	116 (76.5)	71 (70.3)	432 (59.4)
Average percentage of disciplined attorneys who are minorities.	6.6%	72.7%	61.0%	41.7%	7.2%	43.1%	33.1%
Average number of white disciplined attorneys known.	2.59	1.57	1.24	3.70	4.44	4.65	3.11
Average number of minority disciplined attorneys known.	.18	5.43	2.14	2.30	.27	2.32	1.79
Yes, race affected discipline.	5 (5.5)	39 (50.6)	9 (18.0)	3 (11.5)	1 (.7)	25 (35.7)	82 (19.2)

* See Appendix B, Table B-32, for tests of significance.

Significantly fewer Hispanic and Asian litigators than those in any other group knew any disciplined attorney significantly more white and minority litigators outside than in New York City knew at least one attorney who had been disciplined. This may be partially explained by the fact that Hispanic and Asian litigators had the lowest average number of years in practice since passing the bar. Whites in- and outside New York City reported that, on the average, 7% of the attorneys they know who have been disciplined are minorities. Nearly three quarters (73%) of the disciplined attorneys known to black litigators and 61% of the disciplined attorneys known to Hispanic litigators, are minority. These differences in the proportions of disciplined minorities known to white attorneys and to black and to Hispanic litigators can

[16]The numbers in the first and fifth items of this table represent litigators responding affirmatively to the questionnaire items. The percentages given are affirmative responses as a percentage of all responses by the relevant cohort. Thus, for example, 91 white litigators in New York City reported knowing disciplined attorneys, representing 63% of the 145 white litigators in New York City providing any response.

obably be attributed to the fact that white attorneys know white attorneys while inority attorneys know minority attorneys. Examination of the average numbers of hite and minority disciplined attorneys known to each group shows that minority tigators, especially Blacks, know more disciplined attorneys than do Whites. More lack litigators than any other group know minority attorneys who have been isciplined. Significantly more minority litigators outside New York City than white itigators outside New York City reported knowing minority attorneys who have been disciplined. There are no differences among groups in the numbers of white disciplined attorneys known. Black litigators in New York City and minority litigators outside New York City were far more likely to feel that attorney discipline was affected by race than were other litigators. Of course, it should be pointed out that white litigators reported very small proportions of minority attorneys being disciplined; therefore it is hardly surprising that very few thought the proceedings had anything to do with race. An Hispanic litigator in New York City remarked:

> I believe the profession is more likely to initiate disciplinary action against a minority attorney who represents unpopular clients than it would if the attorney was white.

A black litigator in New York City stated:

> Black attorneys are more likely to be both challenged and charged.

A black litigator outside New York City recalled:

> In several cases the grievance involved was relatively minor and could have been resolved without the severe penalties sought, but for race.

A black litigator in New York city noted:

> Individuals (including other attorneys) are quicker to report minority

attorneys than Whites, who they see as equal or their friends. Similarly, the chief counsels at the committee are more likely to go after the minority than after the white attorney.

A black litigator outside New York City charged:

> Minority attorneys received disproportionate sanctions as compared to non-minority attorneys for similar or the same conduct.

A black litigator in New York City noted:

> Black clients complain about [b]lack attorneys more readily than [about] white attorneys.

A white litigator in New York City mentioned an incident where:

> The minority attorney is an outspoken civil rights champion whose discipline investigation is certainly linked to his criticism of the system.

A black litigator in New York City wrote:

> In as much as I am a member of [a] disciplinary committee, I have knowledge of many disciplinary cases. I do not think that the initiation of proceedings are caused by race, but I do think that the outcome may be and a minority attorney may receive a harsher penalty than other attorneys in some instances.

A black litigator in New York City charged:

> The initiation of complaints against minority attorneys is greater because our actions are always more suspect. A white attorney just about has to steal clients' money to get a complaint a minority attorney will be filed against for not returning a phone call.

A white litigator in New York City recalled an instance where:

> Minority attorney who was active in bar association received more lenient treatment.

A black litigator in New York City wrote:

> In a recent case in Westchester, a [b]lack attorney was disbarred after a finding that he commingled client's funds. But just about two years before, a white attorney in Westchester was given a mere slap on the

wrist for the same act. I believe that Blacks are scrutinized much more harshly than Whites.

A african-American litigator in New York City noted:

> The [b]lack attorneys are not as familiar with members of the committees as are our white colleagues. Therefore committee members who are unfamiliar with the respondent are unlikely to give him/her the benefit of the doubt because they don't know him/her. This is a continuation of the "Old Boys Network" of the legal profession.

An Hispanic litigator in New York City wrote:

> Both the general public and the Appellate Division are more likely to reprimand and complain of minority attorneys.

A black litigator in New York City agreed:

> The level of tolerance for minority attorneys differs substantially from that of clients dealing with white attorneys.

A black litigator in New York City noted:

> [L]itigants tend to report minority attorneys to grievance committee[s] with greater frequency. Most litigants feel that bad results are usually due to minority attorney misconduct or incompetence.

A black litigator in New York City wrote:

> I have found that minority clients are more likely to complain against minority attorneys than against white.

A black litigator in New York City wrote:

> The panel[s] formed by the grievance committee[s] are mostly from large law firms and are not familiar with the minority law practice.

A black litigator in New York City wrote:

> The grievance committee is extremely racist, its attorneys have no knowledge of the problems confronting minority practitioners from small law firms.

An Asian litigator in New York City wrote:

> [An] attorney with [an] accent may be accused for not properly representing [her/his] client.

A black litigator outside New York City wrote:

> Grievance Committee attorneys generally do not have real life experience [and] bring their discriminatory [and] biased opinions into their employment.

A black litigator outside New York City suggested:

> [B]ecause all persons making decision to investigate are white, the conduct of their friends or of themselves is not investigated.

A black litigator outside New York City recalled:

> Rochester case: Rochester is prejudiced towards any black professional. The case was against the only prominent attorney and [was] perceived to be only to discredit black leadership.

A black litigator in New York City wrote:

> Minority attorneys are more closely scrutinized and held to a higher standard than white attorneys charged with a similar infraction of the rules.

A black litigator outside New York City suggested:

> I believe that minority lawyers are watched very closely and subjected to scrutiny and disciplinary proceedings at a far greater pace than nonminority attorneys . . . . [I]t is very important that we have minority persons in positions of judgeships and on committees that affect the outcome and fate of minority attorneys.

A black litigator in New York City remarked:

> I believe the race of [an] attorney influenced what the clients expected and their willingness to complain.

A black litigator in New York City wrote:

> [I]n both instances I believe it was the conduct of the attorney which subjected him/her to scrutiny and caused their behavior to be evaluated not their race. They both just happened to be minorities in these

instances.

While these findings are based on personal recollections and cannot be taken as conclusive, they do suggest that there is a minority perception that relatively more minority than white attorneys are disciplined. The absence of systematically maintained race data by attorney grievance and disciplinary committees makes it impossible to study this phenomenon any further.

9.0 Bar Association Participation

Respondents were asked about their membership in the New York State Bar Association (NYSBA), and in any majority city or county bar association; all but minority bar associations and those with a clear ethnic minority orientation were considered to be majority (White) bar groups. The question is whether there is a difference between white and minority litigators in their frequency of membership in majority bar associations. These findings are presented in Table 33.

Table 33. Membership in Majority Bar Associations* (Numbers in parentheses are percentages)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
New York State Bar Association	79 (54.1)	64 (47.8)	68 (52.3)	41 (55.4)	100 (64.9)	55 (53.9)	407 (55)
Local Bar Associations	70 (47.9)	58 (43.3)	50 (38.5)	30 (40.5)	114 (74.0)	65 (63.7)	388 (52.4)

* See Appendix B, Table B-33, for tests of significance.

There are no significant differences in rates of membership in NYSBA. Overall, 55% of all study litigators belong to NYSBA. It is important to note that most respondents were identified through various bar association lists and, therefore, study participants may tend

to be "joiners" and may thus overstate the rates of membership. There are, however, significant differences in membership rates in local (city or county) associations. Overall, 52% of all respondents are members of at least one local majority bar association. Higher proportions of litigators outside New York City (74% white, 64% minority) than litigators in New York City (43% black, 39% Hispanic, 41% Asian, and 48% whites) are members of a local, majority bar association. This suggests that bar membership in local bar associations is less a function of race than of geography. Nevertheless, although lawyers outside of New York City are more likely to be bar members than lawyers in New York City, white lawyers in both locations are somewhat more likely to be members of local bar associations than are minorities. A black litigator in New York City wrote:

> [T]he Association of the Bar of the City of New York has been almost an exclusive and private organization, making little or no effort or appeal to have its membership reflect the diversity of all lawyers engaged in the various practice[s] of the law . . . . Its membership is composed mostly of lawyers from the "large" law firms and corporations, which means that a few lawyers can control the destinies of many lawyers to the point of determining who will practice law and who will not practice law if a complaint is made against a lawyer. The Association's membership practices to a great degree prohibit many lawyers from becoming members. Its membership fees are reminiscent of the "old poll tax" that existed in the South before same was declared unconstitutional by the Supreme Court. There must be a reorganization of the Association of the Bar of the City of New York to attract a diversity of members including minorities, women, and other lawyers confined to a certain economic level by our socio-economic structure . . . . This diversity is also necessary in order to bring to the Association different attitudes, different thinking, and a broader understanding of the many problems all lawyers encounter on a daily basis.

Respondents who were members of any majority bar association were asked whether they were members of any majority bar association committees and if so, to identify the committees of such associations on which they are active participants. Those not belonging

committees were asked to identify the reasons for nonparticipation. These findings rovided in Table 34.

34. Participation on Majority Bar Association Committees and Reasons for Nonparticipation*

(Numbers in parenthesis are percentages)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
YES, MEMBER OF A COMMITTEE	20 (17.2)	26 (26.8)	12 (12.9)	9 (17.6)	48 (34.2)	35 (42.2)	150 (25.9)
Mean numbers of Committees	.29	.45	.22	.24	.56	.72	.45
Standard Deviation	.76	.90	.66	.55	.93	1.10	.87
NO, NOT A MEMBER OF A COMMITTEE**	95 (82.8)	71 (72.3)	81 (87.1)	42 (82.4)	93 (65.8)	48 (57.8)	430 (74.1)
Not interested	24 (25.0)	7 (9.9)	15 (18.5)	6 (14.3)	24 (26.0)	7 (14.6)	83 (19.3)
No time	71 (73.9)	45 (63.4)	49 (60.5)	26 (61.9)	69 (74.0)	30 (62.5)	290 (67.4)
Serve on min. bar committee	0 (0.0)	8 (11.3)	7 (8.6)	0 (0.0)	0 (0.0)	6 (12.5)	21 (4.9)
Uncomfortable on a comm. dominated by whites	0 (0.0)	12 (16.9)	7 (8.6)	1 (2.4)	2 (2.1)	4 (8.3)	26 (6.0)
Applied, but not accepted	3 (3.5)	5 (7.0)	2 (2.5)	2 (4.8)	3 (3.0)	1 (2.1)	16 (3.7)
Do not know how to apply	6 (6.6)	9 (12.7)	11 (13.6)	4 (9.5)	5 (5.2)	9 (18.8)	44 (10.2)
Tedious application process	1 (0.9)	0 (0.0)	4 (4.9)	0 (0.0)	2 (2.1)	0 (0.0)	7 (1.6)
BASE: Persons who belong to a majority bar association	115	97	93	51	141	83	580

* See Appendix B, Table B-34, for tests of significance.
** Multiple responses possible.

Significantly more litigators outside of New York City (both white and minority) than litigators in New York City are members of committees of majority bar associations. On the average, litigators outside New York City also belong to a greater number of committees

than litigators in New York City. These differences may reflect either different styles of doing legal business in communities outside New York City or the need for professional networking in geographically dispersed areas.

As can be seen from Table 34, the most common reasons for not participating on committees have to do with lack of time and interest. Very few persons selected any of the other reasons for not being on committees.

10.0 Malpractice Insurance

Litigators were asked whether or not they have malpractice insurance; if they did not, they were asked whether the lack is due to its cost, and whether or not having it is a hindrance to their practice of law. For the purposes of this analysis, only solo practitioners or those in very small firms were included. The data are provided in Table 35.

Table 35. **Malpractice Insurance for Solo and Smaller Firm Litigators*** (Numbers in parentheses are percentages)

		NEW YORK CITY				OUTSIDE NYC		TOTAL
		White	Black	Hisp.	Asian	White	Min.	
Have malpractice insurance?	YES	47 (64.7)	23 (30.3)	21 (36.8)	22 (62.9)	63 (74.0)	26 (53.1)	202 (53.9)
	NO	26 (35.3)	53 (69.7)	36 (63.2)	13 (37.1)	22 (26.0)	23 (48.9)	173 (46.1)
Lack of malpractice insurance: **	due to high cost	20 (76.9)	46 (86.9)	32 (88.9)	11 (84.6)	15 (68.2)	20 (87.0)	144 (83.2)
	limits types of cases	6 (30.0)	21 (39.6)	11 (30.6)	6 (46.1)	4 (18.2)	12 (52.2)	59 (34.1)
	limits referrals	2 (6.7)	9 (17.0)	7 (19.4)	3 (23.0)	8 (36.4)	4 (17.4)	34 (19.7)

* See Appendix B, Table B-35, for tests of significance.
** Totals can be more than 100% since multiple responses were possible.

Significantly fewer black and Hispanic litigators in New York City and minorities outside New York City than Whites reported having malpractice insurance. Whereas 65%

f Whites in New York City have insurance, only 30% of Blacks and 31% of Hispanics in lew York City have malpractice insurance. Similarly, outside New York City 74% of Vhites, but only 53% of minority, litigators have insurance. Among respondents who do not ıave malpractice insurance, 83% said that cost was indeed the key deterrent; white solo and ;mall-firm litigators outside New York City affirmed this reason significantly less often than all other groups.

Overall, 34% of the solo and small-firm litigators said that lack of malpractice insurance kept them from taking some types of cases; significantly fewer white non-New York City litigators (18%) than litigators in any other group gave this response. Overall, 20% of solo and small-firm litigators said that lack of malpractice insurance kept them from being listed with a lawyer referral service; significantly more Whites outside New York City (37%) gave this response.

In general, given that fewer black and Hispanic litigators have malpractice insurance, more of them are likely to be affected by the resulting problems.

11.0 Satisfaction with Professional Opportunities

Litigators were asked, "How satisfied are you with your professional opportunities as an attorney?" ("very satisfied," "satisfied," dissatisfied," or "very dissatisfied"). Those who checked either of the last two responses were asked to state the source(s) of their dissatisfaction.

Average satisfaction scores are provided in Table 36. The lower the average score, the greater the satisfaction.

Table 36. **Satisfaction with Professional Opportunities*** (Range is 1-4, 4=very dissatisfied)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
N	146	134	130	72	153	102	737
Mean	1.75	2.47	2.15	2.11	1.78	2.44	2.09
Standard Deviation	.66	.77	.80	.88	.66	.84	.81

* See Appendix B, Table B-36, for tests of significance.

It is clear that minorities, and Blacks in particular, are much less satisfied with their professional opportunities than are Whites. Blacks, Hispanics, and minorities outside of New York City are all significantly more dissatisfied than are Whites both in and outside of New York City. Only 10% of Whites in New York City and 12% of Whites outside of New York City, as compared to 46% of Blacks, 28% of Hispanics, 28% of Asians, and 45% of minorities outside of New York City reported that they were "dissatisfied" or "very dissatisfied."

The written reasons for dissatisfaction were categorized. Two categories emerged that were substantially larger than the others: the first consisted of a lack of job mobility and advancement opportunities, attributed both to racial discrimination and to the respondent's current employment; the second consisted of lack of initial job offers or referral work because of racial discrimination. These data are provided in Table 37.

: 37. **Reasons for Dissatisfaction with Professional Opportunities**
(Numbers in parentheses are percentages)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
Lack of job mobility and advancement opportunities.	6 (40.0)	28 (45.0)	12 (33.3)	4 (20.0)	5 (27.8)	22 (47.8)	76 (38.8)
Lack of job offers/ referral work due to racial discrimination.	0 (0.0)	6 (9.7)	7 (19.4)	4 (20.0)	1 (5.6)	12 (26.1)	30 (15.3)
BASE: Dissatisfied attorneys.	15	62	36	20	18	46	196

ee Appendix B, Table B-37, for tests of significance.

Not surprisingly given the definition of the category, significantly fewer Whites in)th groups stated racial work-discrimination reasons than did members of the other groups. fore minorities outside of New York City than any other group reported lack of referrals ue to racial discrimination. This probably reflects a difference in the professional :nvironments for minorities in the city and outside it: those outside the city find themselves immersed to a much greater degree in a predominantly white professional culture and consequently have fewer opportunities for referral business from other minorities--and they perceive that white firms will not send clients to a minority attorney. Similarly, to the extent that minority attorneys are more likely to attract minority rather than white clients, the smaller minority populations outside New York City limit their minority attorney's client pool.

Comments provided by litigators on their job satisfaction can be grouped into several major categories. The first set of comments suggests that public interest law and government employment have become ghettoized; minority attorneys enter those fields because of lack of access to positions in large law firms or corporations. Once in, even

lateral mobility into other specializations is difficult. An Asian litigator in New York City remarked:

> Being a member of a minority group you are viewed as unqualified for most legal jobs in the private sector and therefore restricted to public interest jobs government jobs or solo practice.

A black litigator outside New York City hypothesized:

> It is my perception that certain avenues of the legal profession are not open to minority lawyers, such as the large law firms. Once minorities are hired at government positions or in small defense firms they do not seem to have the same opportunities as white lawyers to eventually move over to larger firms and [to] be placed on the partnership track.

A black litigator outside New York City wrote:

> A majority of minority attorneys work in municipal or government service. There are not many opportunities for minority attorneys outside of the public sector. This limitation creates less career and job satisfaction.

A white litigator in New York City remarked:

> Minority legal aid attorneys [are] often treated by judges (and jurors) as inferior attorneys with clients (defendants) treated as needing more help from the court because all they have is a minority attorney.

A black litigator in New York City wrote:

> I believe public service is very important and can be personally rewarding for those that serve. However, I resent the public outcry of politicians regarding crime and the criminal system. . . . The government offices should either pay off student loans or increase salaries where employees (black attorneys) who are not independently wealthy or subsidized by parents can live decently and meet their daily expenses. The city should not be allowed [to] compensate city attorneys (corporation counsel) better than Legal Aid or District Attorney's offices. All people who have achieved higher education should work in a clean, professional atmosphere, and while not earning private salaries, should at least earn comparable salaries to corporation counsel.

A black litigator in New York City noted:

Minorities are lured into government jobs, i.e., agencies etc., bottom of the [b]arrel legal work.

Hispanic litigator in New York City added:

> There is very little appreciation and upward mobility available to people of color who practice public interest law and I'm not interested in representing anyone else. Nor [are] the corporate world or private firms interested in us.

white litigator outside New York City wrote:

> Those who spend many years in a government or public-service attorney position are limited in future career opportunities to similar types of positions.

black litigator in New York City explained:

> A significant amount of minority attorneys are relegated to government service. Several judges are not tolerant of the actions of some government agencies. As a result, minority attorneys are constantly bearing the brunt of this intolerance. We are treated disrespectfully and unfavorably . . . . If the legal doors of opportunity are not open to everyone, then some of us will have to take the unfavorable positions. Representing unfavorable clients and legal stances in court are burdensome; add "skin color" to this and it becomes unbearable.

A white-Hispanic litigator in New York City wrote:

> Dissatisfaction is due more to length of time as [a] prosecutor--many employers do not value prosecutorial experience past 5 years. Also, non-Ivy League background is a disadvantage.

A black litigator outside New York City reported:

> General feelings of lack of opportunities or ability to freely move from one area of law to another.

An Asian litigator in New York City explained:

> I think the legal profession is becoming increasingly specialized, so that one tends to become "pigeon-holed" early on--for example, myself as a litigator--and it becomes harder and harder to be considered for positions in other areas of the law.

Some litigators cite a general lack of professional opportunities as a cause of their career dissatisfaction. A black litigator outside New York City remarked:

> Black attorneys are perceived to be out of place in civil court proceedings. There is a perception that black attorneys are just criminal lawyers.

An Hispanic litigator in New York City noted:

> The majority of minority lawyers in the Bronx are mostly handling real estate matters and 18B criminal cases. Yet some of the cases are in the civil area. The reason for this is that many minorities start out working for Legal Aid or the D.A's office. Real estate is straightforward and relatively simple[, w]hereas civil matters are a great deal more involved. . . . This may scare many minority lawyers away from handling the civil cases.

An Hispanic litigator in New York City offered:

> The [b]ar [a]ssociations [and] [c]ourt [a]dministration do not publicize enough opportunities that exist for solo practitioners in the court system, for example, [g]uardian [a]d [li]tem, [e]xecutors of [e]states.

An Hispanic litigator in New York City wrote:

> Most white litigation firms, taking cases from min[ority] lawyers for <u>most</u> of contingent fee, have convinced <u>most</u> min[ority] lawyers they can't litigate or shouldn't; even when min[ority] lawyer has track record for signing big cases, talk of association or employment is <u>discouraged</u>, as is sitting in at trial to learn, or providing copies/pleadings, or having a say on settlement offers. "Stay out there . . . ."

A black litigator outside New York City stated:

> Certain types of companies do not even consider African American lawyers to handle their legal work. Specifically insurance companies, banks and title companies in Westchester County.

A black litigator in New York City wrote:

> Minority attorneys are not provide[d] access to professional opportunities with small corporate firms, city contracts or banking institutions.

Other litigators in private practice pointed out that not only are whites more ... prefer the legal services of white attorneys, but minority litigants, especially when they ...e big cases, seek out white attorneys. A black litigator in New York City commented:

> Minority clients are reluctant to retain black counsel. They need a white person to speak on their behalf for justice to be awarded. Minority attorneys are treated like defendants themselves. Their presentation must be shifted and weighed, but this does not occur with whites. Judges feel they should believe the DA, which is mostly what the police officer says.

n Hispanic litigator practicing both in and outside New York City wrote:

> Large clients (especially corporate) do not consider minority controlled firms, particularly small firms, for legal representation. Even minority operated businesses tend to resist retaining minority attorneys.

A black litigator in New York City recalled:

> [A] white attorney referred two white clients to me. They made an appointment [but] upon seeing me, they immediately excused themselves and never came back.

A black litigator in New York City wrote:

> Minority clients show as much disrespect for minority attorneys as the larger society by taking their business to white attorney[s]. . . .

A black litigator outside New York City wrote:

> One can realize the difficulty of minority counsel to attract white clients easily, inasmuch as my experience is that being a Yale Law School graduate I have never been able to attract [] more than 10% white clientele.

A black litigator in New York City remarked:

> Many Blacks use Black lawyers on small cases. They use white lawyers on their more important cases. I have no white clients.

A black litigator in New York City wrote:

> 85% of all minorities still go to white attorneys. This limits our client pool and of course finances! The lack of respect accorded minority attorneys makes it extremely frustrating at times to settle good cases, try cases, etc.

A black litigator outside New York City wrote:

> There exists approximately 60 minority attorneys in the Buffalo area. Approximately 48 are agency attorneys. The remainder are private practitioners. Our firm is the only minority partnership in this area. None of us are given the opportunity to provide services for large corporations as even the small white firms are given some exposure. Other than poor, inadequate clientele who are assigned counsel by the courts, we see very little white trade. On the other hand, black clients are the main staple for many area white firms.

An Hispanic litigator in New York City added:

> The community I serve can only barely support its professionals in that the economies of [b]lack and Hispanic areas are continually depressed, and members do not, generally, have the resources to invest in paying fees, costs, etc. of litigation.

A black litigator outside New York City wrote:

> In this area approximately 75 to 80% of the minority population seek white attorneys. Approximately 95 to 99% of the white population also seek white attorneys.

A white litigator outside New York City stated:

> It is my perception that many of my black clients choose me, rather than a black attorney, because they perceive that I will be able to make the system work better for them than a black attorney.

A black litigator in New York City asserted:

> Minority clients take big lawsuits to non-minority attorneys.

The financial consequences of limited opportunities for minority attorneys were mentioned by several attorneys as a source of their dissatisfaction. An Hispanic litigator in New York City commented:

Serving a predominantly poor to middle class population results in providing free consultation and legal advice free of charge and having to charge low legal fees.

A black litigator outside New York City wrote:

Race affects the initial salary offered and promotional increases.

An Asian litigator in New York City stated:

[It is] [d]ifficult to obtain clients who can afford to pay for legal work.

An African-American litigator in New York City summed up:

After being admitted [in] April 1977 I am dissatisfied by the lack of financial stability and [by the] entire system of courtrooms, attorneys and litigation.

A black litigator in New York City noted:

[a] [l]ack of major retainer clients that would cover yearly overhead. Minority attorneys are generally paid less.

An Hispanic litigator in New York City commented:

Most minority attorneys are not hired by name firms. Leaving for <u>most</u> the option <u>exclusively</u> of starting up a practice which takes 5-6 years before you make <u>any</u> money.

An Asian litigator in New York City wrote:

Job search in private firms yielded few opportunities, and those jobs offered were low pay with little if any opportunity for advancement.

A black litigator in New York City complained of:

[a] [l]ack of capital to take on certain cases that would lead to independence.

An Hispanic litigator in New York City stated:

Professional opportunities to obtain a higher salary are highly unavailable to Hispanic women in private practice who are litigators. Intellectually, I am satisfied with the legal profession. It is both challenging and diverse.

A black litigator outside New York City wrote of:

> [a] [l]ack of access to clients, corporations, etc. including local, state [and] fed[eral] gov[ernment] who can be bill[ed] and who will pay [in a] timely [fashion].

An Hispanic litigator in New York City wrote:

> [The] [j]obs available [are] mostly low paying private sector -- especially larger firms [are] 95% closed to minorities.

An Hispanic litigator in New York City wrote:

> I feel the job market is very limited to minority law students and attorneys. Jobs that are available are low-paying and often not in the areas of law that the minority attorneys want or [are] interested in.

The strain of being generally alienated from, or actually abused by, the court system and the legal profession created and maintained by Whites has led to general dissatisfaction for a portion of the study's minority litigators. A black litigator both inside and outside New York City wrote:

> District Court of Hempstead is a minority attorney's nightmare on every level--clerical staff, court officers, District Attorneys, and Judges. I find myself turning down cash-carrying clients whose cases are pending in the criminal parts of that courthouse because the success of the case is hindered by them having a black attorney and because I would have to charge them extra to put myself in that courthouse since I know that the disrespect I will receive is close to unbearable. I've been an attorney for ten years and have encountered and handled all types of insensitivities with unyielding grace. But in this court, I leave cursing or crying. Something must be done.

An Hispanic litigator in New York City remarked:

> Primarily dissatisfied and frustrated with litigation. I'm tired of being the only hispanic woman in court and find the entire judicial system, with few exceptions, hostile to minority representatives [and] clients.

A black litigator outside New York City stated:

> —The New York State Unified Court System cannot achieve anything close to racial fairness so long as its decision and policy making bodies continue to be

dominated by nonminorities. . . . This exclusion is seemingly based on lack of experience of minority candidates.

An Hispanic litigator in New York City wrote:

> There are too many "old boy networks" that do not allow access to minority attorneys.

An Hispanic litigator in New York City wrote:

> [M]ost solo minority lawyers do not have mentors or experienced counsel supervising or training them.

An Asian litigator in New York City wrote:

> [I] have worked for legal services for 8 years as an attorney. The majority of my clients were minority (99.9%). I found out I (and my clients) were treated even worse by all levels (Judges, officers, court personnel) when I worked for Legal Services.

Several litigators expressed resignation about the state of racial bias in the legal profession and in the state court system. They strive to work within the constraints laid out for them. A black litigator in New York City wrote:

> I personally have not encountered race discrimination (with the exception of continuously identifying myself as an attorney and not a court reporter) although I may certainly have had it work against me. The overwhelming reality is that the legal system in N[ew] Y[ork] is a white, male club and all others survive as best they can. I've been lucky, so far.

An Asian litigator in New York City commented:

> On the whole, I believe that the court system reflects society in that there is racism and prejudiced feelings anywhere. The issue is whether such attitudes impair a minority attorney's ability to practice in his/her chosen profession. In my three years of experience, I have not felt as though there were limitations on my career or ability to practice beyond the reality that this is a white-male dominated society and profession. I have learned to work with the skills and tools I have been given and acquired through my education to make the best of existing conditions.

An Asian litigator in New York City wrote:

> I do practice in the five boroughs and in the various courts. As an Asian, I have not felt any prejudice towards me and I rarely see or hear of prejudicial comments towards minority attorneys or their clients. I think if people are respectful to one another, respect is reciprocated. I have good rapport with the personnel in the various courts that I am in frequently. What I find more is the "clubhouse" prejudice between judges, personnel and attorneys. It is most prevalent in Queens County.

Finally, a sizable number of minority attorneys expressed general satisfaction with the opportunities available to them in the profession. An Hispanic litigator in New York City wrote:

> I am gratified to report that I have encountered no racial unfairness in my years of practice in New York.

Another Hispanic litigator in New York City wrote:

> I cannot say I have noticed any unfair treatment of me or my clients because of our Hispanic background.

Yet another Hispanic litigator in New York City commented:

> The New York system is very impartial and fair, no vibes anything is wrong . . . . Never noticed different treatment over 25 years . . . . Nothing has impacted me and I can't see we're treated any differently. Perhaps minorities have less opportunities to move into more complex areas . . . [but it's] a matter of history and time will take care of that.

Still another Hispanic litigator in New York City wrote:

> I cannot personally complain against bias. My court appearance working for a public authority brings me the prestige of a large, respected, public institution. So long as I make a creditable presentation in oral argument and/or memorandums of law and motions, I find no problem.

An Asian litigator in New York City wrote:

> In my seven years experience on the appellate and lower court level, I have not experienced any prejudice due to my ethnicity.

2.0 Conclusions

Minority attorneys within organizations perceived substantially fewer professional opportunities for minorities than their white counterparts perceived for them. White attorneys are generally unaware of the struggle faced by minority attorneys to be hired, to be assigned complex work, and to advance. While black attorneys have the least confidence in their professional opportunities, Hispanic and Asian attorneys also feel limited in what they can achieve. Most organizations are perceived as doing nothing or very little to recruit minority attorneys; once hired, minority attorneys feel unsupported in their professional growth and advancement.

Minority attorneys perceived themselves as being subjected to less than professional courtesy when they appear in New York State courts. Black litigators reported more professional maltreatment than any other group, but substantial numbers of Asians and Hispanics reported lack of professional courtesy. Minority lawyers are regularly subjected to questions as to whether they are attorneys, to doubts about their credentials, and to lack of respect. For many, appearances in court represent a constant effort to overcome racial bias and to establish their professional credibility. Although minority applicants who reported that they had applied for fiduciary appointments were not disproportionately excluded, large proportions of minorities did not apply due to lack of knowledge of the application process. Black attorneys knew more attorneys who have been disciplined, and half of those who knew an attorney who had been disciplined believed that race was a factor in either the filing or the disposition of a grievance. Black and Hispanic attorneys were substantially less likely to have malpractice insurance, primarily due to high cost.

Living under a constant cloud of suspicion regarding their competence and finding few opportunities for advancement, it is hardly surprising that many minority attorneys are dissatisfied. Black attorneys in particular reported being treated with less respect, knew more colleagues who had been disciplined, were less likely to have malpractice insurance, and were more likely to feel that race affects all aspects of their professional lives.

The findings support the conclusion that many minority attorneys practice law in a climate which they perceive as unsupportive and, indeed, hostile. By-and-large, many white attorneys seem oblivious to the daily insults and demeaning experiences of their minority colleagues. Many white attorneys, however, endorsed the importance of greater representation of minorities in the profession and of training attorneys on cultural/racial sensitivity. It is apparent that a great deal of training needs to be done in order to raise the awareness of white attorneys as to the regular and pervasive bias that exists in the treatment of minority attorneys.

X. BAR PASSAGE

1.0 Introduction

Although bar passage data by race have never before been available in New York State, there is ample anecdotal evidence to suggest that minority pass rates are below those of Whites. The Commission was able to obtain bar passage data from all of the fifteen law schools in New York State which do indeed show that minority pass rates are substantially below those of Whites; these data are reported in the Commission's main report. Because of the unique opportunity afforded by the litigators' study to query minority attorneys about their bar experiences, a few questions were included on this issue.

Bar Exam Experience

Litigators were asked the number of times they had taken the New York State bar n. For the purposes of this question, data from New York City and outside of New k City lawyers were combined. Data on the numbers and proportions of persons in each e/ethnic group who took the bar exam once, twice, or three or more times are presented Table 38.

ble 38. Number of Attempts at Passing the New York State Bar Exam* (Range is 1-7)

		White	Black	Hispanic	Asian
Number of times took New York State Bar Exam	1 time	233 (80.5)	98 (55.1)	75 (51.7)	51 (67.1)
	2 times	37 (12.9)	51 (28.7)	42 (29.0)	14 (18.4)
	3 times or more	19 (6.6)	29 (16.3)	28 (19.3)	11 (14.5)
Mean number of attempts		1.29	1.67	1.75	1.53

* See appendix B, Table B-38, for standard deviations and tests of significance.

A majority of litigators passed the New York State bar exam the first time; 81% of white, 55% of Black; 52% of Hispanic, and 67% of Asians passed the exam on the first try. The differences between Whites on the one hand and Blacks and Hispanics on the other are statistically significant. It is important to note, however, that the average number of bar pass efforts by any group is not more than two.

Litigators were asked about the relevance of the bar exam to their practice as attorneys ("extremely relevant," "relevant," "irrelevant"), whether the bar exam is biased against minorities ("considerably biased," "somewhat biased," "not at all biased"), and whether

their law school education was useful for passing the bar exam ("very useful," "somewhat useful," "not at all useful"). These findings are presented in Table 39.

Table 39. Relevance, Usefulness, and Perceived Bias of the Bar Examination*

	WHITE			BLACK			HISPANIC			ASIAN			TOTAL		
Relevance of bar exam to practice as an attorney.	Extr. Relevant	Relevant	Irrelevant	Extr. Relevant	Relevant	Irrelevant	Extr. Relevant	Relevant	Irrelevant	Extr. Relevant	Relevant	Irrelevant	Extr. Relevant	Relevant	Irrelevar
	25 (8.4)	128 (43.6)	140 (48.0)	12 (6.3)	71 (37.6)	106 (56.1)	8 (5.4)	71 (47.7)	70 (47.0)	6 (7.6)	30 (38.0)	43 (54.4)	51 (7.1)	300 (42.2)	359 (50.4
Usefulness of Law-School education as preparation for bar exam.	Very Useful	Somewhat Useful	Not Useful	Very Useful	Somewhat Useful	Not Useful	Very Useful	Somewhat Useful	Not Useful	Very Useful	Somewhat Useful	Not Useful	Very Useful	Somewhat Useful	Not Useft
	144 (49.2)	122 (41.7)	27 (9.2)	74 (38.3)	93 (48.2)	26 (13.5)	59 (39.3)	61 (40.7)	30 (20.0)	24 (30.8)	45 (57.7)	9 (11.5)	301 (42.2)	321 (45.0)	92 (12.9
Bias of examination against minorities.	Considerably Biased	Somewhat Biased	Not at all Biased	Considerably Biased	Somewhat Biased	Not at all Biased	Considerably Biased	Somewhat Biased	Not at all Biased	Considerably Biased	Somewhat Biased	Not at all Biased	Considerably Biased	Somewhat Biased	No at a Bias
	9 (3.5)	41 (15.2)	218 (81.3)	23 (12.5)	104 (56.5)	57 (31.0)	25 (17.1)	58 (39.7)	63 (43.2)	4 (5.2)	22 (28.6)	51 (66.2)	61 (9.1)	225 (33.3)	389 (57.

* See Appendix B, Table B-39, for means, standard deviations and tests of significance.

Overall, 51% of all respondents, or 48% of white, 56% of black, 47% of Hispanic, and 54% of Asian litigators rated the bar exam as irrelevant to their practice as attorneys. There are no significant differences among groups. Not surprisingly, respondents who took the exam more than once were significantly more likely than those who took the exam once to rate it as irrelevant to the practice of law. Thus, 43% of those who took the exam once, but 62% of those who took it twice, and 66% of those who took it three or more times, rated it as irrelevant. This relationship between number of attempts to pass the bar and the rating of relevance holds for all groups. For example, Blacks and Whites who passed the

ar on the first attempt were equally likely to rate the exam as relevant. Thus, rating of the ›ar exam for relevance is related to success in passing it rather than to race.

Relatively few respondents (13%) said that their law school education was not at all useful for passing the bar exam. Significantly more Hispanic (20%) than white (9%) litigators rated their law school education as not at all useful for bar passage, but overall the majority of litigators in all groups divided their opinions between "very useful" and "somewhat useful." In all groups, respondents who took the exam more than once were more likely than respondents who passed on the first attempt to rate their law school education as "not at all" useful.

Overall, few litigators (9%) felt that the bar exam is "considerably biased" against minorities. Significantly more Blacks and Hispanics than Whites and Asians believed that the bar exam is biased. Thus, only 4% of white and 5% of Asian, but 13% of black and 17% of Hispanic, litigators gave this opinion. Conversely, whereas 81% of white and 66% of Asian respondents rated the exam as not at all biased, only 31% of black and 43% of Hispanic respondents had reached this conclusion. Among Hispanics, but not among Blacks or Asians, there is a strong relationship between multiple efforts to pass the bar and rating the exam as biased against minorities. Thus, 43% of Hispanic first-time bar passers, but 71% of third or more time passers, rated the exam as "somewhat" or "considerably" biased. Among Blacks and Asians, equal proportions of first, second, or third or more time passers rated the exam as biased.

3.0 Conclusions

In general, the data show that Black and Hispanic litigators did have to take the bar exam more often than did White or Asian litigators. The majority of respondents in all groups agreed that the bar exam is irrelevant to their practice as attorneys; such belief is strongly related to number of efforts to pass rather than to race. More than half of the black and Hispanic litigators reported that the bar exam is at least somewhat biased; among Hispanics there is a strong relationship between the perception of bias and the number of efforts to pass.

XI. REPRESENTATION AND TREATMENT OF MINORITIES ON JURIES

1.0 Introduction

The low representation of minorities in the judiciary and in the legal profession can be explained in part by the underrepresentation of minorities among college graduates. But the underrepresentation of minorities on juries is far less understandable given the high proportion of minorities in the population, at least in New York City. The constitution guarantees the right to a trial by a jury of one's peers; for many minorities their peers are minority group persons. Many minorities feel so alienated from Whites and so suspicious of Whites' willingness to judge fairly, that the fairness of all-white juries is automatically likely to be called into question. Given the importance of this issue and the serious doubts that exist about the inherent fairness of the jury system, a series of questions relevant to juries and jury decision-making was asked.

.0 Minority Representation on Juries

Litigators were asked about the representation of minorities on juries. These findings ıre presented in Table 40.

ble 40. Frequency with which Minority Litigants' Cases are Decided by All-White or Predominantly Minority Juries* (Numbers in parentheses are percentages)

	NEW YORK CITY												OUTSIDE NYC						TOTAL		
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Rare-ly/ Never	Very Often/ Often	Some-times	Re [illegible] Ne
ase involving a rity litigant is ded by an all- e jury.	13 (13.5)	19 (18.8)	67 (67.7)	36 (37.9)	29 (30.5)	30 (31.6)	24 (28.6)	16 (19.0)	44 (52.4)	5 (14.3)	9 (25.7)	21 (60.0)	49 (50.1)	29 (29.5)	20 (20.4)	62 (86.1)	7 (9.7)	3 (4.2)	190 (39.2)	109 (22.5)	18 (38
ase involving a rity litigant is ded by a predomi- ly minority jury.	31 (29.8)	39 (37.8)	33 (32.4)	16 (16.5)	26 (26.8)	55 (56.7)	20 (22.5)	34 (38.2)	35 (39.3)	4 (11.1)	14 (38.9)	18 (50.0)	7 (6.9)	8 (8.6)	83 (84.5)	5 (7.0)	3 (4.2)	63 (88.7)	82 (16.7)	124 (25.2)	28 (58

Appendix B, Table B-40, for means, standard deviations, and tests of significance.

Overall, a large proportion of New York City litigators (25%) reported that minority cases are "often/very often" tried before all-white juries; significantly more black (38%) and Hispanic (29%) than white (14%) or Asian (14%) litigators reported this phenomenon. Given that the population of Brooklyn is 52% minority, the Bronx--67%, Manhattan--49%, and Queens--38%, the existence of all-white juries in such large proportions of cases suggests that there may be serious problems in the jury-selection process. Outside of New York City, all-white juries for minority litigants are reported as the norm rather than the exception. Overall, 65% of litigators outside New York City reported that this happens "often/very often": minorities outside New York City--86%, Whites outside New York City--50%.

Black and Hispanic attorneys are probably more sensitized to the issue and may overstate the frequency with which minorities appear before all-white juries; Whites and Asians may be less sensitized and may understate the frequency of the occurrence. But taken all together--assuming the true situation is somewhere between--it is apparent that large numbers of minorities are appearing before all-white juries. Given the extensive literature which shows that "like is more sympathetic to and better able to understand like"[17] it is apparent that the underrepresentation of minorities on juries is a problem.

The next item asks about the frequency with which a case involving a minority litigant is decided by a jury that is predominantly minority. Among New York City litigators, Whites reported a significantly more frequent occupance than did minority litigators: 30% of white litigators, 23% of Hispanic litigators, 17% of black litigators, and 11% of Asian litigators reported that minority litigants' cases are decided by predominantly minority juries

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[17] See Review of the Literature on jury issues, New York State Judicial Commission on Minorities, Volume 5.

"often/very often." Litigators outside New York City reported a less frequency occupance of predominantly minority juries and there was no significant difference between the two groups: 89% of white and 86% of minority litigators responded that this happens "rarely/never."

Some litigators commented on the small proportion of minorities in the venire. For example, one white litigator outside of New York City commented:

> The one thing that is clear to me is that the panels from which I choose juries are primarily white, with more women than men. Minorities probably have constituted less than 10% of the available panels.

Another white litigator outside New York City stated:

> In Rockland County, where my office is located, there appears to be a disparity between the number of black and Hispanic persons chosen for jury duty versus the percentage of blacks and Hispanics [in] the community overall. I don't believe this to be the result of an intentional scheme or plan; however, I do feel that some effort must be made to bring more black and other minority citizens into the jury pool. Because there are so few black jurors to begin with, it is very difficult to select a jury with a black juror when representing a black plaintiff.

There were many comments about the need for minorities on juries. For example, as one Hispanic litigator outside New York City said:

> When trying cases, you need at least one minority on the jury. You just need one to stop the stereotype typecasting from happening in the jury room. Otherwise the jury, when deliberating, may say things like, "They all steal hubcaps" or "They all do this."

However, there is no universal agreement that the presence of at least one minority is sufficient. As one white litigator outside New York City wrote:

> I also worry about the jury composed of all whites and <u>one single</u> minority member--I worry that said individual will not have a truly equal 1/12th or 1/6th voice unless he or she is a very dominant-type personality, [and] will [not] "go

with the flow" for whatever reasons, such as a feeling of isolation, and will, in effect, result in an all-white jury with the appearance of racial mixing.

Some litigators specifically commented on the fact that the strong likelihood of an all-white jury in some counties causes them to avoid the jury process because they feel their client will not get a fair trial. For example, one white litigator outside of New York City recounted:

> I recently represented a young black man who was indicted for murder and manslaughter as the result of a fight which occurred at [a] prison. This man strenuously protested his innocence of the charges and wanted very much to go to trial. If he exercised his right to a trial, however, he would be tried before a rural, conservative, all-white jury in a case in which two white corrections officers were prepared to give testimony which was directly contrary to the defendant's version of what had occurred in the fight. Faced with this reality, my client elected to accept a plea bargain and was sentenced to 2-4 years in state prison. Although it is not possible for me to say with certainty that my client would not have received a fair trial because of his race, I can say that his apprehension was not unwarranted.

Many litigators commented on the tendency of DAs to strike minority jurors. The following comments are typical: "I have seen prosecutors systematically strike potential minority jurors" (White, outside New York City) or "Qualified and competent blacks are preempted by assistant DAs as jurors" (White, outside New York City) or "Potential black jurors are almost always challenged in cases with black litigants" (White, New York City) or "During jury selection a DA systematically challenged every black female on the panel whose name was selected" (Hispanic, outside New York City) or "Despite Batson, prosecutors usually exclude most or all black jurors from a trial of a black defendant expressing some nonracial grounds for the peremptory challenges" (White, New York City) and finally, another litigator complained of the "exercise of 8 or 9 peremptory challenges by prosecutor against black voir dire persons in panel that was 44% black" (White, New York City). It

seems apparent that despite Batson there is a real problem associated with prosecutorial challenges. One white attorney outside of New York City recounted the following:

> An ADA tried to use a peremptory challenge on the only black member of a jury panel, in a case where my client was black. I cited Batson v. Kentucky but the judge said he'd allow the challenge. The ADA withdrew the challenge after consulting with his superior, but the judge would have allowed it.

Litigators were also asked about the importance of greater representation of minorities on juries. These findings are presented in Table 41.

Table 41. The Importance of Greater Minority Representation on Juries*
(Numbers in parenthesis are percentages)

NEW YORK CITY												OUTSIDE NYC						TOTAL		
WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
Very Impor/ Impor.	Some-what Impor.	Not Impor-tant	Very Impor/ Impor.	Some-what Impor.	Not Impor-tant	Very Impor/ Impor.	Some-what Impor.	Not Impor-tant	Very Impor/ Impor.	Some-what Impor.	Not Impor-tant	Very Impor/ Impor.	Some-what Impor.	Not Impor-tant	Very Impor/ Impor.	Some-what Impor.	Not Impor-tant	Very Impor/ Impor.	Some-what Impor.	Not Impor-tant
49 (35.9)	35 (26.0)	52 (38.1)	119 (90.8)	9 (6.9)	3 (2.3)	106 (82.8)	10 (7.8)	12 (9.4)	41 (56.1)	22 (30.1)	10 (13.7)	80 (54.3)	44 (29.7)	24 (16.0)	95 (94.1)	5 (5.0)	1 (1.0)	490 (68.3)	125 (17.5)	101 (14.2)

* See Appendix B, Table B-41, for means, standard deviations, and tests of significance.

Overall, 68% of litigators stated that it is "important/very important" to have greater minority representation on juries; 36% of Whites, 91% of Blacks, 83% of Hispanics, and 56% of Asians in New York City, and 54% of Whites and 94% of minorities outside of New York City, gave this response. Whites in New York City attached significantly less importance to greater minority representation on juries than any minority group in New York City. Outside New York City, minority litigators attached a significantly greater importance to this than white litigators. It is apparent that this issue is of great salience to minority attorneys. However, substantial numbers of white litigators supported the importance of this issue.

3.0 The Voir Dire Process

A series of questions was asked about the voir dire process. Litigators were asked who conducts the voir dire (judge, litigator, judge and litigator, or "depends on the judge"); whether voir dire is conducted with individuals, in groups, or both; whether they are satisfied with the voir dire as a mechanism for excluding racially biased jurors; and whether they believe jurors respond honestly to voir dire questions about race. These findings are presented in Tables 42 through 45.

Table 42. Percent Responding that Jurors Respond Honestly to Voir Dire Questions About Racial Bias*
(Numbers in parenthesis are percentages)

NEW YORK CITY				OUTSIDE NYC		
White (N=123)	Black (N=103)	Hisp. (N=96)	Asian (N=41)	White (N=123)	Min. (N=79)	Total (N=565)
42 (34.2)	11 (10.7)	20 (20.8)	11 (26.8)	37 (30.1)	10 (12.7)	131 (23.2)

* See Appendix B, Table B-42, for tests of significance.

The most important finding is that, overall, 23% of litigators said "yes" to the question "Do you think that jurors on the whole respond honestly to voir dire questions about racial bias?"; 77% answered "no." While there are significant differences among groups, it is striking that only 34% of Whites in New York City and 30% of Whites outside of New York City reported that jurors respond honestly to questions about racist bias. Among the minority groups these percentages are even lower: 11% of Blacks, 21% of Hispanics, and 27% of Asians in New York City, and 13% of minorities outside New York City, answered "yes" to this question.

Table 43. Satisfaction with the Voir Dire Process as a Way of Ensuring that Individuals Who Are Racially Biased Are Excused*

(Numbers in parenthesis are percentages)

NEW YORK CITY												OUTSIDE NYC						TOTAL		
WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY					
Very Satisfied	Satisfied	Dissat./ Very Dissat.	Very Satisfied	Satisfied	Dissat./ Very Dissat.	Very Satisfied	Satisfied	Dissat./ Very Dissat.	Very Satisfied	Satisfied	Dissat./ Very Dissat.	Very Satisfied	Satisfied	Dissat./ Very Dissat.	Very Satisfied	Satisfied	Dissat./ Very Dissat.	Very Satisfied	Satisfied	Dissat. Very Dissat.
21 (16.5)	58 (46.9)	46 (36.6)	6 (5.8)	37 (35.9)	60 (58.3)	4 (4.2)	48 (50.5)	43 (45.3)	2 (4.9)	23 (56.1)	16 (39.0)	10 (8.4)	77 (62.8)	35 (28.7)	2 (2.6)	29 (37.2)	47 (60.2)	45 (8.0)	272 (48.3)	247 (43.7)

* See Appendix B, Table B-43, for means, standard deviations, and tests of significance.

Not surprisingly, given the findings in Table 42, there was marked dissatisfaction with the voir dire process as a way of ensuring a bias-free jury. Overall, 44% of respondents reported that they are "Dissatisfied/Very Dissatisfied" "with the voir dire process as a way of ensuring that individuals who are racially biased are excused." There are significant differences among groups; 37% of New York City Whites, 58% of New York City Blacks, 45% of New York City Hispanics, 39% of New York City Asians, and 29% of Whites and 60% of minorities outside of New York City reported dissatisfaction.

Table 44. Litigator's and Judges' Participation in Portion of Voir Dire Process Designed to Ensure a Neutral Jury*
(Numbers in parentheses are percentages)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
Only litigators participate.	51 (46.4)	32 (31.4)	32 (34.4)	12 (32.4)	49 (42.0)	17 (23.6)	193 (36.4)
Depends on the judge.	31 (27.8)	43 (42.2)	19 (20.4)	11 (29.7)	31 (26.7)	26 (36.1)	161 (30.3)
The litigator and judge participate.	27 (24.4)	24 (23.5)	39 (41.9)	12 (32.4)	32 (27.3)	28 (38.9)	162 (30.5)
The judge is the primary or sole questioner.	2 (1.4)	3 (2.9)	3 (3.2)	2 (5.4)	5 (4.0)	1 (1.4)	15 (2.9)

* See Appendix B. Table B-44, for test of significance.

Social science research shows that because of social pressures people are least likely to respond honestly to questions about racial bias that are 1) posed by someone in authority and 2) are posed in a group setting. In this context the findings about how voir dire is conducted are striking. Table 44 shows that overall, 31% of litigators said that the judge (a clear authority figure in the court) participates actively in the voir dire questioning, with an additional 3% saying that the judge is the primary or sole questioner. Thus, a third of the litigators said that in their experience the voir dire process customarily involves questions

posed by an authority figure (the judge). The responses to this question differed significantly among groups; 26% of Whites, 26% of Blacks, 45% of Hispanics, and 38% of Asians in New York City, and 31% of Whites and 40% of minorities outside New York City, gave this response.

Table 45. Is Voir Dire Conducted with Individuals or Groups?
(Numbers in parentheses are percentages)

	NEW YORK CITY				OUTSIDE NYC		TOTAL
	White	Black	Hisp.	Asian	White	Min.	
Individuals	11 (9.3)	16 (16.3)	14 (15.7)	3 (7.9)	18 (14.6)	5 (6.8)	67 (12.4)
Groups	49 (41.6)	40 (40.8)	32 (36.0)	13 (34.2)	37 (31.0)	27 (36.5)	198 (36.9)
Both	58 (49.1)	42 (42.9)	43 (48.3)	22 (57.9)	66 (54.4)	42 (56.8)	272 (50.7)

* See Appendix B, Table B-45, for test of significance.

Regarding the issue of whether voir dire is conducted with individuals or with groups, 37% of litigators overall reported that in their experience voir dire is always a group process. Interestingly, there were no differences among groups. Thus, 42% of Whites, 41% of Blacks, 36% of Hispanics, and 34% of Asians in New York City, and 31% of Whites and 37% of minorities outside New York City, reported that voir dire is always a group phenomenon. Again, given what is known about social pressures to give an acceptable response, it is unlikely that racial bias will surface in a group setting.

Some litigators commented on specific experiences with voir dire. For example, one black litigator in New York City stated, "I have had white Judges ask very insensitive questions of potential minority jurors to discourage them from serving."

One white attorney in New York City summarized dissatisfaction with the voir dire process as follows:

> Further, for the few defendants with the courage to go to trial, the system's mania for speed and "efficiency" often results in woefully inadequate jury selection based on a false belief that the process is inordinately time consuming. As a result, attorneys have little to rely on in selecting jurors and thus often fall back on their own racial biases and prejudices in exercising peremptory challenges.

4.0 Conclusions

Despite large minority populations in New York City and large minority populations of defendants, all too often juries are all-white. There is widespread support of the view that more minorities need to be on juries and that the problem lies both with the venire and with exclusions that occur during voir dire.

Many litigators reported that frequently judges participate in the voir dire process and that voir dire is always conducted in groups. Large numbers of litigators also expressed dissatisfaction with the voir dire process; overall, 77% stated that they do not believe that jurors answer race-bias questions honestly. In the context of this concern, the prevalence of judge-conducted group voir dire raises questions about socially desirable responses and the extent to which these practices contribute to juror lack of truthfulness about racial bias.

XII. SUMMARY OF MAJOR FINDINGS

Treatment of Minority Litigants and Witnesses

- Substantial numbers of litigators reported maltreatment of minority litigants. Use of racial stereotypes; ethnic jokes, epithets, and demeaning remarks; comments about personal appearance; use of first names; and general disrespect and discourtesy toward minorities are not at all uncommon in New York State Courts.
- Litigators reported that white witnesses are treated with greater courtesy than are minority witnesses and that their testimony is given greater credibility.

- Litigators also reported that white jurors sympathize more with white victims and react more positively to white litigants.
- More minority than white litigators had witnessed biased treatment, but even more than one out of four white litigators had witnessed such treatment.
- Courts that are used primarily by minorities ("ghetto" courts) are perceived by litigators as being in far worse physical condition than are courts that are used by substantial numbers of white litigants.

Aspirations to the Bench and Perceived Importance of Minority Representation in the Judiciary

- Substantial numbers of minority litigators aspire to the bench. Many lack the requisite ten years in practice, but also believe that other barriers will keep them from the judiciary.
- There is a great deal of support for increasing minority representation in the judiciary; even a majority of litigators outside New York City showed such support.
- The majority of litigators in each group favors cultural sensitivity training for judges.

Legal Representation of Minorities

- Both white and minority litigators reported greater frequency of inadequate legal representation for minority than for white litigants. Adequacy of legal representation for minorities is seen as a substantial problem.
- Both white and minority litigators reported greater frequency of lack of representation in civil cases for minority than for white litigants. Availability of representation for minorities in civil cases is a substantial problem.

Nonjudicial Work Force

- All-white courtrooms, particularly outside of New York City, are commonplace.
- Substantial numbers of litigators believe that minority representation among nonjudicial personnel should be increased.
- The majority of litigators in every group supported the importance of cultural sensitivity training for nonjudicial personnel.

Race-Related Disparities in Civil Case Outcomes

- Race-related disparities in civil case outcomes are reported by substantial numbers of litigators.

Adequacy of Interpretation and Other Services

- Substantial numbers of litigators reported adverse impact due to lack of low skill level of interpreters.
- Transportation problems are perceived to be a greater problem for minority, than for white, litigants by litigants in all groups.

Race-Related Disparities in Pretrial Processing and Criminal Case Outcomes

- Litigators reported that preferential treatment of white defendants in pretrial release, in bailsetting, in release on their own recognizance, in use of dispositional alternatives to incarceration, and in use of prison sentences are all commonplace.

Representation and Treatment of Minorities in the Legal Profession

- Minority litigators, especially Blacks, in organizations perceived substantially fewer opportunities for minorities than for Whites.
- Most organizations were reported as doing very little to recruit minority attorneys.

- Minority litigators reported substantial discourtesy and lack of professional treatment in the courts.
- Large proportions of minorities reported not applying for fiduciary appointments because of a lack of knowledge of how to apply.
- Black litigators reported knowing more attorneys who have been disciplined than litigators in any other group.
- Black and Hispanic litigators were substantially less likely to have malpractice insurance, primarily due to high cost.
- Overall, minority litigators are substantially less satisfied with their professional opportunities than are white litigators.

Bar Passage

- More black and Hispanic than white or Asian litigators took the bar exam more than once.
- Belief about the relevance of the bar exam to practice and about the exam's bias is related to the number of efforts at passage rather than to race.

Representation and Treatment of Minorities on Juries

- All-white juries are commonplace. There is widespread agreement that minority representation on juries needs to be increased.
- The majority of litigators in all groups stated that they do not believe that jurors answer race-bias questions honestly.

APPENDIX A

SURVEY INSTRUMENT

FOR ATTORNEYS WHO LITIGATE

IN NEW YORK STATE COURTS:

QUESTIONNAIRE ON

ISSUES RELATING TO PROFESSIONAL EXPERIENCES AND

PERCEPTIONS OF FAIRNESS AND SENSITIVITY

IN THE COURTROOM

PLEASE NOTE: YOUR RESPONSE TO THIS QUESTIONNAIRE IS ENTIRELY CONFIDENTIAL. RESPONSES WILL BE AGGREGATED AND WILL NOT BE CONNECTED WITH ANY INDIVIDUAL.

DATE: _____

March 16, 1989

ATTORNEY QUESTIONNAIRE

For Office use only

ID _____ (1)

1. How many years has it been since you were admitted to practice in the State of New York? __ _____ _____ (2)

2. In what counties do you practice? (List top 3 by frequency of court appearances) _____ (3)
_____ (4)
_____ (5)

3. In which New York State courts do you most frequently appear? CHECK UP TO FIVE COURTS

1 ( ) Court of Appeals (6)

2 ( ) Appellate Division/Supreme Court _____ Dept. (7)

3 ( ) Appellate Term/Supreme Court _____ Dept. (8)

4 ( ) Supreme Court _____ District _____ County (9)

5 ( ) Court of Claims (Part A) (10)

6 ( ) Court of Claims (Assigned to Supreme Court) _____ County (11)

7 ( ) Surrogate Court _____ County (12)

8 ( ) County Court _____ County (13)

9 ( ) Family Court _____ County (14)

10 ( ) NYC Criminal Court _____ County (15)

11 ( ) NYC Civil Court _____ County (16)

12 ( ) NYC Housing Part _____ County (17)

13 ( ) District Court _____ County (18)

14 ( ) City Court _____ City (19)

15 ( ) Other (specify)_____ (20)

(21)
(22)
(23)
(24)
(25)
(26)
(27)
(28)
(29)
(30)

4. Are you currently practicing law as: (CHECK AS MANY AS APPLY, INCLUDING PART-TIME POSITIONS)

For Office use only

1( ) A solo practitioner or a practitioner in a firm of no more than four attorneys (IF FULL-TIME IN A PRACTICE OF 1-4 ATTORNEYS, SKIP TO QUESTION 7 ON PAGE 4) ____ 31

( ) An attorney in a law firm with 5-20 attorneys
IF YES, PLEASE SPECIFY WHETHER:

1( ) Partner 2( ) Associate ____ 32

( ) An attorney in a law firm with more than 20 attorneys
IF YES, PLEASE SPECIFY WHETHER:

1( ) Partner 2( ) Associate ____ 33

1( ) An attorney in a corporation/insurance company ____ 34

1( ) Public agency counsel (e.g. Corp. Counsel, State or City Agency or Government) ____ 35

1( ) A legal aid attorney (criminal cases) or an attorney in a public defender's office ____ 36

1( ) An attorney in a prosecutor's office (DA, Asst. DA, AG's office) ____ 37

1( ) Legal services attorney or other provider of civil legal representation to the poor (includes public interest and non-profit organizations) ____ 38

1( ) Other (specify) _____ ____ 39

5. Are you aware of any special efforts made by your organization to recruit minority attorneys? (CHECK AS MANY AS APPLY)

	Yes 1	
a) Outreach to minority student organizations at majority law schools	( )	40
b) Interviews at minority law schools	( )	41
c) Minority summer internships	( )	42
d) Participation in minority-sponsored job fairs	( )	43
e) Advertisements in minority media	( )	44
f) Other (Specify) _____	( )	45
_____		46
_____		47

6. Based on experience within your organization would you say that you strongly agree, agree, disagree or strongly disagree with each of the following? If you have no experience, mark the column no experience.

	strongly agree 4	agree 3	dis-agree 2	strongly disagree 1	no exp. 0	For office use only
a. In order to be hired, minority lawyers have to have higher grade point averages and academic qualifications than non-minority lawyers.	( )	( )	( )	( )	( )	48
b. Minority lawyers tend to be assigned more limited, less complex cases.	( )	( )	( )	( )	( )	49
c. Minority lawyers lack mentors.	( )	( )	( )	( )	( )	50
d. Minority lawyers receive less feedback about their work because non-minority lawyers are uncomfortable criticizing them.	( )	( )	( )	( )	( )	51
e. Minority lawyers are less likely to be included in social events.	( )	( )	( )	( )	( )	52
f. Minority lawyers have fewer opportunities for advancement.	( )	( )	( )	( )	( )	53
g. Minority lawyers are sometimes given hiring preference over academically better qualified non-minority lawyers.	( )	( )	( )	( )	( )	54
h. A minority lawyer in the organization is less likely than a white lawyer with comparable experience to make partner/supervisor.	( )	( )	( )	( )	( )	55
i. Minority lawyers have fewer opportunities than white lawyers to participate in continuing education or training opportunities.	( )	( )	( )	( )	( )	56

7. Considering the last year, please provide an approximate breakdown of the race/ethnicity of your clients.

		For office use only
White	_____ %	
Black	_____ %	57
Hispanic	_____ %	58
Asian	_____ %	59
Native Americans	_____ %	60
	100%	61

8. In the past 12 months approximately how many courtroom or in-chambers appearances have you made in state court? _____ 62

9. How many of these have been on behalf of minority clients? (Please give the actual number or estimate - not a %) _____ 63

10. In your experience, how often does each of the following occur? If you have no relevant experience in a particular case, check the column marked "not applicable". Thus, for example, if you do not handle criminal cases, you would check "not applicable" for all items dealing with criminal matters. Similarly, if you do not handle civil matters, you would check "not applicable" for all items dealing with civil lawsuits and settlements. If, on the other hand, you have relevant experience, but the phenomenon in question never occurs, then you would check "never".

	very often 51-100%	often 26-50%	some-times 6-25%	rarely 1-5%	never 0%	Not appl	
a. The testimony of a minority expert witness is less effective because of juror reactions to the expert's race.	( )	( )	( )	( )	( )	( )	64
b. The testimony of a minority lay witness is less effective because of juror reactions to the witness' race.	( )	( )	( )	( )	( )	( )	65
c. Court personnel are disrespectful and discourteous to minority litigants.	( )	( )	( )	( )	( )	( )	66
d. Court personnel are disrespectful and discourteous to white litigants.	( )	( )	( )	( )	( )	( )	67

Attorney Questionnaire
(Question 10 Continued)

	very often 51-100%	often 26-50%	some-times 6-25%	rarely 1-5%	never 0%	Not appl	For office use only
e. Court personnel are more respectful of white attorneys than of minority attorneys.	( )	( )	( )	( )	( )	( )	68
f. Court officers call cases of white attorneys ahead of cases of minority attorneys.	( )	( )	( )	( )	( )	( )	69
g. Court officers offer assistance to white attorneys.	( )	( )	( )	( )	( )	( )	70
h. Court officers offer assistance to minority attorneys.	( )	( )	( )	( )	( )	( )	71
i. Minority litigants receive inadequate legal representation.	( )	( )	( )	( )	( )	( )	72
j. Minority litigants are unrepresented in civil cases.	( )	( )	( )	( )	( )	( )	73
k. White litigants receive inadequate legal representation.	( )	( )	( )	( )	( )	( )	74
l. White litigants are unrepresented in civil cases.	( )	( )	( )	( )	( )	( )	75
m. Minority jurors respond more favorably to white attorneys than to minority attorneys.	( )	( )	( )	( )	( )	( )	76
n. White jurors respond more favorably to white attorneys than to minority attorneys.	( )	( )	( )	( )	( )	( )	77
o. Minority jurors react more positively to a white litigant than to a minority litigant.	( )	( )	( )	( )	( )	( )	78
p. White jurors react more positively to a white litigant than to a minority litigant.	( )	( )	( )	( )	( )	( )	79

Attorney Questionnaire
(Question 10 Continued)

	very often 51-100%	often 26-50%	some-times 6-25%	rarely 1-5%	never 0%	Not appl	For office use only
q. Minority jurors sympathize more with a white victim than with a minority victim.	( )	( )	( )	( )	( )	( )	80
r. White jurors sympathize more with a white victim than with a minority victim.	( )	( )	( )	( )	( )	( )	81
s. A case involving a minority litigant is decided by an all-white jury.	( )	( )	( )	( )	( )	( )	82
t. A case involving a minority litigant is decided by a jury that is predominantly minority.	( )	( )	( )	( )	( )	( )	83
u. White attorneys get more respect and cooperation from other attorneys than do minority attorneys.	( )	( )	( )	( )	( )	( )	84
v. Judges pay more attention or give more credibility to statements of white attorneys than to those of minority attorneys.	( )	( )	( )	( )	( )	( )	85
w. Minority attorneys are more likely than white attorneys to be asked whether they are attorneys.	( )	( )	( )	( )	( )	( )	86
x. Minority attorneys are more likely than white attorneys to be questioned about their credentials.	( )	( )	( )	( )	( )	( )	87
y. Minority attorneys are more likely than white attorneys to be required to pass through a screening device or to show identification.	( )	( )	( )	( )	( )	( )	88
z. Minority attorneys, litigants, or witnesses are addressed by first name, while white attorneys, litigants, or witnesses are addressed more formally.	( )	( )	( )	( )	( )	( )	89

Attorney Questionnaire
(Question 10 Continued)

	very often 51-100%	often 26-50%	some-times 6-25%	rarely 1-5%	never 0%	Not appl	For office use only
a1. Comments are made by the judge about the personal appearance of minority attorneys, litigants, or witnesses when no comments are made about the appearance of white attorneys, litigants, or witnesses.	( )	( )	( )	( )	( )	( )	90
b1. Attorneys are more respectful and courteous toward white witnesses than toward minority witnesses in cross examination.	( )	( )	( )	( )	( )	( )	91
c1. A civil case is regarded by attorneys or insurance companies as less "winnable" because the injured party is minority.	( )	( )	( )	( )	( )	( )	92
d1. Minority judges find a white lay witness more credible than a minority witness giving the same testimony.	( )	( )	( )	( )	( )	( )	93
e1. White judges find a white lay witness more credible than a minority witness giving the same testimony.	( )	( )	( )	( )	( )	( )	94
f1. White judges give more credibility to white expert witnesses than to minority expert witnesses.	( )	( )	( )	( )	( )	( )	95
g1. Minority judges give more credibility to white expert witnesses than to minority expert witnesses.	( )	( )	( )	( )	( )	( )	96
h1. The relief awarded to a white plaintiff in a civil case is more than the relief awarded to a minority plaintiff in a comparable case.	( )	( )	( )	( )	( )	( )	97
i1. Transportation problems (cost or access) lead to delays in handling cases of minority litigants.	( )	( )	( )	( )	( )	( )	98

Attorney Questionnaire
(Question 10 Continued)

	very often 51-100%	often 26-50%	sometimes 6-25%	rarely 1-5%	never 0%	Not appl	For office use only
j1. Transportation problems (cost or access) lead to delays in handling cases of white litigants.	( )	( )	( )	( )	( )	( )	99
k1. A case involving a minority litigant is heard in a courtroom in which all non-judicial personnel (clerks, court officers and stenographers) are white.	( )	( )	( )	( )	( )	( )	100
l1. Judges, attorneys or courtroom personnel publicly repeat ethnic jokes involving minorities, use racial epithets, or make demeaning remarks about a minority group.	( )	( )	( )	( )	( )	( )	101
m1. Racial stereotypes affect the evaluation of litigants' claims.	( )	( )	( )	( )	( )	( )	102
n1. The lack of readily available interpreters adversely affects Hispanic, Asian and Haitian litigants.	( )	( )	( )	( )	( )	( )	103
o1. The low level of the skills of interpreters, when available, adversely affects Hispanic, Asian and Haitian litigants.	( )	( )	( )	( )	( )	( )	104
p1. Minority clients express greater satisfaction when they are represented by a minority lawyer.	( )	( )	( )	( )	( )	( )	105
q1. The court enforces a child support award for a white child more vigorously than it does for a minority child in similar circumstances.	( )	( )	( )	( )	( )	( )	106

Attorney Questionnaire
(Question 10 Continuned)

	very often 51-100%	often 26-50%	some-times 6-25%	rarely 1-5%	never 0%	Not appl	For Office use on
r1. The court treats a domestic violence case involving a white couple more seriously than one involving a minority couple in similar circumstances.	( )	( )	( )	( )	( )	( )	107

ONLY FOR ATTORNEYS WHO HANDLE CRIMINAL CASES [ALL OTHER ATTORNEYS SKIP TO QUESTION 11]

s1. A criminal case is regarded by defense attorneys as more "winnable" because the defendant is white.	( )	( )	( )	( )	( )	( )	108
t1. A criminal case is regarded by prosecutors as more "winnable" because the victim is white.	( )	( )	( )	( )	( )	( )	109
u1. A white defendant is released, with or without bail, pending trial in a situation that would lead to detention for a minority defendant.	( )	( )	( )	( )	( )	( )	110
v1. White defendants (adult or juvenile) are less likely to receive prison sentences than are minority defendants with similar records convicted of the same crimes.	( )	( )	( )	( )	( )	( )	111
w1. White defendants are more likely to be released on their own recognizance than are minority defendants accused of the same crimes, with similar records and similar community ties.	( )	( )	( )	( )	( )	( )	112

	very often 51-100%	often 26-50%	some-times 6-25%	rarely 1-5%	never 0%	Not appl	For Office use on.
x1. In the case of a white defendant/respondent, (adult or juvenile) the court is encouraged by counsel to consider a wider range of dispositional alternatives (e.g. drug treatment programs, community service programs, private placements or treatment programs, supervised home release) than that presented in cases involving minority defendants/respondents.	( )	( )	( )	( )	( )	( )	113
y1. Minority defendants complain of physical maltreatment while they are in the holding areas within the courts.	( )	( )	( )	( )	( )	( )	114
z1. White defendants complain of physical maltreatment while they are in the holding areas within the courts.	( )	( )	( )	( )	( )	( )	115
a2. Lower bail is set for white defendants than for minority defendants accused of similar crimes, with similar records and similiar community ties.	( )	( )	( )	( )	( )	( )	116

11. How would you characterize the extent, if any, of your participation in that part of the voir dire which is designed to ensure a racially neutral jury?

1( ) I conduct my own voir dire in all cases.

2( ) I conduct my own voir dire when possible, but that depends on the judge.

3( ) I ask some questions and so does the judge.

4( ) The judge is the primary or sole questioner.

5( ) Other (specify) _____

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12. In your experience, is voir dire conducted with individuals or with groups of individuals?

1( ) individuals 2( ) groups of individuals

3( ) both

113

13. How satisfied are you with the voir dire process as a way of ensuring that individuals who are racially biased are excused?

1( ) very satisfied 2( ) satisfied

3( ) dissatisfied 3( ) very dissatisfied

114

14. Do you think that on the whole jurors respond honestly to voir dire questions about racial bias?

1( ) Yes 2( ) No

115

15. Have you ever experienced a situation in which you perceived the treatment of minority attorneys, litigants, jurors, or witnesses to be unfair or insensitive, or otherwise different from the treatment of whites?

( ) Yes (PLEASE GIVE SPECIFIC EXAMPLES. ATTACH EXTRA PAGES IF NECESSARY)

116

_____

117

_____

118

_____

119

_____

120

*0( ) No

15a. IF YES TO Q. 15, Have you ever protested unfair or insensitive treatment of a minority attorney, litigant, juror, or witness to the appropriate authority?

( ) Yes (PLEASE GIVE SPECIFIC EXAMPLES. ATTACH EXTRA PAGES IF NECESSARY)

121

_____

122

_____

123

_____

124

_____

125

*0( ) No

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15b. IF NO TO Q. 15A, If you have observed unfair treatment, but have not reported it, why was this? (CHECK ALL THAT APPLY)

1( ) Don't know where to report. 131

1( ) Afraid of reprisals against client. 132

1( ) Afraid of reprisals against self. 133

1( ) Other (specify) _____ 134

16. Have you ever heard any judge make a statement which suggested that he/she was going beyond the facts of a specific case to allow racial/ethnic stereotypes about a group of people to influence his/her decision?

( ) Yes (PLEASE GIVE SPECIFIC EXAMPLES. ATTACH EXTRA PAGES IF NECESSARY)

_____ 135

_____ 136

_____ 137

_____ 138

_____ 139

*0( ) No

17. Please rate each of the following in terms of the importance you ascribe to them:

	Very Impor. 4	Impor. 3	somewhat impor. 2	not impor. 1	
a) Training for attorneys on cultural/racial sensitivity	( )	( )	( )	( )	140
b) Greater numerical representation of minorities on the bench	( )	( )	( )	( )	141
c) Training for judges on cultural/racial sensitivity	( )	( )	( )	( )	142
d) Greater numerical representation of minorities among attorneys appearing in the courts	( )	( )	( )	( )	143
e) Greater numerical representation of minorities among non-judicial personnel in the courtroom	( )	( )	( )	( )	144
f) Training for non-judicial personnel on cultural/racial sensitivity	( )	( )	( )	( )	145
g) Greater numerical representation of minorities on juries	( )	( )	( )	( )	146

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18. Are you on an 18-B (assigned counsel) panel in your county? 147

1( ) Yes

2( ) No, interested but never applied.

3( ) No, applied but not selected.

4( ) No, not interested.

[IF NO, SKIP TO Q. 19]

18a. IF YES TO Q. 18, How many 18-B cases have you had in the last 12 months? _____ 148

18b. IF YES TO Q. 18, Approximately what percentage of your current criminal cases are court-assigned work under the 18-B system? 149

1( ) 0 - 5% 2( ) 6% - 50%

3( ) 51% - 100%

19. Have you ever applied to be on a list from which judges make appointments to fee-generating positions? 150

1( ) Yes 2( ) No, don't know where to apply

3( ) No, not interested 4( ) No, because the likelihood of getting any cases is so small

19a. IF YES TO Q. 19, Has a judge appointed you to a fee generating position within the last two years? 151

1( ) Yes 2( ) No

20. IF YES TO Q. 19a, Do minority attorneys tend to be awarded the same fees as non-minority attorneys for similar work? 152

1( ) Yes 2( ) No 3( ) Do not know

21. Have you ever wanted to be a judge? 153

1( ) Yes 2( ) No (SKIP TO Q. 22)

21a. IF YES TO Q. 21, Have you ever made this interest known to any appropriate nominating committee or authority?

( ) Yes (Please describe what happened) _____ 154

_____ 155

_____ 156

_____ 157

_____ 158

*0( ) No

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21b. IF NO TO Q. 21a, Why haven't you made your interest known to any nominating committee or authority? (CHECK ALL THAT APPLY)

1( ) Insufficient number of years in practice — 159

1( ) Insufficient litigation experience — 160

1( ) Lack of access to positions from which judges are drawn — 161

1( ) Insufficient academic credentials — 162

1( ) Racial minority unlikely to be appointed or elected — 163

1( ) Lack of professional and/or political contacts — 164

1( ) Other (please specify)_____ — 165

_____ — 166

_____

_____

22. Do you know any attorneys whose professional behavior has been reviewed by a Grievance Committee or Disciplinary Committee of any of the Appellate Divisions of New York State?

1( ) Yes 2( ) No (SKIP TO Q. 23) — 167

22a. IF YES TO Q. 22, Please estimate how many (not %'s) of these cases involved minority and white attorneys, respectively:

Minority _____ — 168

White _____ — 169

22b. IF YES TO Q. 22, Is it your belief that the race of the attorney affected the initiation or the outcome of any of the disciplinary proceedings with which you are familiar?

( ) Yes (Please explain: _____ — 170

_____ — 171

_____ — 172

_____ — 173

_____ — 174

*0( ) No

* numbers are for office use only

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23. Are you currently a member of any bar association in New York State?

1( ) Yes ____ 175

2( ) No (SKIP TO Q. 24)

23a. IF YES TO Q. 23, Please indicate the bar association(s) to which you belong: [CHECK ALL THAT APPLY]

1( ) New York State Bar Association ____ 176

1( ) City Bar Association _____ (specify) ____ 177

1( ) County Bar Association _____ (specify) ____ 178

1( ) Minority Bar Association _____ (specify) ____ 179

1( ) Other _____ (specify) ____ 180

23b. IF YES TO Q.23, Do you actively participate (i.e. attend committee meetings as a voting member) on any committee of any of the non-minority bar associations indicated above?

( ) Yes (specify the bar association(s) and the relevant committee(s)

	Bar Association	Committee	
1)	_____	_____	181
2)	_____	_____	182
3)	_____	_____	183
4)	_____	_____	184
5)	_____	_____	185

*0( ) No

* numbers are for office use only

For Office use only

24. IF NO TO Q. 23, What are the reasons that you are not an active participant on any committee of a non-minority bar association? [CHECK ALL THAT APPLY]

1( ) Not interested

1( ) No time — 186

1( ) Serve on committee(s) of a minority bar association — 187

1( ) Feel uncomfortable on a committee dominated by non-minority members — 188

1( ) Sought appointment to a committee, but was not accepted — 189

1( ) Unfamiliar with application process — 190

1( ) Application process is tedious — 191

1( ) Other(specify) _____ — 192

25. Do you have malpractice insurance? — 193

1( ) Yes covered by my organization/firm

2( ) Yes, self paid — 194

3( ) No

25a. IF NO TO Q. 25, Is your lack of malpractice insurance because of its high cost?

1( ) Yes 2( ) No — 195

25b. IF NO TO Q. 25, Is your lack of malpractice insurance a hinderance to your practice of law in any of the following ways? (Check all that apply)

1( ) Keeps me from taking certain types of cases

2( ) Keeps me from being listed with a lawyer referral service — 196

3( ) Other (specify) _____ — 197

4( ) Other (specify) _____ — 198

26. How satisfied are you with your professional opportunities as an attorney? — 199

1( ) Very satisfied 3( ) Dissatified

2( ) Satisfied 4( ) Very dissatisfied — 200

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26a. If you checked dissatisfied or very dissatisfied as your response to Q. 26, please explain the source(s) of your dissatisfaction.

_____ 201

_____ 202

_____ 203

_____ 204

_____ 205

27. How many times did you take the New York State Bar Exam?

_____ 206

28. How relevant was your ability to answer questions successfully on the bar exam to your practice as an attorney?

1( ) Extremely relevant

2( ) Relevant

3( ) Irrelevant 207

29. To what extent, if any, do you feel the bar exam is biased against minorities?

1( ) Considerably biased

2( ) Somewhat biased

3( ) Not at all biased 208

30. How useful was your law-school education as preparation for the bar exam?

1( ) Very useful

2( ) Somewhat useful

3( ) Not at all useful 209

31. How would you describe the physical conditions of the New York State courts in which you have practiced?

	Exc. 4	Good 3	Adeq. 2	Poor 1	No Exper. 0	For Office use only
Court of Appeals	( )	( )	( )	( )	( )	210
Appellate Division/ Supreme Court	( )	( )	( )	( )	( )	211
Supreme Court	( )	( )	( )	( )	( )	212
Court of Claims (Part A)	( )	( )	( )	( )	( )	213
Surrogate Court	( )	( )	( )	( )	( )	214
County Court	( )	( )	( )	( )	( )	215
Family Court	( )	( )	( )	( )	( )	216
NYC Criminal Court	( )	( )	( )	( )	( )	217
NYC Civil Court	( )	( )	( )	( )	( )	218
NYC Housing Court	( )	( )	( )	( )	( )	219
District Court	( )	( )	( )	( )	( )	220
City Court	( )	( )	( )	( )	( )	221

32. Are there public services (e.g. childcare, information booth) that should be provided in the courts in which you practice, but are not provided?

( ) Yes (Please specify)

1. _____ 222
2. _____ 223
3. _____ 224
4. _____ 225
5. _____ 226

*0( ) No

*numbers are for office use only

33. For the five courts in which you appear most frequently, please indicate the court and the approximate minority percentage for each of the following in that court.

(NAME OF COURT)	0-10% 1	11-25% 2	26-50% 3	51-75% 4	76-100% 5	no exp. 0	For Office use only
Court Personnel	( )	( )	( )	( )	( )	( )	227
Criminal Defendants	( )	( )	( )	( )	( )	( )	228
Civil Defendants	( )	( )	( )	( )	( )	( )	229
Civil Plaintiffs	( )	( )	( )	( )	( )	( )	230
							231

(NAME OF COURT)	0-10% 1	11-25% 2	26-50% 3	51-75% 4	76-100% 5	no exp. 0	
Court Personnel	( )	( )	( )	( )	( )	( )	232
Criminal Defendants	( )	( )	( )	( )	( )	( )	233
Civil Defendants	( )	( )	( )	( )	( )	( )	234
Civil Plaintiffs	( )	( )	( )	( )	( )	( )	235
							236

(NAME OF COURT)	0-10% 1	11-25% 2	26-50% 3	51-75% 4	76-100% 5	no exp. 0	
Court Personnel	( )	( )	( )	( )	( )	( )	237
Criminal Defendants	( )	( )	( )	( )	( )	( )	238
Civil Defendants	( )	( )	( )	( )	( )	( )	239
Civil Plaintiffs	( )	( )	( )	( )	( )	( )	240
							241

(NAME OF COURT)	0-10% 1	11-25% 2	26-50% 3	51-75% 4	76-100% 5	no exp. 0	
Court Personnel	( )	( )	( )	( )	( )	( )	242
Criminal Defendants	( )	( )	( )	( )	( )	( )	243
Civil Defendants	( )	( )	( )	( )	( )	( )	244
Civil Plaintiffs	( )	( )	( )	( )	( )	( )	245
							246

Question 33 Continued

(NAME OF COURT)	0-10% 1	11-25% 2	26-50% 3	51-75% 4	76-100% 5	no exp. 0
Court Personnel	( )	( )	( )	( )	( )	( )
Criminal Defendants	( )	( )	( )	( )	( )	( )
Civil Defendants	( )	( )	( )	( )	( )	( )
Civil Plaintiffs	( )	( )	( )	( )	( )	( )

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247 248 249 250 251

34. Please indicate your primary practice concentration if you have one: _____ 252

34a. IF YOU STATED A CONCENTRATION IN Q. 34: Please list the three most important characteristics of successful attorneys in your specialty:

1. _____ 253
2. _____ 254
3. _____ 255

34b. IF YOU DID NOT STATE A CONCENTRATION IN Q. 34, please list the three most important qualities or behaviors of successful attorneys in general:

1. _____ 256
2. _____ 257
3. _____ 258

35. What law school did you attend? _____ 259

36. Are you?

1( ) White 4( ) Asian 260

2( ) Black 5( ) Native American

3( ) Hispanic

37. Are you?

1( ) Male 2( ) Female 261

Attorney Questionnaire

Use the space below and attach additional sheets as needed to explain or elaborate on any of your answers or to make any further comments on the racial fairness of the New York State Unified Court System.

If you have anything else that you would like to tell the Commission and you want someone to contact you, please give us your name, address and telephone number below.

(Name)

(Address)

(City, State, Zip)

(_____) (Telephone Number)

APPENDIX B

STATISTICAL TABLES

LE B-8a. Treatment of Litigants

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
ial stereotypes affect luation of litigants' ims.	114	1.718	.986	114	2.895	.981	110	2.427	1.161	58	1.914	1.064	108	1.492	.944	82	2.610	1.173	Groups 1 & 2; 1 & 3 2 & 4; 3 & 4 5 & 6
lges, attorneys or court- om personnel publicly peat ethnic jokes, epi- ets or demeaning remarks.	131	1.116	1.004	119	1.479	1.346	120	1.550	1.107	68	1.103	.964	138	1.040	.929	96	1.531	1.095	Groups 5 & 6
mments by judge about the rsonal appearance of nority litigants, wit- sses, and attorneys.	125	.593	.833	117	1.444	1.141	117	1.205	1.055	63	1.000	1.122	128	.391	.657	92	1.077	1.141	Groups 1 & 2 1 & 3 5 & 6
nority attorneys, itigants, witnesses ddressed by first name.	125	.824	.965	130	2.015	1.257	121	1.521	1.184	68	.927	1.097	117	.424	.634	91	1.539	1.319	Groups 1 & 2; 1 & 3 2 & 3; 2 & 4 3 & 4; 5 & 6
ourt personnel iscourteous to minority itigants.	136	1.527	1.142	130	2.315	1.093	125	2.256	1.084	69	1.855	1.033	144	.937	.766	98	1.765	1.053	Groups 1 & 2; 1 & 3 5 & 6
ourt personnel liscourteous to white itigants.	137	1.367	.852	128	1.344	.798	126	1.397	.770	70	1.400	.730	147	.963	.708	96	1.125	.785	Groups 5 & 6
Minority defendants complain of physical maltreatment in holding areas.	64	1.951	1.027	67	2.791	.930	72	2.389	1.193	22	2.136	1.167	82	1.379	.888	60	2.400	1.138	Groups 1 & 2 5 & 6
White defendants complain of physical maltreatment in holding areas.	64	1.506	.678	61	1.410	.804	69	1.391	.878	21	1.619	.865	83	1.291	.765	58	1.448	.753	Groups None

Means Based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often.

Table B-8c. Regression Analysis in the Minority Treatment Scale

(A positive correlation reflects a positive relationship with perceiving poor treatment)

	Correlations with Scale	Beta
Black	.3742**	.53 (P<.001)
Hispanic	.1349*	.34 (P<.001)
Asian	-.0286*	.18 (P<.001)
Female	.2314**	.11 (P<.01)
Number of Years in Practice (Natural Log)	-.1005	
In Solo Practice	-.0201	-.27 (P<.001)
Firm Member	-.0654	-.26 (P<.001)
Prosecutor	-.0631	-.21 (P<.001)
Legal Aid Society, and Civil Services for the Poor	.1236*	
Public Agency Counsel	-.0382	-.22 (P<.001)
Overall Adjusted R^2	.310	

* P<.01
** P<.001

Table B-9a. Credibility and Treatment of Witnesses by Judges and Attorneys

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
White judges give more credibility to white than to minority expert witness.	96	1.014	.992	85	2.106	1.273	87	1.713	1.130	39	1.308	1.128	85	.556	.713	56	1.589	1.332	Groups 1 & 2; 1 & 3 2 & 4; 5 & 6
Whites judges give more credibility to white than to minority lay witness.	104	1.178	1.029	105	2.076	1.246	110	1.864	1.161	43	1.302	1.186	113	.821	.846	81	1.840	1.327	Groups 1 & 2; 1 & 3 2 & 4; 5 & 6
Minority judges give more credibility to white than to minority expert witnesses.	92	.710	.776	88	1.432	1.163	91	1.275	.932	31	1.258	1.210	74	.500	.629	48	1.021	1.021	Groups 1 & 2; 1 & 3
Minority judges give more credibility to white than to minority lay witnesses.	101	.894	.954	104	1.375	1.116	105	1.448	1.092	37	.973	1.067	82	.555	.736	64	1.063	1.139	Groups 1 & 2; 1 & 3
Attorneys are more respectful of white than of minority witnesses in cross-examination.	122	1.101	1.071	116	2.310	1.091	117	1.701	1.139	52	1.385	1.331	132	.718	.809	92	1.739	1.283	Groups 1 & 2; 1 & 3 2 & 3; 2 & 4 5 & 6

Means Based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often

ble B-10a. Juror Reactions to Victims, Litigants, and Witnesses

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
te jurors sympathize e with a white victim n with a minority tim.	91	2.030	1.133	92	3.022	.972	82	2.622	1.096	31	2.645	1.142	80	1.815	1.000	65	2.769	1.196	Groups 1 & 2, 1 & 3 5 & 6
ority jurors sympathize e with a white victim n with a minority tim.	89	1.152	.784	93	1.850	1.032	82	1.598	.901	31	1.548	1.028	72	1.019	.712	60	1.900	1.454	Groups 1 & 2, 1 & 3 5 & 6
te jurors react more itively to a white igant than to a minority igant.	95	1.872	.987	96	2.781	.954	84	2.500	1.000	33	2.273	1.180	73	1.791	1.048	67	2.657	1.109	Groups 1 & 2, 1 & 3 5 & 6
ority jurors react more itively to a white igant than to a minority igant.	94	1.131	.818	95	1.853	.875	80	1.575	.952	33	1.606	.933	68	1.033	.704	60	1.900	1.020	Groups 1 & 2, 5 & 6
testimony if a minority witness is less effec- e because of juror reac- ns to the witnesses race	102	1.405	.931	97	1.938	1.107	88	2.057	1.118	36	1.883	1.134	102	1.430	.859	70	2.400	1.221	Groups 1 & 2, 1 & 3 5 & 6
testimony of a minority rt witness is less ctive because of juror tions to the experts .	80	1.219	.827	69	1.623	1.226	58	1.569	1.141	23	1.435	1.273	58	1.144	.898	43	1.674	1.410	Groups None

. Based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often.

Table B-11. Experiences of Bias and Efforts at Redress

		Chi-Square	Significance
Ever perceived unfair treatment?		68.897	.000
If so, ever protested?		7.761	.170
Reasons for not protesting.	Don't know where to report.	7.020	.219
	Afraid of reprisal against client.	1.915	.861
	Afraid of reprisal against self.	2.485	.779
	Other reasons.	6.187	.288

Table B-14. Numbers of Litigators who Reported an Interest in Judicial Positions and Whether their Interest had ever been Communicated to a Relevant Authority and if Not, Why Not

		Chi-Square	Significance
Ever wanted to be a judge.			
Ever made desire to be a judge known.		12.085	.034
Why desire not made known.	Insufficient number of years in practice.	19.437	.002
	Insufficient litigation experience.	29.365	.000
	Lack of access to positions from which judges are drawn.	9.586	.088
	Insufficient academic credentials.	15.327	.009
	Racial minority unlikely to be appointed or elected.	45.574	.000
	Lack of political and professional contacts	14.486	.013
	Other	15.935	.007

e B-15. Importance of Minorities in the Judiciary and Sensitivity Training for Judges

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
'tance of :er numerical :sentation of :ities on the .	143	2.276	1.050	132	3.800	.441	129	3.612	.616	74	3.338	.799	149	2.542	.995	101	3.743	.643	Groups 1 & 2; 2 & 4 1 & 3; 4 & 5 1 & 4
tance of ing for s on cultural al tivity.	143	2.814	.977	131	3.611	.719	128	3.430	.728	74	3.149	.753	149	2.625	1.003	101	3.634	.628	Groups 1 & 2; 5 & 6 1 & 3; 2 & 4

Based on 1 = Not Important, 2 = Somewhat important, 3 = Important, 4 = Very Important

: B-16. Litigators Assessment of the Adequacy of Legal Representation for White and Minority Litigants

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
ty litigants adequate represen- .	122	2.071	1.050	126	2.905	.975	116	2.664	1.087	60	2.500	.854	135	1.689	.959	94	2.468	1.114	Groups 1 & 2 1 & 3 5 & 6
litigants adequate represen- .	125	1.674	.789	115	1.670	.814	105	1.676	.803	63	1.778	.706	138	1.727	.822	87	1.632	.701	None

ased on 0 = Never, 1 = Rarely, 2 = Sometimes, 3 = Often, 4 = Very Often

ıle B-17. Litigators' Assessment of the Representation in Civil Cases for White and Minority Litigants

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
Minority litigants are unrepresented in civil cases.	79	1.668	1.240	103	2.602	1.106	88	2.796	1.186	55	2.418	.994	100	1.811	1.124	78	2.359	.993	Groups 1 & 2; 1 & 3 1 & 4; 5 & 6
White litigants are unrepresented in civil cases.	83	1.453	.972	98	1.347	.814	85	1.518	.921	57	1.684	.711	107	1.581	.932	74	1.527	.744	None

leans Based on 0 = Never, 1 = Rarely, 2 = Sometimes, 3 = Often, 4 = Very Often

ıble B-18. Litigators' Assessment of the Satisfaction of Minority Clients when Represented by Minority Lawyers

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
inority clients xpress greater satis-action when they are epresented by a inority lawyer.	95	1.367	.856	115	2.374	.863	111	2.649	.950	61	2.131	1.133	70	1.595	1.055	92	2.370	1.146	Groups 1 & 2; 1 & 3 1 & 4; 5 & 6

ans Based on 0 = Never, 1 = Rarely, 2 = Sometimes, 3 = Often, 4 = Very Often

le B-19. Frequency With Which Minority Litigants Appear in Courtrooms where all Personnel are White

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
ıse involving A min. gant is heard in a troom in which all judicial personnel white.	131	1.744	1.022	121	1.773	1.117	115	2.322	1.072	63	2.191	1.216	131	2.747	1.287	96	3.479	.808	Groups 1 & 2; 1 & 3 2 & 4; 5 & 6

Based on 0 = Never, 1 = Rarely, 2 = Sometimes, 3 = Often, 4 = Very Often

able B-20. The Importance of Greater Representation of Minorities and Sensitivity Training for Nonjudicial Personnel

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P. <0.5)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
ırtance of greater ırity representation ıg nonjudicial :onnel	143	2.149	1.020	132	3.530	.670	129	3.225	.841	74	2.811	.989	150	2.329	.986	101	3.545	.755	Groups 1 & 2; 1 & 1 & 4; 2 & 4 & 6; 5 &
ırtance of training nonjudicial person- on cultural/racial ;itivity.	143	2.781	1.004	131	3.458	.806	129	3.302	.806	74	2.878	.859	149	2.524	1.049	101	3.416	.828	Groups 1 & 2; 1 & 2 & 4; 5 &

; based on 1 = Not Important, 2 = Somewhat Important, 3 = Important, 4 = Very Important

ible B-21. Litigator Responses to Questions about Civil Outcomes

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
civil case is regarded / attorneys or insur- nce companies as less winnable' because the njured party is inority.	80	1.288	.966	83	2.313	1.199	60	2.033	1.041	40	1.400	1.236	74	1.494	1.277	59	2.441	1.304	Groups 1 & 2, 1 & 3 2 & 4, 5 & 6
he relief award to a hite plaintiff in a ase is more than the elief awarded to a inority plaintiff in comparable case.	71	1.093	.967	81	2.938	1.133	64	2.063	1.037	32	2.031	1.092	66	1.491	1.101	52	2.827	1.248	Groups 1 & 2, 1 & 3 1 & 4, 1 & 4 2 & 3, 2 & 4 5 & 6
hild support awards ore vigorously enforced or whites than for inorities in similar ircumstances.	33	.799	1.020	58	1.966	1.169	50	1.940	1.300	14	1.571	1.284	65	.676	.903	61	1.820	1.372	Groups 1 & 2, 1 & 3 5 & 6
omestic violence cases nvolving whites are reated more seriously y the courts than those nvolving minorities in imilar circumstances.	67	1.487	1.122	80	2.325	1.271	78	2.115	1.377	24	1.625	1.245	97	.901	.960	69	2.014	1.278	Groups 1 & 2, 5 & 6

ons Based on 0 = Never, 1 = Rarely, 2 = Sometimes, 3 = Often, 4 = Very Often

Table B-22. Availability and Quality of Interpreters

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
The lack of readily available interpreters adversely affects Hispanic, Asian, and Haitian litigants.	124	1.643	1.184	117	2.188	1.279	120	2.283	1.361	63	2.381	1.142	119	1.445	1.172	88	2.284	1.277	Groups 1 & 2, 1 & 1 & 4, 5 &
The law level of the skills interpreters, when available, adversely affects Hispanic, Asian and Haitian litigants.	121	1.792	1.268	110	1.809	1.267	120	2.408	1.274	64	2.359	1.289	111	1.079	1.002	79	1.937	1.284	Groups 1 & 3, 2 & 5 & 6

Means Based on 0 = Never, 1 = Rarely, 2 = Sometimes, 3 = Often, 4 = Very Often

Table B-23. Frequency of Transportation Problems for Minority and White Litigants

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE			BLACK			HISPANIC			ASIAN			WHITE			MINORITY			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
Transportation problems cause delays for white litigants.	101	1.137	.838	88	1.182	.751	89	1.326	.795	45	1.111	.959	119	1.192	.845	79	1.228	.862	Groups: 5 & 6
Transportation problems cause delays for minority litigants.	104	1.866	1.296	99	2.202	1.270	93	2.226	1.054	46	1.630	1.306	113	1.625	1.077	81	2.370	1.355	None

Means Based on 0 = Never, 1 = Rarely, 2 = Sometimes, 3 = Often, 4 = Very Often

B-25a. Differential Treatment of Criminal Defendants

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
e defendant is released, r without bail, pending in a situation that would o detention for a ty defendant.	64	2.272	1.162	69	3.261	.902	74	2.689	1.204	22	1.864	1.207	83	1.672	1.102	64	2.828	1.121	Groups 1 & 2 2 & 4 5 & 6
bail is set for white than ty defendants accused of r crimes with similar s and community ties.	59	1.983	1.167	66	3.167	.887	71	2.549	1.263	22	2.091	1.065	85	1.353	.971	60	2.717	1.091	Groups 1 & 2; 2 & 3 2 & 4; 5 & 6
defendants are more likely released on their own izance than are minority ants accused of the same with similar records and ity ties.	65	2.099	1.143	67	3.194	.957	74	2.581	1.205	24	2.000	1.180	84	1.443	1.093	64	2.875	1.091	Groups 1 & 2 2 & 4 5 & 6
attorneys view criminal more "winnable" when nt is white.	67	2.171	1.085	67	2.493	1.199	72	2.333	1.210	23	1.913	1.041	84	1.889	1.117	59	2.627	1.173	Groups 5 & 6
itor views criminal case "winnable" when victim e.	63	2.324	1.106	66	2.879	1.144	68	2.456	1.165	23	1.957	1.147	79	1.821	1.144	60	2.717	1.121	Groups 2 & 4 5 & 6
encourages the court to r a wider range of dispo- alternatives more often te than minority nts.	65	1.925	1.153	68	2.779	1.157	70	2.357	1.168	22	1.864	1.207	85	1.260	1.015	63	2.429	1.214	Groups 1 & 2 5 & 6
efendants are less likely ive prison sentences than y defendants given records and conviction.	66	2.035	1.177	68	3.059	.945	71	2.479	1.169	22	1.773	1.066	85	1.383	1.041	64	2.813	1.037	Groups 1 & 2 2 & 4 5 & 6

sed on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often

Table B-26a. Percent Reporting Recruitment Efforts of Organizations/Firms Targeted to Minorities

	Chi-Square	Significance
Outreach to minority student organizations at majority law schools	42.40336	.0000
Participation in minority-sponsored job fairs	32.63525	.0000
Minority summer internships	31.12414	.0000
Interviews at minority law schools	19.85894	.0013
Advertisements in minority media	11.16223	.0483
Other recruitment efforts	18.06745	.0029
Any of the above recruitment efforts	51.87669	.0000

Table B-27a. Experiences of Attorneys in Law Firms/Organizations

	Chi-Square	Significance
In order to be hired, minority lawyers have to have higher grade point averages and academic qualifications than non-minority lawyers	121.91757	.0000
Minority lawyers are sometimes given hiring preference over academically better qualified non-minority lawyers.	34.58873	.0000
Minority lawyers have fewer opportunities than white lawyers to participate in continuing education or training opportunities.	40.69608	.0000
Minority lawyers are less likely to be included in social events.	88.69794	.0000
Minority lawyers lack mentors.	64.74325	.0000
Minority lawyers receive less feedback about their work because non-minority lawyers are uncomfortable criticizing them.	9.17264	.1024
Minority lawyers tend to be assigned more limited, less complex cases.	89.61614	.0000
Minority lawyers have fewer opportunities for advancement.	127.40334	.0000
A minority lawyer in the organization is less likely than a white lawyer with comparable experience to make partner/supervisor.	82.06520	.0000

le *B-28a: Treatment of Minority Attorneys in the Courts*

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
ity attorneys more y to be asked if they ttorneys.	122	1.675	1.241	132	3.477	.961	125	2.696	1.271	73	2.123	1.394	110	1.113	1.085	93	2.699	1.389	Groups 1 & 2, 1 & 2 & 3, 2 & 5 & 6
ity attorneys more y to be required to through a screening e or to show identifi- n than white attorneys	108	.825	1.069	129	2.721	1.293	122	2.098	1.399	68	1.338	1.311	95	.551	.871	87	1.747	1.504	Groups 1 & 2, 1 & 2 & 3, 2 & 3 & 4, 5 &
ity attorneys more y to be questioned their credentials.	111	1.083	1.099	132	3.114	1.170	121	2.388	1.356	71	1.704	1.303	105	.627	.868	92	2.152	1.452	Groups 1 & 2, 1 & 4, 2 & 3, 2 & 4, 5 & 6
es pay more attention ive more credibility to ements of white attor- than to those of rity attorneys.	128	1.001	.938	131	2.618	1.120	122	2.074	1.115	72	1.625	1.283	118	.609	.739	97	2.010	1.237	Groups 1 & 2, 1 & 2 & 3, 2 & 3 & 4, 5
e attorneys get more ect and cooperation other attorneys than inority attorneys.	128	1.191	.963	131	2.824	.988	122	2.164	1.124	71	2.000	1.108	122	.976	.850	95	2.232	1.171	Groups 1 & 2, 1 & 2 & 3, 2 & 5 & 6
e jurors respond favorably to white rneys.	88	1.788	1.044	101	2.683	.979	87	2.368	1.013	37	2.027	1.142	71	1.533	.985	68	2.574	1.213	Groups 1 & 2, 1 & 5 & 6
rity jurors respond favorably to white rneys.	86	1.172	.862	101	1.960	.979	87	1.609	.932	32	1.639	1.019	68	1.018	.777	61	1.820	1.073	Groups 1 & 2, 5
t Officers offer stance to white rneys.	133	2.321	1.117	129	2.705	1.041	122	2.410	.986	69	2.188	1.075	138	2.474	1.164	87	2.678	1.156	None
t Officers offer stance to minority rneys.	124	2.271	1.138	130	2.069	.846	123	2.024	.844	71	2.127	.985	124	2.508	1.131	94	2.192	1.129	None
t Officers call white rney cases ahead of rity attorney cases.	129	.484	.730	119	1.966	1.295	118	1.517	1.168	66	.742	1.057	123	.226	.547	89	1.180	1.284	Groups 1 & 2, 1 & 2 & 3, 2 & 3 & 4, 5 &
t personnel more re- tful of white attorneys of minority attorneys.	133	1.021	.953	130	2.708	1.260	127	2.181	1.191	71	1.747	1.192	126	.768	.909	95	2.084	1.389	Groups 1 & 2, 1 & 1 & 4, 2 & 2 & 4, 5 &

1=Rarely, 2=Sometimes, 3=Often, 4= Very Often

.E B-29. Numbers of Attorneys Stating that Greater Numerical Representation of Minorities Among Attorneys & Training re Cultural/Racial Sensitivity is "Important/Very Important"

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
·r numerical entation of ties among ieys appear- the courts.	142	2.428	1.083	132	3.682	.557	127	3.567	.855	147	2.579	.940	101	3.673	.618	101	3.673	.618	Groups 1 & 2, 1 & 3 1 & 4, 2 & 4 5 & 6
ng for ieys on cul- racial ivity.	143	2.643	1.002	131	3.260	.828	128	3.156	.818	74	2.892	.915	149	2.462	.991	101	3.366	.771	Groups 1 & 2, 1 & 3 5 & 6

ased on 1=Not Important, 2=Somewhat Important, 3=Important, 4= Very Important

Table B-30. Membership in 18B Panels

	Chi-Square	Significance
YES - Participate	55.780	.0000
Percentage of total caseload	15.175	.1258
Reasons for non-participation	27.772	.0230

Table B-31. Participation in Fiduciary Appointments

	Chi-Square	Significance
YES, APPLIED No: Do not know how. No: Not interested. No: Small chance of No: being appointed.	73.45483	.0000
Yes, assigned case in last two years.	13.17956	.0218
Yes, race bias in fees awarded.	37.75931	.0000

32. Experiences with Attorney Discipline Committees

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
s who know who have iplined.	Chi-Square=64.29157, Significance=.0000																		
ercentage of ed attorneys inorities.	82	6.629	14.710	74	72.667	31.034	48	60.990	38.362	24	41.398	42.434	113	7.201	13.956	65	43.115	34.578	Groups 1 & 2, 1 & 3 1 & 4, 2 & 3 2 & 4, 5 & 6
mber of iplined known.	71	2.586	2.185	72	1.569	2.892	45	1.244	1.861	20	3.700	10.965	96	4.440	10.102	58	4.655	8.065	None
mber of disciplined known.	78	.177	.634	65	5.431	5.950	43	2.140	3.167	23	2.304	4.477	110	.271	.609	59	2.322	3.071	Groups 1 & 2, 2 & 3 2 & 4, 5 & 6
affected	Chi-Square=98.64489, Significance=.0000																		

Table B-33. Membership in Majority Bar Associations

	Chi-Square	Significance
New York State Bar Association	10.63332	.0592
Local Bar Associations	55.07338	.0000

Table B-34. Participation on Majority Bar Association Committees and Reasons for Nonparticipation

		Chi=Square	Significance
YES, MEMBER OF A COMMITTEE		31.13051	.0000
IF NOT, WHY NOT?			
	Not interested	10.14417	.0713
	No time	7.07232	.2153
	Serve on minor. bar committee	26.52455	.0001
	Uncomfortable on a committee dominated by whites	25.88517	.0001
	Applied, but not accepted	3.16290	.6749
	Do not know how to apply	9.24097	.0998
	Tedious application process	8.95912	.1107

TABLE B-35. Malpractice Insurance for Solo and Smaller Firm Litigators

		Chi=Square	Significance
Have malpractice insurance?	YES	42.16003	.0000
Lack of malpractice insurance:	due to high cost	10.49350	.0624
	limits types of cases	9.67985	.0848
	limits referrals	5.58245	.3490

Table B-36. Satisfaction with Professional Opportunities

NEW YORK CITY											OUTSIDE NYC						Significant Differences (P<.05)
WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
146	1.752	.698	134	2.470	.773	130	2.146	.798	72	2.111	.881	153	1.776	.662	102	2.441	.839	Groups 1 & 2, 1 & 3 2 & 3, 5 & 6

Means based on 1=Very Satisfied, 2=Satisfied, 3=Dissatisfied, 4=Very Dissatisfied

TABLE B-37 Reasons for Dissatisfaction with Professional Opportunities

	Chi=Square	Significance
Lack of job mobility and advancement opportunities.	7.55327	.1826
Lack of job offers/referral work due to racial discrimination.	10.77399	.0560

Table 38. Number of Attempts at Passing the New York State Bar Exam

WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			Significant Differences (P<.05)
N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
293	1.289	.726	181	1.669	.961	146	1.747	.974	76	1.526	.916	Groups 1 & 2, 1 & 3

Table B-39. Relevance, Usefulness, and Perceived Bias of the Bar Examination

	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			Significant Differences (P<.05)
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
Relevance of bar exam to practice as an attorney. *	292	2.395	.640	189	2.497	.616	149	2.416	.594	79	2.468	.637	None
Usefulness of Law-School education as preparation for the bar exam. **	293	1.600	.652	193	1.751	.677	150	1.807	.748	78	1.808	.625	Group 1 & 3
Bias of examination against minorities. ***	268	2.778	.494	184	2.185	.635	146	2.260	.734	77	2.610	.588	Groups 1 & 2, 1 & 3 2 & 4, 3 & 4

* 1=Extremely Relevant, 2=Relevant, 3=Irrelevant. ** 1=Very Useful, 2=Somewhat Useful, 3=Not At All Useful
*** 1=Considerably Biased, 2=Somewhat Biased, 3=Not At All Biased

BLE B-40. Frequency with which Minority Litigants' Cases are Decided by All-White or Predominantly Minority Juries

	NEW YORK CITY												OUTSIDE NYC						Significant Differences (P<.05)
	WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
ıse involving a ɔrity litigant is ided by an all- :e jury.	99	1.314	1.008	95	2.168	1.252	84	1.738	1.183	35	1.371	1.114	98	2.427	1.118	72	3.333	.872	Groups 1 & 2, 2 & 4 5 & 6
ıse involving a ɔrity litigant is ided by a predomi- :ly minority jury.	102	1.994	1.062	97	1.516	1.001	89	1.798	1.046	36	1.444	.909	97	.915	.909	71	.648	1.001	None

: based on 0=Never, 1=Rarely, 2=Sometimes, 3=Often, 4=Very Often

Table B-41. The Importance of Greater Minority Representation on Juries

NEW YORK CITY											OUTSIDE NYC						Significant Differences (P<.05)
WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
135	2.140	1.102	131	3.405	.721	128	3.195	.940	73	2.644	.977	147	2.586	.989	101	3.634	.628	Groups 1 & 2, 1 & 3 1 & 4, 2 & 4 3 & 4, 5 & 6

Means based on 1=Not Important, 2=Somewhat Important, 3=Important, 4=Very Important

Table B-42. Percent Responding that Jurors Respond Honestly to Voir Dire Questions About Racial Bias

Chi-Square	Significance
26.17193	.0001

Table B-43. Satisfaction with the Voir Dire Process as a Way of Ensuring that Individuals Who Are Racially Biased Are Excused

NEW YORK CITY											OUTSIDE NYC						Significant Differences (P<.05)
WHITE (1)			BLACK (2)			HISPANIC (3)			ASIAN (4)			WHITE (5)			MINORITY (6)			
N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	N	Mean	Std. Dev.	
124	2.239	.769	103	2.573	.680	95	2.463	.665	41	2.390	.666	122	2.203	.577	78	2.705	.723	Groups 1 & 2, 5 & 6

Means based on 1=Very Satisfied, 2=Satisfied, 3=Dissatisfied, 4=Very Dissatisfied

Table B-44. Litigators' and Judges' Participation in Portion of Voir Dire Process Designed to Ensure a Neutral Jury

Chi-Square	Significance
29.46115	.0140

Table B-45. Is Voir Dire Conducted with Individuals or Groups

Chi-Square	Significance
10.88418	.3666

BACKGROUND BRIEFING PAPERS

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INTRODUCTION

Ten briefing papers were prepared for the Commission by Commission staff. These papers primarily represent reviews of social science research and policy documents. They are not necessarily comprehensive, but they do represent a synthesis of the most important work in each area.

A briefing paper was prepared for each set of Commission-identified issues. The briefing papers generally parallel the major chapters of the final report. Briefing papers are on the following topics:

- Perception, Treatment, and Utilization of the Civil Courts
- Judicial Selection and the Experience of Minority Judges
- Legal Representation of Minorities
- Nonjudicial Employment
- Civil Outcomes
- Interpretation and Translation in the Courts
- Criminal Sanctions and Pretrial Processing
- Legal Profession
- Bar Examination
- Juror Attitudes Toward Minority Defendants and Attorneys

PERCEPTION, TREATMENT, AND UTILIZATION OF THE CIVIL COURTS

BACKGROUND BRIEFING PAPER #1

New York State Judicial Commission On Minorities

TABLE OF CONTENTS

PERCEPTION, TREATMENT, AND UTILIZATION OF THE CIVIL COURTS

1.0 Introduction

The perception, experience, and voluntary utilization of the courts can be conceptualized as a circular process. Surveys routinely show that minorities distrust the fairness of the courts. Insensitive treatment, regardless of whether it is predominantly directed toward minorities or a generalized insensitivity characteristic of an overburdened court system, feeds negative perceptions of the court system among minorities. These negative perceptions and expectations of mistreatment can, in turn, be hypothesized to deter minorities from pursuing legal redress through the courts. Negative perceptions and poor treatment by the courts are thus inextricably interrelated in deterring voluntary access to the legal system.

This review summarizes the research on the perceptions of minorities regarding the fairness of the judicial system, the treatment of minorities in the courts, and the voluntary utilization of the courts in the redress of grievances. Studies of racial prejudice were conducted primarily in the 1950s, an era in which the landscape of prejudice was very different from the present one. As racial bias has become less overt and more subtle, it has become much harder to operationalize and quantify. Surveys of public perceptions of the courts have been conducted and are reported in the first section of this chapter. With the exception of criminal outcome and jury studies reviewed in separate chapters, research on

the treatment of minorities in the courts is noteworthy for its absence. Studies of the utilization of civil courts are also absent from the literature, in part because of the absence of court-maintained race data in civil cases.

In the absence of a body of substantive research, the theoretical literature relevant to racial bias in the courts and the viability of the legal system as a catalyst for change are addressed here, by way of providing a framework for empirical investigations of the question.

2.0 Perceptions of Bias

A number of studies have documented minority distrust of the fairness of the courts. The National Center for State Courts (1978) surveyed a national random sample of 1,931 adults, who were asked whether or not a series of potential court problems could be regarded as a "serious problem that occurs often." In the survey, 49% of black respondents and 34% of Hispanic respondents, but only 15% of white respondents, stated that "courts do not treat blacks as well as whites" and perceived disparate treatment as "a serious problem that occurs often." Similarly, nearly a quarter of Blacks (23%) and Hispanics (24%), but only a tenth of Whites (10%), perceived "judges who are biased and unfair" to be "a serious problem that occurs often." The survey concluded, "to the extent that there is dissatisfaction with the courts on the part of the public, it is far greater among minorities than among the population as a whole" (p. 87).

Similar findings were made in a New York Times/WCBS survey of 1,147 residents of

New York City (Meislin, 1988). In response to the question "Do you think the judges and courts in New York City generally treat both whites and blacks fairly, or do they favor one race over the other?" 45% of Whites, but only 28% of Blacks and 33% of Hispanics, responded that "courts treat both races fairly." Correspondingly, 47% of Blacks and 43% of Hispanics, compared to 21% of Whites, believed that "courts favor whites."

Newsday (Friedman, 1988) polled 759 black New Yorkers and found that 40% of respondents believed that the courts mistreat Blacks all or most of the time. The only groups receiving higher ratings of distrust were the police and landlords. In the same year, the New York Law Journal (Kaplan, 1988) polled 402 New York City residents about the criminal justice system. One question asked, "Suppose two people--one white, one black--are convicted of identical crimes. Who do you think will get the lighter sentence?" Of the overall sample, 44% responded that the white offender would get the lighter sentence but 71% of Blacks, in contrast with 31% of Whites, gave this response.

Also instructive in this regard are the two "electronic town meetings" sponsored by the New York State Martin Luther King, Jr. Commission. While the electronic survey conducted in the public hearings was meant to provoke discussion, not to provide scientific information (and some factors, such as the overrepresentation of high income groups and college graduates at both meetings, may well have skewed the results), the findings nonetheless indicate that the public perceives differences in the treatment of minorities and

Whites in the courts. At the first meeting, held in October 1988 in Dutchess County, in the wake of the controversial Tawana Brawley case, there were 205 participants; 21% were black and 76% were white. Attendees were asked to rate the chances of black people receiving fair treatment in the criminal justice system. Whereas 63% of Whites rated the chances as "excellent" or "pretty good," no Blacks rated the chances as "excellent" and only 9% rated them as "pretty good" (Michael Rowan Group, 1988).

For the second meeting, held in January 1989 in Westchester County, the Martin Luther King Commission, at the request of the Judicial Commission on Minorities, added some specific survey questions regarding perceptions of the legal system. The Westchester meeting can also be regarded as skewed in sampling terms--over half the attendees were from Yonkers, which holds only 22% of the county's population, and, again, higher income and education groups were overrepresented--but was nonetheless about evenly divided (46% in favor, 54% opposed) with regard to the most polarizing issue in the community, the court-ordered housing desegregation plan for the City of Yonkers. Whites made up 73% of the 200 persons attending, Blacks 16%, Hispanics 9%, and Asian Americans 1%. Among the people at the meeting, 51% believed that treatment by the criminal justice system was better for Whites, and only 29% believed it was equal for all. More than a third (38%) of respondents believed that if a white person and a minority person were to be involved as plaintiffs in comparable civil cases, the white litigant would receive greater compensation

50% of attendees believed that a white defendant would receive a lesser sentence than a minority defendant in comparable criminal cases. Unlike the Dutchess County electronic meeting, responses given at the Westchester meeting were not disaggregated by race. However, with only 16% of the people at the meeting identifying themselves as black, and 9% identifying themselves as Hispanic, these results indicate that distrust of the fairness of the legal system was by no means confined to minority participants (Michael Rowan Group. 1989).

A study of perceptions of Chicago courts among a random sample of 1,575 Chicagoans (Tyler, 1990) demonstrated disproportionately high dissatisfaction among minorities. Significantly greater proportions of minorities than nonminorities disagreed with such statements as "the courts in Chicago generally guarantee everyone a fair trial," "the basic rights of citizens are well protected in Chicago courts," and "court decisions in Chicago are almost always fair." Tyler's study, designed to address the relative importance of process and outcome in the evaluation of the fairness of courtroom experiences, found that persons who had had a courtroom experience focused more on their treatment in the court process than on the outcome in evaluating whether judgments were fair. If the judge listened carefully, acted neutrally, showed no bias, and conducted the proceedings with honesty politeness, and a respect for citizens' rights, people evaluated the experience positive regardless of whether they had won or lost. Tyler concluded that fair procedure, more th

outcome, affects whether a litigant is satisfied that justice has been done.

A widespread distrust of the legal profession by minorities parallels the distrust of the court system. Curran's (1977) study of the legal needs of the public found a majority of Blacks and Hispanics (66% of males and 52% of females) responding that lawyers are more concerned about getting clients than serving them; among Whites, only 32% of males and 27% of females shared this opinion. Proportionately more Blacks and Hispanics were pessimistic about lawyers' interest in understanding their clients' wishes and believed that lawyers are not concerned with providing explanations to their clients about what needs to be done and why. Mistrust of the courts was also significantly greater among Blacks and Hispanics. Thus Blacks and Hispanics were less likely than Whites to agree with the statement "if you were accused of a crime, you could expect to get a fair trial," and with the statement "judges are generally honest and fair in deciding each case." Blacks and Hispanics were also more likely to agree that "the legal system favors the rich and powerful" and that the system is "not set up to deal with the problems of ordinary people" (p. 252).

3.0 The Changing Face of Racism and New Difficulties in Winning Legal Redress

To determine empirically whether racism and discrimination are actually present in the courts, these terms must be defined in a way that makes the relevant behaviors identifiable. Such definition is neither static nor universally agreed upon.

The first major studies of racism dealt with the problem in its most overt forms---

violence and bigotry. Adorno et al. (1950) conducted studies designed to identify the personality correlates of racial and ethnic hatred. The sorts of racist propositions consistent with the typology thus identified--the "authoritarian personality"--included a belief in the segregation of neighborhoods, deportation, extension of police control, and willful deprivation of legal rights. Subjects characterized as having "authoritarian personalities" were also more likely to accept racial and ethnic stereotypes, agreeing with descriptions of Blacks as "lazy" or "superstitious." Allport (1954) used a similar psychological model, describing the phenomena of in-group identification and hostility toward out-groups. His examples of prejudice included characterization of social "others" as unintelligent, unclean, immoral, and conspiratorial.

Such characterizations were consistent with the overt and official forms of racism dominant at the time. Fighting racism in the political environment of the era meant preventing lynching and breaking down exclusions from housing and schools. Necessarily, this informed and constrained the dimensions of the political battle against racism. The legal aspect of this effort reflected this constraint: the Brown decision in 1954 began the high-water period of breaking down racism's legal and official forms, where the focus of concern lay (Piven and Cloward, 1979). The legislative achievements, political battles, and court battles of the 1950's and 1960's swept away much of the overt institutional and legal support for segregation and discriminatory practices. And on the measures of prejudice adopted by

the traditional attribution scales cited by Adorno and Allport, overt expressions of stereotypes declined: in 1933, 84% of white respondents characterized Blacks as "superstitious" and 75% characterized them as "lazy"; by 1982, these attributions declined to 6% and 13%, respectively (Dovidio and Gaertner, 1986).

The erosion of stereotypes does not necessarily translate to public willingness to support policies that would eliminate the disadvantages of discrimination. Schuman et al. (1985) evaluated results of surveys on racial attitudes conducted between 1942 and 1984: on the ten items evaluated, responses favoring the principle of equal treatment rose dramatically, from below 50% in all items in 1942 to above 90% in some items in the 1970s and 1980s. For example, whereas only 30% of those surveyed in 1942 said that they would send their child to study in a school where black children studied, 90% of those surveyed in 1982 said they would. However, when the researchers evaluated comparable survey data on attitudes toward policies which would implement principles of equal treatment, the same trend did not obtain. While three of the eight proposals evaluated gained support during the survey period, one item retained a constant low level of support and four others declined. Thus, for example, support for open housing legislation increased modestly, from 37% to 42%, between 1972 and 1982; support for federal aid to minority groups declined from 25% in 1972 to 17% in 1982.

A recent study of the operation of stereotypes by Jussim, et al. (1987) investigated

ratings of videotaped job applicants using the variables of race (black or white), dialect (standard English or nonstandard English) and appearance (dress in upper-class or lower-class fashion). They found that white subjects evaluated black applicants who spoke standard English and dressed in upper-class fashion much more favorably than white applicants with the same attributes, suggesting that Blacks who violate the expectation of a negative stereotype are received more favorably. However, where expectations were not violated, as in the rating of applicants dressed in lower-class fashion and speaking nonstandard English, there was no difference in ratings.

Besides attitudinal barriers to the elimination of racial discrimination, other structural barriers remained. McWilliams (1948), for example, recognized the economic side of discrimination, calling it a "mask for privilege." Indeed, the very success of the integrationist program led many critics to recognize the insufficiencies of obtaining equal access to such luxury ornamentations as hotels and restaurants. Dr. Martin Luther King publicly doubted the value of being admitted to a lunch counter "if you can't afford a hamburger" (Wilson, 1978, p. 138). Critics began expanding the definition of racism to encompass not just an irrational attitude formation, but a whole range of institutional structures and practices which serve to perpetuate economic, juridical, and educational inequities. In 1968, the National Advisory Commission on Civil Disorders, asked to identify the causes of the recent wave of rioting in the United States, highlighted a single cause: white racism. The Commission

examined police repression, judiciary injustice, and the poverty and misery of the ghetto as endemic conditions of black life in the cities and concluded:

> What white Americans have never fully understood--but what the Negro can never forget--is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it. (National Advisory Committees on Civil Disorders, 1969, p. 2)

Thus racism and discrimination came to be viewed not as isolated and irrational phenomena, but as a present, historic, and pervasive social evil.

This view was broadened further by critics like Knowles and Prewitt (1969), who examined a racist social environment and derived from racial differences in education, health, employment, living conditions, justice and politics the following broad definition: "Any nation that permits race to affect the distribution of benefits from social policies is racist" (p. 6). They went on to distinguish "overt" institutional racism, expressed in law, employment and residential discrimination, from its "covert" counterpart, which perpetuates inequality under the guise of "color blindness" and "business as usual." Thus, the conclusion was reached that, despite the destruction of many overt legal and structural mechanisms of discrimination, racism continued to exist in other forms.

The continuation of racist conditions led to a theoretical questioning of whether it was appropriate to oppose so pervasive a psychological and political problem through the formal instrument of the law. American laws have provided a powerful support for racism. Racism was written into the Constitution, which permitted slavery and denied voting rights to nonwhites (Bell, 1987). Barring fundamental change in social institutions, there was no reason to expect racism to disappear when the Civil War Amendments wrote it out of the

Constitution. The civil rights victories of the following century were similarly limited. Formal declarations of equality could not produce equality unless accompanied by changes in long-standing social practices and institutional arrangements. As in the previous century, this did not happen; events like the Bakke decision (Regents of the Univ. of Calif. v. Bakke, 1978), which struck down an affirmative action program for medical school admissions, indicated resistance to measures designed to correct the effects of discrimination. Officially, racism was no longer approved--but it was not dismantled. Absent the support of the law, racism transmuted into a less overt manifestation.

In the legal field, a school of thought has developed which reflects this practical dilemma. Critical Legal Studies (CLS) offers a pessimistic perspective on the possibility of defeating racism through law. CLS argues that law is an ideological deployment of existing social structures and relations (Kennedy, 1982). As such, since racism is so deeply embedded in the history and structures of American society, the law is bound to represent a racist society as natural and inevitable. Therefore, a purely legal fight against racism is necessarily limited, and CLS questions the extent of the change such litigation can produce unless it is preceded by concrete changes in social relations (Freeman, 1978).

While acknowledging that this argument is of interest, many of those fighting racism through legal means naturally regard it as unhelpful (Crenshaw, 1988). A critique of CLS by minority scholars has emerged which argues that several aspects of the CLS discourse either ignore or actually work counter to the legal interests of minorities. For instance, CLS scholarship views the liberal doctrine of legal rights as formalistic and stultifying, and as a functional mask for injustice; rights are distributed with much fanfare as proof that the

system is fair, argue CLS scholars, then they are quietly denied through narrow construction, nonenforcement and delay (Freeman, 1978). The experience of civil rights litigation does not necessarily refute this argument; nonetheless, the discourse of rights has been the most important instrument in the forging of progress in this area, and consequently its abandonment by CLS is criticized (Delgado, 1987). CLS scholarship also rejects incrementalism as a political strategy and offers a utopian vision of a loosely organized, rule-free social organization. One critic has gone so far as to say that the utopian ideal of CLS, which emphasizes decentralization of decision-making and flexibility of procedure, would "affirmatively increase the likelihood of prejudice" (Delgado, 1987, p. 315; also see Bracamonte, 1987; Dalton, 1987; Matsuda, 1987; Williams, 1987a). Nevertheless, there seems to be general agreement that the politically progressive orientation of most CLS scholars creates the potential for a positive contribution, as yet unrealized, to the legal battle against racism (Crenshaw, 1988; Matsuda, 1987; Williams, 1987b).

Most recent research is directed toward the psychological and economic aspects of racism, which are most prevalent today. While the sorts of overt expressions of hostility described by Allport and his contemporaries have certainly not disappeared, they have become far less common--most speakers on issues of race publicly abhor racist attitudes. Nonetheless, beliefs and practices with racially disparate effects have not ceased to exist; hence Derrick Bell's aphorism, "We have made progress in everything yet nothing has changed" (Bell, 1987, p. 22). McConahay (1986) labels the contemporary strain "modern" racism, and describes it as follows:

> The principal tenets of modern racism are these: 1). Discrimination is a thing of the past because blacks now have the freedom to compete in the marketplace and to

> enjoy those things they can afford. 2). Blacks are pushing too hard, too fast and into places where they are not wanted. 3). These tactics and demands are unfair. 4). Therefore, recent gains are undeserved and the prestige granting institutions of society are giving blacks more attention and the concomitant status than they deserve. Two other tenets are added to this psychological syllogism: Racism is bad and the other beliefs do not constitute racism because these beliefs are empirical facts. (p. 93)

The expression of this sort of racism is, according to advocates of the view, "not hostility or hate. Instead, this negativity involves discomfort, uneasiness, disgust, and sometimes fear, which tend to motivate avoidance rather than intentionally destructive behaviors" (Gaertner & Dovidio, 1986, p. 63). Thus, acts which have a discriminatory effect or content still occur, but in subtle, rationalizable ways.

In its more subtle, passive form, racist behavior is, in many ways, more problematic from a legal and political standpoint because, although racism continues to have economic and personal effects, the question of intentionality of the racist behavior is no longer entirely clear. This issue has been a barrier in several recent civil rights, employment and voting rights cases before the United States Supreme Court, where opponents of housing and districting plans have been required to prove discriminatory intent in order to strike down actions with racially disparate impacts (Memphis v. Greene, 451 US 100, 1981; Arlington Heights v. Metropolitan Housing Development Corp., 429 US 252, 1977; New York State Judicial Commission on Minorities, 1989, p. 25 [summary of recent case law restricting affirmative action in employment]). Lawrence (1987) criticizes the standard as "an imaginary world where discrimination does not exist unless it was consciously intended" (p. 325). Critics note that discriminatory intent is difficult to prove, that actors will invariably deny intending to discriminate, and that the intent behind an action is not always clear even to the actor.

One response to this difficulty has been to recognize the ambiguity of intent surrounding an action and to contest it on the ground of its effect or its "cultural meaning." Lawrence (1987) proposes the cultural meaning test to "evaluate governmental conduct to see if it conveys a symbolic message to which the culture attaches racial significance" (p. 356). Its focus is on stigmatizing actions which "brand the individual with a sign that signals her inferior status to others and designates her as an outcast" (p. 351). This approach explicitly affirms the difficulty surrounding proof of intent but does not deny the existence of racism on this ground, since:

> Racism is in large part a product of the unconscious. It is a set of beliefs whereby we irrationally attach significance to something called race. I do not mean to imply that racism does not have its origins in the rational and premeditated acts of those who sought and seek property and power. But racism in America is much more complex than either the conscious conspiracy of a power elite or the simple delusion of a few ignorant bigots. It is a part of our common historical experience and, therefore, a part of our culture. It arises from the assumptions we have learned to make about the world, ourselves and others as well as from the patterns of our fundamental social activities. (Lawrence, 1987, p. 330)

In this view, racism is neither an aberrant incident nor a marginal movement, but a historically embedded aspect of our national life.

One implication of this broader perspective on racism is that it is not isolated nor even necessarily possible to isolate. Racism, especially in its unconscious, "modern" form, is ubiquitous and pervasive. Thus the traditional idea that racism can be identified through departures from conventional behavior patterns and neutrality is turned on its head: racism is the conventional behavior and the outcome of a "neutral" (since "neutrality" is the internalization of the given) perspective.

This creates the methodological problem of identifying what actions can be defined

as racist. Rather than relying on changing and uncertain criteria of intent, the meanings and effects of concrete actions must be examined. Massive exclusion or lack of consultation indicate--regardless of defensive claims to offer "equal opportunity"--a large-scale aggression against a particular group. Avoidance of personal interaction or slips of the tongue[1] indicate--regardless of attempts to rationalize--a microaggression[2] against individuals.

Although any research examining "modern" racism in the court system must necessarily focus on treatments and behaviors of institutional actors, studies conducted to date have been directed toward more quantifiable issues such as case outcomes (e.g. sentencing), which are regarded as the clearest and most accessible evidence of bias in the courts. However, it is impossible to discern from outcome studies alone the extent to which less conscious and less tangible forms of racism, such as persistent disrespect, failure to provide explanations, or scheduling of cases in a way that produces inordinate inconveniences, among others, are present.

In her analysis of the discourse of the Howard Beach attack, Williams (1987) noted that the defense attempted to place the blame for the incident on the victims. At the arraignment, the defense noted that between the place where the victims' car broke down and the pizza restaurant where the youths began to abuse them, there were several all-night gas stations and pizza restaurants. This argument, which tried either to call into question

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[1]Lawrence (1987) cites well-known instances of derogatory remarks "slipping past the ego's censors" from Howard Cossell (who called a football player a "little monkey") and Nancy Reagan (who, intending to admire the snow, marvelled at "all the beautiful white people"), both of whom denied that a "racial slur was intended."

[2]Microaggressions are "subtle, stunning, often automatic and non-verbal exchanges which are 'put downs' of blacks by offenders," (Pierce et al. 1978, p. 66). Davis (1989) builds upon that definition by including elements of cause and effect. Thus, microaggressions are "stunning, automatic acts of disregard that stem from unconscious attitudes of white superiority and constitute a verification of black inferiority" (p. 1576).

the victims' reasons for being in Howard Beach and thus to mitigate the irrationality of the assailants' motivation, or to shift some part of the blame to the victims for being where they should not have been, was taken seriously enough that the New York Times sent a reporter to Howard Beach to look for pizza restaurants and gas stations in the area. Similar sentiments were expressed by community leaders like Mayor Koch, who implied that similar abuse is likely to befall Whites in black neighborhoods. Williams' analysis suggests that this type of circumlocution with regard to racial issues is common in the courts.

Comprehensive empirical studies which would test the premise that racism is present in the courtroom have not been conducted. In part, this may be attributed to the assumption that overt demonstrations of racism like those cited by Williams are relatively infrequent in ordinary cases. Moreover, subtle psychological events, even if they are perceived clearly by their victims, are difficult for an outsider to observe, much less quantify. The presence of an observer may actually change the behavior of court officials, who attempt during the period of observation to maintain fair and courteous practices that they do not otherwise maintain (Citywide Task Force on Housing Court, 1986).

4.0 Utilization of the Civil Courts

Minority overrepresentation among involuntary users of the courts is well known. Data from 1988 show that Blacks represent 41.6%, and Hispanics 18.7%, of arrestees; representation of these groups among defendants in the Criminal Courts is probably analogous to these figures.[3] The Citywide Task Force on Housing Court (1986) found that

[3]These data were provided by the New York State Division of Criminal Justice Services (DCJS) and were noted in correspondence with the Commission.

3.7% of tenant litigants in Housing Court were black and 26.4% Hispanic; along with Asian Americans, who comprised .9% of the tenant litigants, the minority tenant clientele of Housing Court was nearly 81% of the total. The Fund for Modern Courts (1989) reported that among juveniles accused of delinquency in Family Court, 52% were black and 30% were Hispanic. These courts are well known to be the worst legal environments in terms of maintenance, overcrowding, quality of representation, procedures, and courtesy (Citywide Task Force on Housing Court, 1986; Fund for Modern Courts, 1989). Since minorities are brought to these courts in numbers tremendously out of proportion to their numbers in the population, and since they are a majority of the persons brought before these courts, such conditions do have a disparate negative impact on minorities.

The State of New York does not maintain race data on civil litigants, and thus it is not possible to verify with any certainty the assertion that minorities are underrepresented among voluntary users of the civil courts. It is nonetheless clear that conditions which act as barriers to access to such courts--lack of economic resources, lack of information, language differences, geographic inconvenience, and psychological barriers (National Center for State Courts, 1978)--are most prevalent among, and therefore have the strongest impact on, minorities.

Economic barriers affect minorities disproportionately, since minorities are overrepresented among lower income groups. Among the major deterrents produced by this circumstance is the inability to engage the services of an attorney. Also, minorities are less likely to use the courts for the resolution of property-related disputes because minorities are substantially less likely to own property. Curran (1977) found the rate of property ownership

among Whites to be 750 persons per 1,000, while among Blacks and Hispanics the comparable figure was 440 per 1,000. Among persons who did own property, there were no differences between racial categories in the rates of property-related difficulties experienced, so the disparity can be attributed to differences in ownership. Even prior to considering other barriers which may prevent their using the civil courts, economic disparities significantly lower the opportunities minorities have to experience problems which would lead them to initiate cases.

Informational barriers also have a disproportionate impact on minorities, a greater proportion of whom, in comparison to Whites, are not high-school or college graduates. Based on a survey of public knowledge of the courts and how they work, the National Center for State Courts (1978) determined that minorities have less information about the court system than do Whites. The lack of such information can clearly decrease the likelihood that minorities will make use of the courts.

Language barriers are also formidable to many Hispanic and Asian Americans, who, if their English is limited, may not be able to understand court proceedings and may, therefore, not seek the intervention of courts for redress of grievances. Although interpretation and translation services may be provided at the discretion of New York State courts (Federal courts require that they be provided), their quality has been questioned. A recent study by the New Jersey Supreme Court Task Force on Interpreter and Translation Services (1985) found that providers of court interpreting services generally do not possess the requisite skills, knowledge and training, and further argued that:

> some court personnel, attorneys, and other persons engaged in delivering judicial or legal services to linguistic minorities are not sufficiently sensitive to the importance

and complexities of communicating with and delivering effective services to persons of diverse linguistic and cultural backgrounds. (p. ix)

In addition to linguistic barriers, differences in cultural values may deter people of some nationalities from using litigation to settle differences, since the widespread approval of lawsuits and litigation found in the American middle class is not universally shared. For example, Endo (1984) has noted a preference among first-generation Chinese Americans to settle legal disputes through informal mediation and community groups.

In New York State, geographic barriers caused by courts being located far from minority communities are less likely to be a problem, since the minority population in the state is largely concentrated in urban areas. This may, however, act as a barrier to Native Americans living on rural reservations.

Aside from economic barriers, probably the most important factors deterring minorities from using the court system are psychological. We have already noted that distrust of the fairness of the courts is widespread, more so among minorities than among nonminorities. The courtroom environment, which may be perceived as alien and hostile, should not be discounted as a cause of this, especially given the demonstrated underrepresentation of minorities among judges, lawyers and court officers. Accordingly, the National Center for State Courts (1978) notes:

> The psychological barrier probably is felt most by minorities . . . . In some instances alienated, in others merely fearful, they are reluctant to enter the unfamiliar imposing, complicated environment of the regular courts . . . . American courts ca appear a very alien environment to a Black, an Oriental, or a Mexican-Americar For the most part, judges are European Whites; the prosecutors, lawyers, clerks ar other court personnel are the same . . . . For the purposes of this report, we are n so concerned with the plight of the individual minority group members who may deprived of the opportunity to become lawyers or judges. We are more worri about the hundreds of thousands or millions of their fellow citizens who are depri

of an adequately integrated legal system. (p. 112)

This type of psychological barrier is rooted in the historic exclusion of minorities from positions of power within the courtroom environment and perpetuated by the continuing absence of representation which comes from the failure to redress such discrimination. It is therefore likely to continue playing an important role in fostering aversion to courts unless its cause is affirmatively addressed.

5.0 Conclusions

Examination of the operation of process-related factors in the courtroom would expand and complement the information generated by research into differential case outcomes. A focus on process represents another dimension of the entire legal experience, but it is one which may go to the heart of contemporary concerns about the law. Perceptions of fair process are related to positive evaluations of the courts and to belief in the legitimacy of the legal system. Since faith in the legitimacy of the legal system is related, ultimately, to compliance with the law, any courtroom situation which undermines the perception of fairness can be viewed as acting counter to the purpose of the legal system as a whole.

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JUDICIAL SELECTION AND THE EXPERIENCE OF MINORITY JUDGES

BACKGROUND BRIEFING PAPER #2

New York State Judicial Commission On Minorities

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JUDICIAL SELECTION AND THE EXPERIENCE OF MINORITY JUDGES

1.0 Introduction

This review treats issues pertaining to minorities in the judiciary. The first section offers a brief history of minorities on the bench; the second focuses on career paths, backgrounds, experiences, and attitudes particular to minority judges; the third discusses judicial selection and its effect on minority representation. Much of the literature focuses on black and Hispanic jurists; little has been written about Asian jurists (New York's first Asian judge was appointed in 1982), and the State has never had a Native American judge.

Robert Morris, appointed to Boston's Magistrates Court in 1852, was the first Black to hold a judicial position in the U.S. During the next one hundred years, fewer than two dozen Blacks held judgeships (Smith, 1983). In 1937, William Hastie was appointed to the Federal District Court in the Virgin Islands (a post thereafter usually held by Blacks), and later was appointed to the Third Circuit Court of Appeals. Jackson (1974) points out that, "[e]xcept for his successors in the Virgin Islands and two Customs Court judges, Hastie was the sole black federal judge until John Kennedy honored a campaign promise by appointing two in 1961" (p. 112).

The first black jurists in New York State were Judges Charles E. Toney and James E. Watson, elected in 1937 to the newly-created Tenth Municipal Court District in Harlem (Brandveen, 1988). In 1939, Jane Matilda Bolin, a black woman, was appointed to the New York City Court of Domestic Relations (Kane, 1964). In 1951, Emilio Nunez became the first Hispanic jurist in the state; he was appointed as a New York City Magistrate (Governor's Office of Hispanic Affairs, 1986). Randall T. Eng, appointed to the New York

City Criminal Court by Mayor Koch in 1982, was the first Asian jurist in the State of New York. Dorothy Chin Brandt and Peter Tom, both elected to the New York City Civil Court in 1987, are the first elected Asian jurists in New York City (Brandveen, 1988).

Commentators are divided in characterizing the courts' part in redressing racial discrimination in this country. Smith (1983) writes favorably of the courts' role in the civil rights movement:

> [M]any of the movement's most spectacular victories were won in the courts, with the 1954 Supreme Court decision outlawing segregated schools [Brown vs. Board of Education] being the most prominent example. The judiciary has been seen widely as a friend of blacks. (pp. 76-77)

Other writers, however, suggest that minorities see the judiciary as serving white purposes and preserving white hegemony. Kluger (1975) highlights Dred Scott v. Sanford, the 1857 U.S. Supreme Court opinion wherein Chief Justice Taney, in discussing the status of Blacks at the time of the adoption of the Declaration of Independence, "sealed the stamp of white supremacy on the great document, which [Taney] said was adopted under the general agreement that Blacks were 'beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they have no rights which the white man is bound to respect'" (p. 39).

Jackson (1974) writes of the situation in the southern courts in the 1940s and '50s:

> One consequence of the segregated bench was a black community that feared and avoided the courthouses, with good reason. [Judges] Elreta Alexander and George Crockett, growing up in the South, learned to keep a safe distance from the white man's law. Black-on-white crime was dealt with urgently and often viciously; white-on-black and black-on-black offenses were frequently ignored, the latter shucked off as "nigger disorderly." (p. 112)

The sentiment that an all-white judiciary creates an atmosphere inimical to racial justice is

echoed throughout the literature on minorities in the judiciary.[1]

The following passage identifies the key points made in most discussions of the significance of minority jurists. In order to examine whether black judges have made a difference to the kind of justice meted out in our nation's courts,

> one must consider the kinds of differences black judges could make. Civil rights advocates fought for more black judges, presumably because they believed that black judges would provide both symbolic and substantive representation for black people and thus contribute to a more equitable society . . . . By symbolic representation, we mean simply that blacks can look to the courts and see members of their own race in positions of influence and decision-making authority. About one-third of black judges believe that providing symbolic pride, inspiration, and status for blacks is an important function of their service on the bench . . . . Advocates of greater minority representation on the bench also believed they would provide greater substantive representation; that is, that blacks on the bench would act in a manner to advance the best interest of blacks, reducing vestiges of racism that still remained in the legal system . . . . Almost 40 percent of black judges believe that this kind of substantive representation is an important function of their being judges . . . . (Welch et al., 1988, pp. 126-27; citations omitted)

2.0 Minorities in the Judiciary

2.1 Minority Representation

In 1971, the American Judicature Society and the Judicial Council of the National Bar Association identified 286 sitting black federal, state, and city judges; at the time, there were 21,769 judges in the country, putting black representation at 1.3%. Blacks were better represented on the federal bench, where they constituted 7% of the judiciary, than on state courts, where they represented 1.2% of the judiciary. Just over half (51%) of those 286 black judges sat on municipal courts or courts of limited jurisdiction. Thirty-five percent sat on state trial courts of general jurisdiction. The remaining 14% were distributed across

[1] See articles and books referenced above and also Crockett, 1971a; 1971b.

federal courts and state appellate courts, the greatest concentration (4%) being in the U.S. District Court (American Judicature Society, 1973).

In 1985 the Fund for Modern Courts examined the distribution of black, Hispanic, Asian, and Native American law-trained, full-time jurists nationally. The results of that survey are in Table 1.

Table 1. Full-Time Minority Judges in the United States, 1985

	State		Federal	
TOTAL	12,093	100.0%	755	100.0%
Black	465	3.8%	53	7.0%
Hispanic	150	1.2%	24	3.1%
Asian	77	0.6%	3	0.4%
Native American	3	0.02%	0	0.0%

Source: Fund for Modern Courts, 1985, p. 13.

It cannot be determined from these figures how, or if, the percentage of minority jurists had changed since 1971. The Fund's sample of 12,846 judges is only 55.6% of the sample examined by the American Judicature Society (1973), since the Fund study included only full-time, law-trained judges.

In New York in 1971 there were four black appellate level judges and 33 black trial court judges (Cooke, 1971). According to the 1980 census, 2.7% of all the lawyers in New York State were black, while 5.5% of all judges were black. This "overrepresentation" of judges relative to the pool of lawyers did not occur for other minority groups. Hispanics represented 1.6% of all lawyers in the state but 1.3% of all judges; Asians represented 1.7% of all lawyers but 0% of judges; Native Americans represented 0.06% of lawyers, but 0% of judges.

In 1989, the New York State Judicial Commission on Minorities found that of 1,141 New York State judges, 87 (7.6%) were members of minority groups: 65 (5.7%) were black; 19 (1.7%) were Hispanic; and 3 (0.3%) were Asian. There were no Native American judges in New York.[2] The vast majority of minorities on the New York bench sit in New York City. Of 65 black New York judges, 57 (88%) sit in New York City (Metropolitan Black Bar Association, 1988).[3] Notably, the 10 black judges who sit in the second judicial district (Brooklyn and Staten Island) are all in Brooklyn; there has never been a black jurist in Staten Island (Brandveen, 1988). Eighteen of 19 (95%) Hispanic judges sit in New York City, as do all three (100%) Asian jurists.

The distribution of minority judges in New York courts as of 1989 is shown in Table 2.

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[2]Data furnished by the Office of Court Administration and the Metropolitan Black Bar Association.

[3]Minority jurists who sit on courts with statewide jurisdiction located in New York City figure into the count of jurists "sitting in New York City."

Table 2. Minority Judges in New York by Type of Court, 1989

	Black	Hispanic	Asian	Native American	White	Total
Highest Court: Court of Appeals	1 (14.3%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	6 (85.7%)	7
Intermediate Appellate: Appellate Div. of Supreme Court Appellate Terms of Supreme Court County Court	7 (6.1%)	1 (0.9%)	0 (0.0%)	0 (0.0%)	106 (93.0%)	114
Trial Courts of Oric. Jurisdiction: State Supreme Court Court of Claims Family Court Surrogate's Court NYC Criminal NYC Civil	56 (6.8%)	17 (2.1%)	3 (0.4%)	0 (0.0%)	739 (90.7%)	815
Courts of Limited Jurisdiction: City Courts District Courts Town Courts Village Courts	1 (0.5%)	1 (0.5%)	0 (0.0%)	0 (0.0%)	203 (99.0%)	205
Total Judges	65 (5.7%)	19 (1.7%)	3 (0.3%)	0 (0.0%)	1054 (92.3%)	1141

Sources: Office of Court Administration (1989); Metropolitan Black Bar Association (1989).

2.2 Attitudes and Experiences of the Black and Hispanic Judiciary

The Coalition of Concerned Black Americans (1975) focused specifically on the perceptions of black and Hispanic judges regarding inequalities in the administration of justice. The Coalition surveyed black and Hispanic judges serving in New York City Civil and Criminal Courts or on New York State Supreme and Family Courts.[4] At the time, Blacks and Hispanics held 11.5% of those judicial positions.[5]

Responses were elicited on selection procedures, court assignments, plea bargaining, bail, jails, disciplinary actions toward judges, and "overt and covert examples of racism

[4] All 39 eligible judges were contacted; 24 responses were collected, representing a 61% response rate.

[5] At present, according to data from the Office of Court Administration and the Metropolitan Black Bar Association, 13.6% of the judges on these courts are black or Hispanic.

throughout the system (p. 497). Many respondents particularly criticized [illegible] facilities, noting disparities between courts (e.g., "Queens Criminal Court is terrible; the [illegible] provides chambers for judges [not so in Brooklyn Criminal Court]" (p. [illegible]). Seventy-six percent stated that there was no racial discrimination in court assignments. Plea bargaining, while seen by most of the judges as indispensable, was criticized for favoring those with money, who can afford bail and good lawyers. A number of respondents noted that the bail system increased the number of Blacks and Hispanics in jail, since Blacks and Hispanics were less likely to have financial resources. The high percentage of Blacks and Hispanics among the incarcerated dismayed many respondents. One judge noted that "85%" of inmates are black, Puerto Rican, and poor. This judge mused, "And I don't believe their arrest is whimsical. It may be due to historical deprivation, but it is real" (p. 523). Another judge commented, "I doubt seriously that the small number of Whites in jails is due to [an] excess of virtue on the part of the white population" (p. 523).

When asked whether certain judges are rebuked or disciplined for being "lenient," seven judges (29.2%) said yes, nine (37.5%) said no, and eight (33.3%) offered no comment. When asked whether the expression of partisan opinions about the Criminal Justice System would jeopardize their positions, six judges (25%) said yes, seven (29.2%) said no, and 11 (45.8%) offered no comment.

Judges were asked to comment on trends in the administration of criminal justice that might affect Blacks and Hispanics. None of the comments quoted in the Coalition's report are very optimistic. The following is representative:

> There has been a progressive trend toward the diminution of individual rights in this country during the past four years. I believe that this trend will continue

and that the victims will be Black and Hispanic. (p. 526)

When asked, judges offered a variety of comments on whether racism plays a role in their work environment. One half of respondents reported that racism played a part in their daily work.[6] Comments regarding racism included:

> I believe that my colleagues as well as the district attorney's office are still being influenced by hackneyed and stereotyped impressions in their dealings with minorities. (p. 512)

> Some of our judges are somewhat racist, white and some black judges. The reasons lie in the background and experiences of these judges with white society. But overall, most of our judges are fair and impartial, both black and white. (p. 512)

Judges unanimously affirmed that more black and Hispanic judges were needed.

The authors of the Coalition report concluded that there was a need for an expanded and comprehensive study of "the experiences of Black, Hispanic and similar minority judges across the nation" (p. 529).

In Smith's study of the black judiciary (1983),[7] 95% of all respondents believed the U.S. has to go "very much" further to achieve racial equality. Fifty-five percent believed there had been "very much" racial progress between 1953 and 1973; 43% said there had been "some"; less than two percent said there had been no racial progress in those years.

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[6]The Coalition report notes:

> This particular question [Do you believe that racism plays a part in your daily life?] was found to be somewhat confusing to respondents as there was too much latitude for individual interpretation. Consequently, interpretation of the responses is open to question. (A few respondents noted that racism did not play a part in their daily work because they themselves were Black or Hispanic. They did not consider the possibility of racism on the part of other court personnel. This consideration may or may not have resulted in different responses.) (p. 513)

[7]A questionnaire asking about attitudes and background was sent to each the 286 black judges sitting in 1973. Questionnaires were returned by 185 of the judges (65.7% response rate).

Twenty-three percent thought that trial courts had made "very much" contribution to racial progress, 70% thought they had made "some" and 6% "none."

Smith notes:

> Though lower courts were [seen as] niggardly in their contributions to racial equality, most were not perceived as highly racist. Only one in seven black judges (less than 15 percent) thought that racism was high in the courts of their communities. Approximately two-fifths each saw it as moderate and as low . . . . [M]ost interviewees argued that court racism was moderate to low because urban areas, at least in the North, presently have such large black populations, "and even more importantly, there are enough black judges on the bench now to keep 'em honest." (p. 77)

One third of respondents said they had not experienced discrimination as judges. Those who had experienced discrimination did not identify any one group as having perpetrated discrimination significantly more often than any other group. Thus, white political leaders, the police, the media, lawyers, and other judges each were identified by between 10% and 20% of responding judges as having discriminated against the individual respondents. (Smith himself had designated these five groups. Though Smith's questionnaire also included a sixth, "other," category, Smith neither names any of the other groups identified nor reports the proportions of judges identifying an "other" source of discrimination).

Twenty-seven percent of the judges said that other black judges exercise their powers with a special view of protecting the rights of blacks; 40% said that they themselves did so. Forty-five percent believed that judges <u>ought</u> to so exercise their powers, while 49% say they <u>ought not</u>; the remaining 6% did not know.

Smith suggests that race is a factor in attitudes about judicial activism. More than one third of the judges in Smith's study favored judicial activism, whereas, Smith notes, fewer than 5% of judges in a 1975 study of predominantly white judges (Ish, 1975) favored judicial

activism. Conversely, 18% of the black judges in Smith's study favored judicial restraint, whereas nearly two thirds of the judges in the 1975 study favored judicial restraint. Smith concludes that it is "quite likely" that the differences are due to race (p. 82). Disparities among black judges in attitudes toward judicial activism appeared related to socioeconomic background. Black judges from working-class backgrounds were much more likely to advocate judicial activism than those from nonworking-class families.[8]

Thirty percent of the judges in Smith's survey named civil rights issues as the primary influence on their interest in politics. Eighty-six percent belonged to the NAACP, 50% to the Urban League, and 20% to other, mostly local, civil rights groups.

2.3 Background and Career Paths of Black and White Judges

The American Judicature Society's (1973) report on the black judiciary presents findings from a questionnaire returned by 167 of the 286 black judges sitting at the time (a 58% response rate). The survey's findings on pre-judicial career paths appear in Table 3.

Table 3. Black Judges' Pre-Judicial Experience

	Number of Judges	% of Judges
General Practice	61	36.5
Judicial Position	50	30
Government	24	14
Criminal Practice	10	6
None	9	5
Other	13	8.5
Total	167	100

Source: American Judicature Society, 1973, p. 20.

[8] Sixty-two percent of the black judges responding to Smith's (1983) questionnaire described themselves as coming from working-class backgrounds; 32% from middle-class backgrounds; and 6% from upper-class backgrounds.

Among judges who had been in private practice, 18% were in solo practice, 12% were in firms with two members, 26% in firms with three members, 23% in firms of four members, and 21% in firms that had five or more members (the largest firm to which a respondent belonged had 22 members). Eighty percent of the firms to which respondents had belonged were all-black firms. As far as could be ascertained, all but one judge had been partners in their respective firms.

Smith's findings on pre-judicial careers add information to the Society's findings: 66% of the black judges he surveyed had been private practitioners at some point; 23% worked in D.A.s offices; and 19% had held public positions (nonprosecutorial, appointive positions, usually second- and third-ranking office in state and municipal bureaucracies) immediately prior to ascending to the bench.

The Judicature Society questionnaire also asked if other members of judges' families were lawyers. Forty-nine (23.3%) judges reported that at least one immediate family member was a lawyer (most often the father, son, or brother). The Judicature Society report concludes that in order for more Blacks to be represented in the judiciary, there need to be more black attorneys. In 1973, there were "percentage-wise . . . actually slightly more black judges in the judiciary than black attorneys in the legal profession" (p. 25). As mentioned earlier, this was still the case in 1980 in New York.

Uhlman (1977) examined background and career patterns of the 16 black and 79 white jurists serving on the trial bench in "Metro City," a major urban center. Interracial differences and similarities with regard to local and regional ties, education, pre-judicial careers, methods of selection, and professional and community involvement were assessed.

Uhlman used data from other sources[9] to compare black jurists' backgrounds and career paths to those of black attorneys.

Uhlman found that black trial judges in Metro City were less likely than white judges to have been born locally (56.2% vs. 86.6%), reared locally (68.7% vs. 94.7%), or educated locally (25% of black judges, but 69.3% of white judges, attended local colleges; 62.5% of black, as opposed to 85.9% of white, judges attended local law schools). These disparities may be significant indicia of minority success in seeking judgeships, given, as Uhlman notes, that investigations of both state and federal benches "indicate that close community and regional ties are important informal or unofficial prerequisites for judicial service" (p. 460).[10]

While fewer than 8% of all Metro City judges entered the judiciary directly from prosecutorial positions, many had worked as prosecutors (14 [87.5%] black judges and 46 [59%] white judges) at some point in their careers. Pre-judicial (i.e., office last held before reaching the bench) career information found by Uhlman is presented in Table 4.

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[9]For example: Brown, F. (1971). The black lawyer in private practice. Harvard Law School Bulletin, 22, 13-14; Shuman, J. (1971). A black lawyers study. Howard Law Journal, 16, 225-313.

[10]Uhlman cites: Glick, H., & Vines, K. (1973). State Court Systems. Englewood Cliffs: Prentice Hall; Canon, B. (1972). Characteristics and career patterns of state supreme court justices. State Government, 65, 34-41; Vines, K. (1964). Federal district judges and race relations cases in the south. Journal of Politics, 26, 337-57.

Table 4. Metro City Trial Judges: Pre-Judicial Positions

	Prosecutorial	Government	Private Practice	Political	Judicial
Black Judges (N=15)	13.3% (N=2)	20.0% (N=3)	66.7% (N=10)	0% (N=0)	0% (N=0)
White Judges (N=67)	5.9% (N=4)	9.1% (N=6)	77.6% (N=52)	5.9% (N=4)	1.5% (N=1)
Total (N=82)	7.3% (N=6)	11.0% (N=9)	75.6% (N=62)	4.9% (N=4)	1.2% (N=1)

Source: Uhlman, 1977, p. 464.

Substantial numbers of both black (43.8%) and white (28.6%) judges had been local, state, or federal employees in jobs that required legal expertise (e.g., Assistant Director, Legislative Reference Bureau; Counsel, Register of Wills; Attorney/Examiner, Bureau of Sales and Use Tax). From the above data and examination of autobiographical statements, Uhlman concluded the following about trial court judges' career paths in Metro City:

> The specifics varied, but "hands on" legal work emerges as [an] unofficial prerequisite for office. Government service as a prosecutor or in another legal capacity early in the future judge's career was the norm and functions as a solid career base. Private practice, an intermediate career stop, usually consisted of membership in a law firm and represents both a mark of success and an association helpful to judicial prospects. Success here in conjunction with prior government service constitutes the baseline around which both black and white judicial candidacies[11] in Metro City can be and have been structured. (p. 465)

Previous studies show that most black attorneys remain individual practitioners, and a majority of the black judges responding to one survey report never having joined a private firm.[12] However, Uhlman noted the following about black trial jurists in Metro City:

> Association with a firm at some stage in their careers was common as about half (8 of 15, or 53.3 percent) indicate such affiliations. Not surprisingly,

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[11] Trial court judgeships in Metro City are elective positions.

[12] Uhlman cites Brown, supra n. 9, pp. 13-14, and American Judicature Society (1973), p. 21.

nearly all were associated with the one well-established black firm that was in existence throughout the period. However, several others departed from common practice even further by being employed by predominantly white firms in the city. Nearly two-thirds of the whites in private practice (62.0 percent) also affiliated with law firms prior to their judicial careers. In this respect then, black jurists are clearly more comparable to their white judicial colleagues than to a cross-section of the city's black bar. (p. 465)

Uhlman looked at the level of political involvement among Metro City judges and commented:

> [I]nterviews with several community leaders revealed that while visible partisanship might not be required or at least not reported, many future jurists had supported their party behind the scenes; and these credits were indeed helpful for prospective candidates.
>
> While partisan loyalty seems to be important, extensive, and, in particular, highly visible, political activity does not represent an informal requirement for a successful judicial candidacy in Metro City. Important in understanding the entire recruitment process, this finding is especially significant for the black bench when compared to the rather high levels of political activity observed on the part of black attorneys. Political involvement is viewed as an avenue for advancement in black communities and a majority of black attorneys see it as such. Thus the limited nature of this activity may be viewed as a special characteristic of the black bench. It differentiates these individuals from the majority of black, legal professionals and perhaps makes them more acceptable to the white legal establishment. (p. 466)

Uhlman concludes that "[r]ace-related background differences are minimal on the Metro City bench" (p. 468). He notes that while disparities appear, "they occur less frequently and are usually smaller than hypothesized" (p. 468). This finding leads him to comment:

> Jerome Shuman concludes that black lawyers in his study are " . . . Black first and lawyers second."[13] A comparable statement is more difficult to support for the blacks now serving on the Metro City bench. "Blackness" is an obvious and important factor in their backgrounds, but it is not the only factor. The close correspondence between black judicial characteristics and the career patterns and credentials established by successful white candidates appears to

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[13] Shuman, "A Black Lawyers Study," pp.228-229. [Uhlman's note, renumbered here; see herein supra n. 9.]

be equally significant. . . . [T]he black bench in Metro City is not descriptively representative of the black community. More importantly, neither is it descriptively representative of the black legal community. Most black attorneys in the city have not gone to Ivy League law schools, have not engaged in prosecutorial work, and have not avoided active political involvement. (pp. 469-70)

2.4 "Do Black Judges Make A Difference?"

Welch et al. (1988) examined whether black judges make decisions that differ systematically from the decisions of their white counterparts; previous studies are summarized as follows:

> Uhlman (1978)[14] analyzed cases from "Metro City" from 1968 to 1974 and found that both black and white judges convicted black defendants more readily and sentenced them more harshly than they did white defendants. Compared to white judges, black judges were somewhat less likely to convict black defendants as readily or sentence them as harshly, but the differences between black and white judges were small.
>
> Walker and Barrow (1985)[15] examined federal district court judges appointed by President Carter. They found no significant differences between black and white judges in criminal cases or in four other categories of cases, including one encompassing civil rights issues (race discrimination, school desegregation, employment rights, and police brutality). On the other hand, Gottschall (1983)[16] examined federal appellate court judges appointed by Carter and found a dramatic difference between black and white judges in criminal defendants' and prisoners' rights cases. Black judges voted to support these rights to a substantially greater extent. Yet there were no significant differences between the judges in race or sex discrimination cases. (pp. 127-28)

They note that these previous studies have been inconclusive, and they point out a number of problems with Uhlman's 1978 study, viz. his failure to control for prior record of

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[14] Uhlman, T. (1978). Black elite decision making: The case of trial judges. American Journal of Political Science, 22, 884-95.

[15] Walker, T., & Barrow, D. (1985). The diversification of the federal bench: Policy and process ramifications. Journal of Politics, 47, 596-616.

[16] Gottschall, J. (1983). Carter's judicial appointments: The influence of affirmative action and merit selection on voting on the U.S. court of appeals. Judicature, 67(10), 165-73.

defendants, to separate the decision to incarcerate from the decision on length of incarceration, and failure to look at whether other characteristics of judges (prosecutorial experience, time on the bench, sex) could explain decision differences.

Welch et al. focused on decisions of trial court judges in a large northeastern community, "Metro City"; decisions of 10 black and 130 white judges in 3,418 felony cases involving black and white male defendants between 1968 and 1979 were reviewed. While the number of black judges is small, it is comparable to the number in previous studies of race and sentencing. Decision to incarcerate and length of sentence were examined separately; prior record and judicial characteristics were controlled for.

By examining incarceration determinations for black and white defendants separately, Welch et al. found that black judges are more likely than white judges to sentence white defendants to prison. Both black and white judges are equally likely to sentence black defendants to prison. The authors note,

> This raises the question of whether black judges are exceptionally severe with white defendants and, for that reason, sentence them more harshly than do white judges, or whether white judges tend to sentence white defendants more leniently than they do blacks. (pp. 131-32)

Examination of further sentencing data in Metro City led them to conclude that,

> the reason black judges are more likely than white judges to send white defendants to prison is that black judges tend to treat black and white defendants alike, while white judges are more severe with black, compared with white, defendants. (pp. 132-33)

Welch et al. also found that when all relevant factors are controlled for, black judges give black defendants lighter sentences (once the decision to incarcerate has been made) than do white judges. Welch et al. asked whether this means that black judges are more

lenient or white judges are more severe with black defendants. Examining the data led them to conclude, "tentatively," that "black judges may slightly favor defendants of their own race when determining the overall harshness of the sentence, while white judges probably do not do so" (pp. 133-34). Welch et al. concluded that,

> While the impact of black judges is . . . somewhat mixed, in the crucial decision to incarcerate, having more black judges increases equality of treatment. (p. 126)

3.0 The Judicial Selection Process

3.1 Present Judicial Selection Methods in New York

Table 5 shows to which New York courts judges are elected and to which appointed; appointing officials are indicated.

Table 5. New York State Courts, Judicial Selection Methods

COURTS TO WHICH JUDGES ARE APPOINTED:	APPOINTED BY:
Court of Appeals	Governor
Appellate Division of the Supreme Court	Governor
Court of Claims	Governor
Appellate Terms of the Supreme Court (1st and 2nd departments)	Chief Administrative Judge
New York City Housing Parts of New York City Civil Court	Chief Administrative Judge
New York City Family Court	Mayor
New York City Criminal Court	Mayor

COURTS TO WHICH JUDGES ARE ELECTED:

Supreme Court
Surrogate's Court
County Court
Family Court outside of New York City
New York City Civil Court

COURTS TO WHICH JUDGES ARE EITHER APPOINTED OR ELECTED, DEPENDING ON LOCAL LAW:

District Court
City Court
Town Court
Village Court

Source: State of New York Commission on Government Integrity (1988).

3.2 Elective vs. Appointive Selection Plans

Debate has always surrounded judicial selection methods (Jackson, 1974). Proponents of appointive plans claim that appointments protect judges from political pressures, preserving an independent judiciary. Opponents claim such plans give too much power to appointing authorities, making room for favoritism and other abuses.

At present, efforts are being made by some legislators to pass a constitutional amendment instituting a merit selection plan in New York that would give the governor power to appoint state Supreme Court justices. The plan calls for thirteen-member judicial nominating commissions to prepare lists of names from which the governor's choices would be drawn.[17] Gubernatorial appointments would be subject to state senate approval, and voters would have the opportunity to vote on whether to retain a judge once a term was completed.

3.2.1 Minorities and the Election vs. Appointment Debate

In 1985 the Fund for Modern Courts reported that, nationwide,

> A higher percentage of women and minorities were chosen through an appointive process, either Executive Appointment (17.9%) or Merit Selection (17.1%), than any elective system, whether Judicial Election (11.7%), Partisan Elections (11.1%), Nonpartisan Elections (9.4%) or Legislative Elections (6.9%). (Fund for Modern Courts, 1985, p. 69)

The authors concluded that

> women and minorities have a better chance of attaining judgeships in state courts through an appointive process, Executive Appointment or Merit Selection than through any elective process, either partisan or nonpartisan. (p. 69)

The Fund found that of 842 elected New York judges, 37 (4.4%) were black, 8 (1.0%) were Hispanic, and neither Asians nor Native Americans were represented on the bench. Seventy-four New York judges were appointed by the governor, not in a merit

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[17] "The commissions would be established in each of the twelve judicial districts and would consist of four members appointed by the governor, three by the chief judge, one by the presiding justice of the local Appellate Division, one each by the four top legislative leaders and one by the president of the New York State Bar Association. Additionally, in New York City the mayor would appoint four special regional members from each county; each group of four would serve only when the commission was considering vacancies in its county." (Barbieri, 1988, p. 5)

selection process; four (5.4%) were black and one (1.4%) was Hispanic. Of the 181 New York judges chosen under a merit selection process, 21 (11.6%) were black, nine (5.0%) were Hispanic, and two (1.1%) were Asian. Merit selection in New York clearly resulted in more minority judgeships than other selection plans.

Appointing authorities in New York have recently selected a high percentage of women and minority judges. Between 1978 and September of 1985, New York City's Mayor Koch appointed 104 judges; 11 (10.6%) were black, six (5.8%) were Hispanic, and one (0.9%) was Asian. Mayor Lindsay (1966-73) had appointed 15 Blacks and 5 Hispanics (19.1% of all appointments); Mayor Beame (1974-77) appointed 3 Blacks and 2 Hispanics (9.8% of appointments). Between 1983 and 1985, Governor Cuomo appointed 53 judges; four (7.5%) were black and one (1.8%) was Hispanic. Three of Cuomo's black appointments were made under merit selection plans. Governor Carey (1975-1982) appointed 140 judges, of whom 9 (6.4%) were black and 1 (.7%) was Hispanic. Four of the nine black appointees, and the one Hispanic appointee, under Carey were chosen through merit selection (Fund for Modern Courts, 1985).

Many respondents in the Coalition of Concerned Black Americans (1975) study believed that an elective process will result in better minority representation, since the minority electorate is large and growing. The notion that minority voters will be mobilized to vote in a race where "one of their own" is running finds some support in the work of Atkins et al. (1984), who found that race may be a salient feature in judicial elections. Judicial elections generally lack salient features, resulting in low interest and low voter turnout, but Atkins et al., using data from Florida elections, found that black voters are more

likely to vote if a black candidate is in the race.

At least two Coalition respondents expressed concern that the judicial selection procedure was being turned from an elective to an appointive system just as the minority electorate was increasing:

> Do you change the system from an elective one to an appointive one at a time when the numbers of Blacks in inner cities is increasing? We have the population or numbers to elect now. (p. 506)

The Coalition study reports data indicating that minority judges are more likely to be appointed than elected but draws no conclusions.

Ninety-four percent of the black judges in Uhlman's (1977) study were initially appointed, as were 86% of black judges in the American Judicature Society report (1973). It is not known how many white judges in the relevant pools initially were appointed.

3.2.2 Other Considerations in the Debate

The Committee for Modern Courts, which supports merit selection, offers the following arguments:

> Elections do not uniformly produce the best qualified judges. In most elections, political party leaders make the important decisions about who will be designated, and receiving the all-important support of the party organization is prerequisite to becoming a judge in most parts of the state. And, as Chief Judge Sol Wachtler recently observed, "No political leader has been given the mandate to improve the judiciary."
>
> Where there is a competitive race, the voter has no rational basis upon which to make informed choices because judicial candidates are barred by the Canons of Judicial Conduct from campaigning on issues on which they may some day have to rule. Contested races also force candidates to raise campaign contributions which can create at least the appearance of impropriety.
>
> . . . Justices of the Supreme Court are not selected by the voters in primary elections, but are handpicked by party bosses and nominated at a judicial convention. When the nominating process is over--the election is too, for in most parts of the New York State, one party is so dominant that its candidates

are all but guaranteed election. Thus, the party bosses not only nominate the candidate, they in effect "appoint" the judge. (Committee for Modern Courts, pp. 1-2)

Jackson (1974), describing a contested 1972 election to the New York Court of Appeals, points out:

> The canons of judicial ethics close[d] off all the normal avenues of politics: they could not attack their opponents; they must not make promises; they were forbidden to give their views on "disputed legal or political issues," which eliminated everything interesting; they were not to endorse other candidates, not even the presidential nominees of their own party. They were limited to winsome smiles, resumes of their legal careers, bland pronouncements on noncontroversial subjects, and innuendos. They were unable to answer the legitimate questions of voters who wanted to know their views on abortion, capital punishment, school busing, and local property taxes. They were suspended between their profession and the public, jammed into an impossible corner by a system laboring in transition. The rules of politics made them campaigners, the code of the bench all but precluded campaigning. (p. 177)

Some pages later, Jackson comments:

> The theory underlying the popular election of judges is that an office so important and powerful demands accountability to the public, that the voters have a vital interest in who settles their disputes and enforces their standards. The theory is tempting, and many political scientists defend it. But if New York City is a laboratory for empirical study of that theory, it is clearly an idea whose time has gone.
>
> In an overwhelming majority of instances, judicial elections in New York are devoid of choice. The candidates are accountable not to the voters but to the party leaders who bargain their nomination. The voters may endorse the agreed-upon candidate or decline to vote. (p. 186)

The Fund for Modern Courts has examined--and criticized--the elective process used to select judges for New York City Civil Court (1986a) and New York City Surrogates Court (1986b). Elections to both courts are, the Fund maintains, beset by similar problems--they are noncompetitive, expensive, and lack "real" issues (resulting in low voter participation). Moreover, both studies found that the elective process offered little chance for either

minorities or women to win a post on either court.

The Fund's findings support judicial appointment as a means for increasing minority representation on the bench. In 85 New York City Civil Court elections from 1980 to 1985, 12 minorities won election, only 14.1% of successful candidates. By contrast, from 1978 to 1985, Mayor Koch appointed 18 minority judges, 17.3% of the total 104 appointments Koch made (1986a).[18]

While the Fund's report on Surrogates Court (1986b) does not expressly contrast Surrogate Court election results with the appointive process, prospects for a minority to win a Surrogates Court election are especially grim. From 1980 to 1985, only one minority even ran for any of the 24 spots available during that period (a 4.2% candidacy rate), without success. Surrogate's Court judgeships are desirable; working conditions are good, and judges have the power to make lucrative conservator and guardian appointments. The Fund reports that no minority candidate has ever won a Surrogate's Court election. The Fund concludes that merit selection is better than a judicial election plan, a conclusion also reached by the New York State Commission on Government Integrity (1988).

Goldman (1982) offers the following critique of merit selection:

> In practice, merit selection commissions have been found at times to take party affiliation into consideration when assembling the slate of candidates to be presented to the governor. The fact that commissions consist in part of gubernatorial appointees may invite this. Commissions should not be presumed to be any more or less racially or sexually biased than the public at large. Thus, without a conscious effort, perhaps due to the strong beliefs of

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[18] Even correcting for the longer period and higher number of positions covered by the Koch appointment figures, the appointive process can be expected to garner more minority judgeships than the elective process. Eighty-five elective positions provided only 81.73% of the opportunity of Koch's 104 appointments. Prorating the actual number of minority appointments (i.e. 18) by a factor of 81.73% still would result in 14.7 minority judgeships, 22.5% higher than the 12 elective positions won by minorities.

> a commission chairperson or the moral leadership provided by one or more commissioners, it is unlikely that the commission itself will actively recruit or even encourage women and minorities to apply. Further, by selecting some of the membership of the commissions, the bar associations may be burdening the commission with the biases of the bar establishment, be they political, policy-oriented, or racial/sexual. Lastly, by restricting the governor's choice of the ultimate appointee, the merit selection method undermines the concept of political accountability--if not in fact, then in all likelihood--in the perception of the public. (pp. 121-22; citation omitted)

Manhattan Lawyer reported in 1988 that the "majority of judges opposed to merit selection say they would rather be accountable to voters than see the governor gain the power to appoint" (Barbieri, 1988, p. 5). Others who oppose appointive plans also fear that they represent a diminution of democracy.

3.3 Judicial Selection Crfteria and Affirmative Action

The Association of the Bar of the City of New York (1989) lists criteria most often employed in evaluating candidates for judicial office.

- General intellectual ability
- Knowledge of the law, including knowledge of the specific body of law applicable to the court to which the candidate seeks election or appointment.
- Appropriate demeanor and judicial temperament, with an ability to deal patiently, cautiously, and considerately with all participants in the judicial process, including attorneys, clients, jurors, the public, pro se litigants, and, in the case of appellate courts, other judges in a collegial setting.
- Industriousness and a proven willingness to work hard
- An ability to discern facts and weigh conflicting evidence
- An ability to understand legal arguments and to make prompt, correct determinations of legal issues
- A proven capacity to speak and write clearly
- A reputation in the community for good character and integrity

- A commitment to equal justice for all, regardless of race, religion, sex, status, economic position, or other similar factors
- Candor and an absence of outside political or other influence
- A commitment to public service, particularly to judicial service.

(pp. 296-297)

Criteria such as these are widely advocated. Responses to a questionnaire returned by 27 local judicial screening committees to the New York State Judicial Commission on Minorities confirm that such criteria are typical, and that the above list is essentially exhaustive. Less than half of the responding committees report giving any weight to whether a candidate would contribute racial/ethnic diversity to the judiciary. Indeed, exactly half of the 22 committees offering any response on this point said they give ethnicity no weight.

Whether affirmative action considerations should have a place in appointment or nomination decisions has been raised by Goldman (1979). Goldman attempts to answer what he sees as the major objections to such efforts. He writes:

> The addition of racial/ethnic and sexual consideration is in no way inconsistent with the host of other considerations that have been involved in judicial selection . . . . (p. 490)

To the objection that affirmative action is nonetheless inappropriate for the judiciary, that "even though merit may not actually be the sole criterion for judicial selection, it is recognized as ideally the basis for choosing judges," Goldman answers:

> Today, racial and sexual discrimination are major legal issues before the courts. A judge who is a member of a racial minority or a woman cannot help but bring to the bench a certain sensitivity--indeed, certain qualities of the heart and mind--that may be particularly helpful in dealing with these issues. This is not to say that white judges are necessarily insensitive to issues of racial discrimination or that male judges cannot cope with issues of sexual discrimination. But the presence on the bench in visible numbers of well

qualified judges drawn from the minorities and women cannot help but add a new dimension of justice to our courts in most instances.

These judges cannot help but educate their colleagues by the example they set, by the creation of precedents, and by informal as well as formal interchange. They are likely the "best" people to fill certain of the vacancies and new judgeships.

Yes, we ought to aspire to obtaining the "best" people for our judiciary--but the "best" bench may be one composed of persons of all races and both sexes with diverse backgrounds and experiences and not necessarily only those who were editors of the Harvard and Yale law reviews. (p. 494)

Goldman responds to the objection that "classifying people" is dangerous by noting:

> Deliberate considerations of race and sex should not be given negative connotations so long as the government demonstrates positive, anti-racist, anti-sexist motives and purposes. (p. 489)

In response to the objection that the government is called on to exercise neutrality, not favoritism, he notes that affirmative action addresses past "favoritism" toward white men, to address a past wherein "within the framework of political reality . . . appointments of women, blacks, and some other ethnic groups were impossible" (p. 491). He adds,

> Yes, it is ironic that affirmative action which recognizes race and sex is necessary in order to hasten the time when race and sex will be irrelevant, and when racism and sexism are virtually non-existent. (p. 492)

Elsewhere, Goldman (1982) attempts to develop criteria that will aid the assessment of judicial candidates. He identifies eight qualities of a good judge: neutrality as to the parties in litigation; fair-mindedness; being well versed in the law; ability to think and write logically and lucidly; personal integrity; good physical and mental health; judicial temperament; and ability to handle judicial power sensibly. Goldman posits four principles for maximizing the possibility of selecting good judges, including

> Active Recruitment of Women, Blacks, and Other Ethnic Groups Who Have Been the Victims of Discrimination. By expanding the net of possible candidates, it is likely that there will be more well-qualified people to choose

from. A special effort to appoint more women and minorities can result in a strengthened judiciary whose presence can reassure certain segments of the population of the neutrality and fairness of the judicial process. Their presence and interaction as colleagues can also enhance the sensitivity of other judges on issues of race and sex discrimination, thereby enhancing those same qualities of neutrality and fair-mindedness. (p. 119; citations omitted)

4.0 Conclusions

It is evident that the presence of minorities in the judiciary affects both the public's perception of the court system and the "balance" of the justice dispensed by the courts. A greater minority presence on the bench would, the literature suggests, both make the dispensation of justice fairer and increase minorities' trust of the courts. The entrance of greater numbers of minorities into the legal profession is a prerequisite to an increase in the number of minorities in the judiciary. However, increasing minority presence on the bench may also require modification in the processes by which judges are chosen in the State. Available data show that greater numbers of minorities have reached the bench through appointment rather than election processes.

Few of the studies on attitudes and experiences herein reviewed included samples of both minority and non-minority jurists, and much of the work on attitudes was done in the 1970s--the political climate has changed since that time, and attitudes with it.

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LEGAL REPRESENTATION OF MINORITIES

BACKGROUND BRIEFING PAPER #3

New York State Judicial Commission On Minorities

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LEGAL REPRESENTATION OF MINORITIES

1.0 Introduction

This paper examines the adequacy of legal representation available to minorities. Although there is a clear constitutional mandate for representation in criminal cases, the quality of this representation has been questioned. Moreover, there is no corresponding mandate for civil representation, despite studies demonstrating that minorities legal needs are largely unmet in this area. While an obligation on the part of private attorneys to provide pro bono service is often advocated, there is controversy within the profession as to whether this constitutes an actual mandate. By examining the existing systems of providing representation in the context of their historical development, both the extent and the limitations of these systems will become clear.

The issue of quality and availability of legal representation for minorities is inextricably tied to the issue of legal representation for the poor because minorities are greatly overrepresented in that category. In 1982, while 12% of Whites nationwide were below the official poverty level, 36% of Blacks and 30% of Hispanics were below it. At the same time, among single female heads of households, 29% of Whites, 57% of Blacks, and 57% of Hispanics were below the poverty level (Katz, 1985). In New York State, there are also discrepancies: in 1987, 11.5% of the white population was below the poverty line, 31.6% of the black population, 38.0% of the Hispanic population, and 18.1% of "Other" (including Asian Americans and Native Americans) (Gaines, 1988). Thus the conditions affecting quality and availability of legal representation of the poor have a greater impact on minorities than on nonminorities. As of yet, no studies have been conducted which focus

exclusively on this problem.

Minorities are heavily overrepresented among defendants in the criminal, family and housing courts. Moreover, several studies of legal needs of the public have indicated that low-income minorities experience a greater number of civil problems which may require legal representation. Such evidence suggests that the need for representation in civil courts may be greater among minorities than among other segments of the population.

Mechanisms for representation of indigent defendants in criminal courts have been required since the Supreme Court decided Gideon v. Wainwright (372 US 335) in 1963. While these systems do exist as required by law, several studies have pointed to their limitations. Again, in civil cases, there is no clear constitutional mandate for the provision of representation, although private foundations and the federal Legal Services Corporation (LSC) have been established to provide representation. These services were severely curtailed in the 1980s. While the private bar imposes an ethical obligation on lawyers in private practice to provide free representation to indigent clients, this obligation is generally neither enforced nor met (Maher, 1987).

Thus, despite the existence of constitutionally-mandated representation to poor criminal defendants, as well as limited programs which provide representation to civil litigants, there remain problems with the provision of criminal defense, as well as tremendous limitations on the availability of civil representation. These limitations have a particularly negative impact on minorities.

2.0 History of Indigent Legal Assistance

The move to replace court-assigned private defenders with institutional defenders in

the criminal courts grew out of the crisis in criminal justice at the end of the previous century. While elite lawyers moved away from criminal practice and status became concentrated in corporate practice (Auerbach, 1976), an explosion in criminal cases accompanied the massive immigration of the era. Absent a commitment on the part of the elite bar to offer pro bono defense services, most of these cases came to be defended by court-assigned private counsel. This group of lawyers came under heavy criticism for alleged unethical behavior and poor quality work. Specifically, these "courthouse regulars" were said to gouge fees from poor clients, to provide incompetent and inadequate representation, and to prolong trials unnecessarily through the use of obstructive tactics and excessive adversarial advocacy. Reformers campaigned to replace the court-assignment system for indigents with a public defender's office, the first of which was established in Los Angeles in 1914 (McConville and Mirsky, 1986).

The new public defender agencies, as well as private defender agencies, saw their role as nonadversarial quasi-judicial officers, analogous to the public prosecutors, interested in fostering accuracy and efficiency in the criminal justice system. Defenders' performance as "adjunct prosecutors" through adjudication by guilty pleas and dismissals won support from the legal establishment by cutting the costs of court administration and prosecution (McConville and Mirsky, 1986).

In New York State, the establishment of a public defender was successfully opposed by the private bar, which resisted the "socialization" of legal services. A private charitable organization, the Deutsches Rechtsschutz Verein, was founded in 1876 to provide legal aid in civil cases to German immigrants in New York County. Its activities expanded beyond

the German community in 1890, and the organization was reincorporated as the Legal Aid Society (LAS) in 1896. In 1917, the LAS's Voluntary Defenders' Committee began to provide defense in criminal cases as well. The Defenders' Committee represented 500 criminal cases in 1917, growing to defend 1,600 in 1936. Reincorporated as the Criminal Courts Branch of the LAS in 1939, it grew to become a principal provider of defense services in the City, representing 35,506 cases by 1959 (McConville and Mirsky, 1986).

There were limitations on private charitable defenders, not the least of which were those that required defenders to accept cases which were not to their taste or in line with the stated principles of the organizations. For example, the LAS declined to take homicide cases, for which attorneys could be compensated under the Code of Criminal Procedure, for fear of antagonizing the private bar through competition (McConville and Mirsky, 1986). LAS also maintained a distinction, in evaluating who might qualify for their services, between the "worthy poor" and the "unworthy poor" (Auerbach, 1976). In cases where the defendant was believed by the LAS attorney to be guilty, attorneys were encouraged to take a "confession" and to facilitate with the prosecutor the speedy adjudication of the case. Cases in which the innocence of the defendant seemed clear were adjudicated by encouraging dismissal of the charges. Since LAS preempted the establishment of a public defender, attempted (unsuccessfully) to replace the disreputable "courthouse regulars," and cut the cost of operating the criminal courts by avoiding trials, it was enthusiastically supported by the private bar.

On the civil side, where LAS was also the major provider of legal assistance to the poor, similar limitations existed. For fear of antagonizing private lawyers, LAS declined to

take disputes in which the amount of money involved was considerable (Auerbach, 1976). Other limitations were imposed on "moral" grounds, such that legal services programs refused to handle most divorces, bankruptcies, personal injury claims, or workers' compensation claims. In sum, in making the decision whether to provide civil legal aid to the needy, "allocation focused on the character of the client as well as the character of his legal problem" (Breger, 1982, p. 301).

These limitations began to be somewhat alleviated with the events of the 1960's. First, in 1961, the LAS began to receive funding for criminal defense from the City of New York, which permitted it to significantly increase its staff and caseload and to virtually displace assigned private counsel except in multiple-defendant cases. Then, in 1963, the Supreme Court mandated, in Gideon v. Wainwright, 1) that counsel be provided to all defendants charged with a criminal offense, as guaranteed by the Sixth Amendment, and 2) that such criminal defense must be adversarial in nature (in contrast to the "cost-efficient" approach taken by such institutional providers as LAS). The City responded by engaging the LAS as a private contract defender, to represent virtually all indigent defendants for a fixed yearly fee, and also by establishing the "18-B Panel"[1] of private attorneys to serve as court-appointed counsel in homicide cases, conflict cases, multiple-defendant cases, or cases involving unusual circumstances. The 18-B Panel was intended to be peripheral to the institutional defense provided by LAS, and its compensation rates were intended to compensate the expenses of volunteer defense attorneys, not to provide a livelihood to full-

[1]So called after the implementing legislation, codified as Article 18-B of the New York State County Law.

time assigned counsel.

On the civil side, the awakening of interest in poverty led to the creation of federally-funded "neighborhood law firms" under the auspices of the Office of Economic Opportunity (OEO) in 1964. The OEO program spawned legal services agencies throughout the country, which expanded and came under the reorganized aegis of the LSC in 1974.

With the advent of federal funding for civil legal services, legal aid organizations could no longer adopt the morally and politically-based restrictions on the types of cases they handled which characterized private charitable legal aid organizations. Programs which received federal funds were required to accept all categories of cases from eligible clients (Breger, 1982). In addition, federally funded programs began an enthusiastic campaign of "impact litigation" designed to improve poor clients' access to government services and to effect legal reform. These efforts held a particular interest for poor minorities since discrimination in public benefits programs is a perennial concern (Katz, 1985).

With the consolidation of civil legal services under the LSC, an active campaign began to expand programs in order to achieve "minimum access" to the legal system, defined as the provision of two LSC lawyers for every 10,000 eligible clients (Ehrlich, 1981). The goal had nearly been achieved in 1981--the LSC provided 85% of all available funding for civil legal programs nationwide, which served more than 1.2 million people annually (Murray, 1984)--when then President Reagan first attempted to eliminate the LSC from the federal budget. In the decade which followed, although Congress resisted the attempt to destroy federally-supported legal services, the program was severely curtailed. In 1987, William C. Durant

III, chairman of the board of LSC, called for LSC's abolition (Durant, 1987[2]). Lawsuits by conservative activists sought to restrict the activities of LSC programs (Kornhauser, 1987). Funding, proposed at a zero level by the Administration (Glaberson, 1982), was only partially restored by the Congress.

The first round of 25% cuts in the LSC budget represented a $5.5 million dollar loss for New York State legal services programs in 1982 (New York Law Journal, March 23, 1982). One of New York City's principal legal aid organizations, Community Action for Legal Services (CALS), which is entirely funded by LSC grants, found in 1982 that it had assisted 29% fewer clients in government benefits disputes, and 34% fewer clients in housing cases, than it had before the LSC cuts (Fox, 1982). The other major legal aid group in the city, the LAS civil division, received only 14% of its funding from the LSC, and was thus less vulnerable than CALS to cuts in LSC funding (Murray, 1989; currently the LSC proportion of the LAS civil budget is closer to 10%). Hardest hit of all were rural legal services programs, which, since they were smaller than urban programs to begin with, had more difficulty in absorbing the effects of staff reductions (Glaberson, 1982). Though funding was not reduced further after the 25% cut in 1981, inflation also took its toll, such that the effect was cumulative; by 1987, there were roughly half as many LSC lawyers in the country as there were when President Carter left office (Englade, 1987). Several states, New York

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[2]Durant'scomments were more generally directed at the legal profession. Characterizing the legal profession a cartel, he called for the "deregulation" of the profession through repeal of unauthorized-practice-of-law statutes so as to permit market forces and free competition to create both greater access to legal services and diversified mechanisms of dispute resolution. In a deregulated marketplace, Durant argued, LSC would not be needed.

Durant's thesis was attacked as advocating less competent legal representation for the poor than that provided to affluent clients (Trombadore, 1987; Miller, 1987).

included, adopted alternative financing programs to cover part of the loss of LSC funds. The state approved the voluntary Interest on Lawyers' Trust Accounts (IOLA) in 1985, and participation in the program became mandatory in February 1989. Mandating participation in IOLA is expected to triple the yearly revenue from the program from $2 million to $6 million, to be awarded as grants to legal aid organizations (Dean, 1988; Wise, 1988). As discussed in Section 5.0, there have also been campaigns to fill in gaps in services through seeking private donations and promoting pro bono work on the part of private practitioners.

In short, while this century has seen, on the one hand, the expansion of legal services beyond anything available in the past, and, at least in criminal cases, the explicit recognition of a constitutional right to counsel, existing systems are nonetheless limited in the services they provide. Political opposition and funding restrictions, especially in the last decade, have exacerbated these limitations. To gain a clearer idea of what constrains the provision of legal assistance, the following sections examine criminal defense and civil legal aid in detail.

3.0 Criminal Defense of the Poor

Nearly all of the available information on criminal defense of the poor in New York State is from the City of New York, which processes the greatest number of cases and, it may be expected, experiences the problems endemic to criminal defense systems to a great magnitude. The principal recent source on these systems in New York City is the comprehensive study of representation in New York County by McConville and Mirsky (1987), commissioned by the Criminal Advocacy Committee of the Association of the Bar of the City of New York. The Committee did not endorse the report in its entirety, and the LAS, whose lawyering practices are condemned in the report, charged that some findings

are the result of "pique" (Wise, 1986; Murray, 1989). Replying to an early draft of the McConville and Mirsky report, LAS charged that the report did not meet minimum standards of an objective study (Goldart, 1985), and described the study sample of cases as "hopelessly inadequate" (Goldart, 1986). McConville and Mirsky (1987) found serious shortcomings in the lawyering practices of 18-B Panel members, and accused LAS of "shedding" cases, increasing the role of the 18-B Panel far beyond what was projected for the Panel in 1966. Both systems, they charged, were overloaded with cases and failed to represent the interests of defendants.

The overwhelming majority of indigent defense services in New York City are provided by the Criminal Defense Division of the LAS, which is contracted by the City to provide criminal defense for a fixed annual allocation, and the 18-B Panel of private practitioners, who serve as court-appointed counsel and are reimbursed by the courts for time and expenses. The yearly allocation for LAS is subject to annual contract negotiations. The rates of compensation for 18-B attorneys were last raised in 1985; they currently stand at $25 an hour for out-of-court time, and $40 an hour for in-court time, with fee ceilings of $1200 for felony cases and $800 for misdemeanor cases (Judiciary Law §35). These two systems disposed of 163,821 cases in 1984 (McConville and Mirsky, 1987).

As noted above, the City, in developing the plan to comply with Gideon v. Wainwright, intended LAS to be the principal provider of criminal defense, with members of the 18-B Panel stepping in only occasionally in homicide cases or conflict cases. In practice, this intent has not been realized. The 18-B Panel was projected to handle only 500 cases; in the first year of implementation of the plan it handled 746. In succeeding years

both the number and proportion of criminal defendants represented by 18-B lawyers have steadily increased (Scheck, 1986).

LAS cites two instances in which it negotiated to reduce caseload by fiat, in 1976 and in 1985, by refusing to take appeals for a given period of time. In 1985, it also sought to reduce its intake by reducing its staffing of arraignments, where LAS generally accepts its case assignments (Murray, 1989)--many of these cases must have been assigned to the 18-B Panel, although LAS reports engaging pro bono attorneys on an "of-counsel" basis to handle some assignments. The proportion of cases assigned to the Panel increased markedly after the LAS staff lawyers went on strike in 1982 to protest unmanageable caseloads. In 1984, the 18-B Panel received 36,000 assignments, 23,000 of which were in the First Department (Scheck, 1986).

The growth of the 18-B Panel has sparked concern on many grounds, one of the most important being that the process of appointment to the Panel is far from rigorous, and that Panel members do not enjoy the range of training opportunities, monitoring mechanisms, staff support, or research and investigation assistance to which LAS attorneys have access (McConville and Mirsky, 1986; Mounts and Wilson, 1986). McConville and Mirsky's (1986) survey of 372 Panel attorneys demonstrates the salience of such concerns: only 15.5% of survey respondents reported having been required to appear before a screening committee to demonstrate their qualifications; only 44.2% reported having taken clinical courses at-law school (compared to 67.3% of LAS attorneys); 73% reported having taken criminal procedure courses at law school (compared to 90.6% of LAS attorneys); with a greater proportion of attorneys with longer service on the Panel responding negatively. In the area

of staff and colleague support, concerns were validated by results showing that 43.2% of Panel attorneys relied on court assignments for more than half of their practice, which, given the low compensation rates, supports an inference that these attorneys carry a very large caseload, and that fully 69.2% of Panel attorneys practiced as solo practitioners, whose level of subsistence might preclude access to staff support and research resources. McConville and Mirsky note, "The Panel has no central management, and Panel attorneys receive no support services" (pp. 699-700).

Despite the superior resources and management available to LAS attorneys, McConville and Mirsky's study suggests that cases requiring more preparation often fall to the Panel attorneys rather than the LAS staff attorneys. Among the co-defendant cases in the study, in which, to avoid conflict of interest, LAS represents only one defendant, the allegedly-least-culpable defendant (and thus the one least likely to go to trial) was represented by LAS in 67.6% of the cases. Similarly, 70.5% of co-defendants with more severe criminal records were assigned to the 18-B Panel, and 85.7% of co-defendants who were given higher bail were assigned to the 18-B Panel. Correspondingly, the trial rate for the 18-B Panel representing felony defendants in 1984 was 17.2%--more than double the 7.3% rate of LAS. LAS strongly contests McConville and Mirsky's figures in this regard, noting that staff attorneys are instructed to choose the most difficult case if they have a choice, and that they do not have a choice in all courts; in the Bronx, for example, LAS is always assigned to represent the first named defendant in a multiple-defendant case. LAS also asserts that at least 80% of the cases they defend are single-defendant cases, in which there is no choice of defendant whatsoever (Goldart, 1986).

McConville and Mirsky also found that significant numbers of cases are "shed" from LAS to the 18-B Panel throughout the course of case disposition, either through LAS attorneys failing to take cases for which they would be qualified to provide representation, or through LAS attorneys failing to make court appearances, resulting in the case being reassigned to the 18-B Panel by the presiding judge. These practices result in discontinuous representation of the defendant, under conditions which often preclude the establishment of an attorney-client relationship which would guarantee meaningful representation (LAS attempts to guarantee continuous representation; the 18-B Panel does not, and often representation by the 18-B Panel depends on which Panel member happens to be present in a courtroom). The researchers charge that cases are routinely disposed of through guilty pleas or prosecutorial dismissals without defense counsel investigating facts, interviewing the client, or determining whether cases had triable issues. LAS rejects this finding, noting that it consistently objects when a single-defendant case in which it is eligible to provide representation is assigned instead to the 18-B Panel, and that when LAS is relieved of representation in a nonconflict case, they always seek to be reinstated. LAS' position is that any lack of capacity to take cases is attributable to inadequate funding by the City, and that reassignment violates both the policy of LAS and the rights of the defendant. They note that in some cases, especially juvenile cases, LAS lawyers always seek assignment because they have access to social services which the 18-B Panel lacks.

On the fundamental issue that the increasing burden of caseloads going to the 18-B Panel results in inadequate defense services, McConville and Mirsky, the Bar Association Committee on Criminal Advocacy, and LAS are in agreement (McConville and Mirsky, 1986:

Scheck, 1986; Goldart and Lindenauer, 1989). The 18-B system functions in such a way that many attorneys are deprived of basic support services; moreover, continuous representation is not assured, and investigation or engaging expert witnesses is made difficult. An 18-B attorney must submit a motion to the court and have it approved before being permitted to engage an investigator or expert; aside from being an inconvenience, this may involve disclosing possible defenses to the judge. LAS, on the other hand, has access to these services in-house (Goldart and Lindenauer, 1989). Although McConville and Mirsky's criticisms of LAS are seriously disputed, both the Committee on Criminal Advocacy and LAS concur with the study's depiction of the 18-B Panel as providing inadequate and discontinuous representation.

The researchers' findings of overly-expeditious case processing and transfer of caseload from LAS to the 18-B Panel stem from a single condition: namely, an indigent defense system which results, through inadequate funding, in unwieldy caseloads for defense attorneys. They argue that if 18-B compensation rates were raised to reflect market rates and thus attract more and better-qualified Panel members, and if staff support and research resources were provided to 18-B attorneys, the 18-B Panel would cease to be affordable. Similarly, if the LAS Criminal Defense Division increased in size sufficiently to permit LAS to represent nearly all defendants as proposed in 1966, the LAS defense contract fee would have to increase accordingly. LAS has sought this funding, but the City has not provided it (Goldart and Lindenauer, 1989). McConville and Mirsky charge that failure to reform the indigent defense system thus serves the financial and efficiency-oriented interests of the City government and the court administration.

A more recent study by the Association of the Bar of the City of New York, Subcommittee on Advocacy Misconduct (1989a) found that 50% of 123 federal and state judges who hear criminal cases in New York City stated that advocacy misconduct is a "serious" or "very serious" problem, and two thirds believed existing sanctions were of "little use" or "no use." Approximately half of these judges declared defense attorneys to be the "major offenders" in this regard, and some singled out LAS and 18-B attorneys as most responsible. For 76% of the judges, the major instance of misconduct is failure to make required court appearances. More than half identified disrespect to opposing counsel or to the court; failure to file papers on time; and such tactics as "baiting, tricking, and insulting" witnesses, and questioning witnesses in a manner "particularly demeaning to minorities or women because of their jobs, neighborhoods, or lifestyles" (p. 3). Prosecutors, too, were charged with a range of misconduct, including "racism in addressing witnesses" (p. 3). Hon. Milton Mollen in testimony before the Committee (Association of the Bar of the City of New York Subcommittee on Advocacy Misconduct, 1989b) stated: "the major area of problem is the summations . . . . I'll start with the district attorney's summation first. There will be attacks upon . . . a defendant's lifestyle which has no relevancy to the particular crime charged . . . . We know at times they utilize race and racial issues" (p. 371). Many more judges--48% as opposed to 5%--believed that existing sanctions against prosecutors were "effective" or "very effective," in contrast with sanctions against defense attorneys.

Finally, the literature indicates that the manner in which criminal defense is supplied leads to severe shortcomings, ranging from the inability to establish an attorney-client relationship to actual misconduct in the course of conducting a defense. These problems

have a disproportionate impact on the primarily minority defendants in criminal courts who do not, in fact, receive the vigorous adversarial advocacy mandated by Gideon v. Wainwright.

4.0 Civil Legal Services

There exists no clear constitutional mandate for the provision of civil legal services to the poor, but such services are nonetheless widely considered to be a vital social function--civil legal services have existed in New York State in one form or another, public or private, since 1876. Section 2.0 outlined the founding and development of these services. In this section, the findings regarding unmet legal needs of minorities are discussed.

Curran (1977) found that, over the course of a lifetime, the typical person experiences an average of 4.8 problems requiring the assistance of an attorney. Curran's study was not specifically directed toward the needs of the poor, and while it included some areas which impact on the poor (employment, consumer, and government) it also focused largely on questions which affect the poor very little (real property, estate planning, and settlement). Says a critic of Curran's study, "the array of problems likely to be encountered by the poor includes most of these matters, and many more besides" (Goodman, 1987, p. 4). Thus the legal services studies targeted to the legal needs of the poor by legal services programs have found legal needs far in excess of Curran's, determining that the poor, on the average, experience one legal problem per person per year at the least. These divergent results are probably a function of the different populations surveyed in the studies. The legal services studies were designed to assess the legal needs of the poor and to identify as many problems as possible, whereas Curran's was designed more to quantify actual use of legal services and attitudes toward the legal profession. Given the distinct objectives of the two projects, the

disparate results are not surprising.

Under the guidelines for the LSC, any individual with an income below 125% of the poverty guidelines, determined annually by the Office of Management and Budget, is eligible to be a client of an LSC-funded program. In 1987 (the most recent year for which data are available) the poverty levels stood at $5,778 a year for a family of one, $7,397 for a family of two, $9,056 for a family of three, and $11,161 for a family of four. In that year, 32,546,000 people in the United States, or 13.5% of the population, had incomes below the poverty line. In New York State, 2,578,474 people, or 14.6% of the state population, were below the poverty line. Of these 2,578,474, 788,816 were black, 806,840 were Hispanic, and 115,641 were classified as "Other," including Asian Americans and Native Americans--thus although minorities represented 25% of the State's overall population according to the 1980 Census, they represented 66.4% of the poor (New York State Data Center, 1989).

People within the LSC definition of eligibility have been extensively surveyed in several states to determine their legal needs and to aid LSC programs in allocating scarce resources. Data are available from Mobile County, Alabama; Orange County, California; Florida; western Kentucky; Massachusetts; New Jersey; North Carolina; and southern Virginia.

The first of these studies was completed in 1977, at a time of tremendous growth in federally-funded legal services, and the most recent was completed in 1987, when federal resources had been diminishing for five years. All of these studies found that a significant number of situations involving legal needs were unmet by existing programs, and that minority groups, when surveyed (black potential clients were surveyed in each study;

Hispanic potential clients to a lesser degree, and Asian American and Native American potential clients were surveyed in Massachusetts, but not in sufficient numbers to generate reliable comparisons), reported experiencing such situations in greater proportions than nonminorities.

A study of Orange County, California (Blischke, 1977) sampled 750 telephone interviewees, 66.6% of whom were white, 24.4% of whom were Hispanic, and 2.0% of whom were black, who were asked about legal problems they experienced. While Whites reported more consumer and family problems, Hispanics reported more problems involving rental housing. Black respondents reported experiencing no family problems, and in fact were little involved in any of the problem areas surveyed, but this is probably the result of the small sample size. A later survey of 342 low-income households in the same area (Meeker et al., 1985) found that 38.3% of respondents were not aware of the existence of legal services. This study did not generate differentials according to race.

In a study conducted the following year in Mobile County, Alabama (LSC of Alabama, 1978), 310 respondents were interviewed (the distribution of the sample by race is not provided). Blacks experienced more problems in the following areas: dealings with government agencies; applying for and receiving government benefits; applying for and being extended consumer credit; covering medical expenses or obtaining medical insurance; and relations with employers or finding employment (the study gave comparative results but did not provide numbers). Blacks were more likely than Whites to say that they would use free legal services if they were available; 98% of the total sample responded affirmatively to this question.

The North Carolina Legal Services (1979) study of 434 respondents with incomes making them eligible for legal services (below 125% of the poverty level), of which 59% of the sample was black and 39% white, found that problems of relations with the government (primarily problems with agencies which provide government benefits), problems of the community (such as police protection, lack of park facilities, etc.), problems with employers, and health problems were most important. Of problems reported, 73% of them occurred more than once. For 60% of the problems reported, respondents did not seek assistance; a corresponding 60% of problems were not resolved. The study also reported significant differences according to race in the areas of rental and public housing and employment, with Blacks experiencing more problems in all of these areas.

A Virginia study (Cantril & Cantril, 1979) of 687 potential legal services clients, 73.4% of whom were black and 26.2% of whom were white, surveyed perceptions of conditions which could potentially be alleviated with legal assistance. Three particular areas of sensitivity uncovered by the study were jobs, government benefits, and credit. The researchers also questioned participants about perceptions of equal opportunity in seven different areas: "being treated the same as others by police"; "getting the benefits you need and should get"; "getting a good place to live"; "getting a good job"; "getting medical help when you need it"; "having your children get a good education"; and "being able to get a loan when you need it." Fewer Blacks than Whites perceived having an equal opportunity in each of the seven areas; in the first four, the differences were over 10%. In all, 44% of Blacks, compared to 20% of Whites, felt that they did not have an equal opportunity in three or more of the seven areas. Especially in the area of problems with police, where the

difference between Whites and Blacks was 30%, experiences were widely varied between racial groups. Asked whether police did "not treat all equally," 33% of Blacks and 22% of Whites responded affirmatively. Fourteen percent of Blacks, compared to 8% of Whites, said the police had "threatened or beat someone," while 15% of Blacks and only 9% of Whites said that police had "arrested someone without a reason." A full 10% of Blacks, and 6% of Whites, reported that police "wouldn't answer an emergency call," possibly creating cause for a failure-to-protect action against police. These differences were compounded by the further finding that 53% of Whites surveyed, but only 42% of Blacks, said they had had contact with a lawyer.

In Florida, the "Furman Study" (Mills, 1980) was initiated by the Florida Supreme Court pursuant to its decision in Florida Bar v. Rosemary Furman (376 So. 2d 378 [1979]). The defendant had been offering legal advice in family matters at low cost through a secretarial service she operated. The Florida Bar Association charged her with the unauthorized practice of law; she claimed as a defense that her clients could not afford services provided by lawyers and that other sources of legal aid were not widely available. The Court enjoined her from continuing to operate the service but ordered the plaintiffs to produce a study of the legal needs of the poor in Florida and the adequacy of existing legal services.

The Furman Study is especially significant in that it assessed the state of legal services at a time when federal funding for legal services was at an all-time high, and the LSC was in fact quite near achieving the "minimum access" described in Section 2.0. The study still found that the level of services available to those unable to afford private counsel (the study

did not break down data according to race) was not adequate to the level of need for such services among the population. The ratio of attorneys to the general population was found to be 1:350, while the ratio of LSC attorneys to the poor population was 1:6,500. And at a time when the LSC was at its peak of funding, the report quoted the National Director of the LSC as saying that the programs it funds are sufficient to meet only 15% of the legal needs of the poor. Their own figures showed that in the city of Miami, only 25% of needs were met. The study further found that "a large number of problems that are in fact legal are not identified as such by the individuals involved" (p. 35)--a perennial problem for studies of legal needs--and also that, although the focus of this and other studies was the needs of the poor, that "many middle-income persons cannot afford representation" (p. 72), and that the issue was thus wider than even the study mandate offered by the Court. It also identified a lack of services available for the special needs of linguistic minorities, many of whom, by virtue of their membership in the migrant labor force, have particular difficulties in reaching services in their area. The study summarized the problem by stating that "because of his or her financial condition, a poor person has more severe legal problems and less access to the legal system" (p. 3).

A legal services study conducted the same year in Western Kentucky (Vincent, 1980) surveyed a sample of 295 households, 184 of them white and 107 of them black. More than 30% of households reported experiencing problems in the following seven areas: consumer; public benefits; domestic; employment; health; municipal services; and housing (Vincent, 1980). On the whole, the study found black households reported more legal problems than white households in nine areas. The differences were great in some: public benefits (44%

of Blacks and 37% of Whites); municipal services (36% of Blacks and 27% of Whites); housing (36% of Blacks and 23% of Whites); utility service (28% of Blacks and 17% of Whites); and education (16% of Blacks and 9% of Whites). Whites reported more problems in: domestic relations (38% of Whites and 33% of Blacks); employment (35% of Whites and 33% of Blacks); and civil rights (9% of Whites and 6% of Blacks). Comparing problem incidences per 100 households, the study concluded that "black households have a disproportionately high incidence of most types of legal problems" (p. 21).

A study of legal needs in New Jersey (Goodman, 1987) compared problem incidences among a sample of 226 low-income households, including 70 white households, 112 black households, 48 Hispanic households, and 6 Asian American households. They found large differences between ethnic groups:

> While 44.4% of Hispanic households reported four or more problems, only 14.3% of the white households did so. And the difference between black and white households is even greater: for every white household reporting four or more problems, three Hispanic ones, proportionally, did so, while over three times as many black households as white, again, proportionally, reported this number. (p. 23)

In fact, the report found that the incidence of legal problems among Whites was "[a]t most . . . just slightly more than half the incidence for the other groups" (p. 35). In the area of housing, they found 122 problems for every 100 Hispanic households, 93 per 100 black households, and 26 for every 100 white households. The study also found that involvement with government benefits programs, especially Supplemental Security Income (SSI), Veterans Administration programs, unemployment insurance, adult education, and general assistance, increased the likelihood of experiencing legal problems. Finally, only 24.9% of respondents reported seeking help for the problems experienced.

In the Massachusetts legal needs study (Massachusetts Legal Assistance Corporation, 1987), 1,082 low-income households were surveyed by telephone. Whites made up 76.6% of the sample, Blacks 12.8%, Hispanics 6.7%, Asian Americans 0.7%, and Native Americans 0.3%. The study noted an increase in the number of problems requiring the assistance of legal services due to the economic conditions of the time, observing, "[n]ationally, the poorest 40% of all families have a smaller share of the national income than at any time since 1947, when the Census Bureau started keeping statistics" (p. 2). As a result of this and of cuts in most governmental assistance programs, including legal assistance, the Massachusetts study found a higher incidence of problems (which the study nonetheless characterized as a conservative estimate) than the earlier studies summarized above. The average number of legal problems for all households was 4.7 per year, while the average for black and Hispanic households was 5.5. Moreover, comparing the two extremes on the scale of number of problems experienced, 12.1% of white households reported experiencing no problems at all, significantly above the 2.7% of black households and 2.9% of Hispanic households giving the same answer; on the other end, 4.5% of Whites, 6.8% of Blacks, and 7.2% of Hispanics reported experiencing 10 or more problems. Blacks and Hispanics were found to experience a greater number of problems in the following areas: consumer; utility; housing; school; public benefits; and family. The study observed that special problems facing minorities included discrimination in housing, social services, and consumer matters, as well as problems of access for linguistic minorities, and that immigrants face access problems because the LSC is prohibited by statute from providing counsel in immigration matters. Reviewing existing services, it was found that "available services have been able to meet no

more than 15% of the civil legal needs of the poor" (p. 3).

The Massachusetts Legal Assistance (1987) study also discussed problems arising from a condition which had not affected the previous studies: the limitations imposed on the delivery of legal services during President Reagan's term. Five specific conditions were cited as affecting the delivery of legal services: 1) the increased number of people eligible for legal services due to the increase in poverty; 2) the reductions in funding for government social benefits, combined with the policy of restrictive interpretation of benefits regulations, which increased the demand for services to obtain benefits; 3) the rising costs of such essentials as food, health care, and, particularly, housing; 4) the reductions in funding for legal services, and consequently; 5) the effect of staffing cutbacks in legal services programs. These conditions had two principal effects on the delivery of legal services. First, legal services organizations were unable to provide either the quantity or range of representation they had provided previously; most programs found themselves able to take only emergency cases. The study quoted a legal services attorney as saying, "We have to make arbitrary decisions about who we help. There are huge gaps and whatever we do is not enough" (p. 89). Second, the level of representation provided in each case was reduced. While brief service (such as advice, referral, self-help materials, etc., as opposed to litigation) was the mode of representation for 60% of legal services cases in 1980, it had increased to become the mode of representation in a full 71% of all legal services cases in 1986. Thus the Massachusetts study concluded that, due to economic conditions, legal needs had increased, and that due to funding restrictions, the capacity to deal with such problems had concurrently decreased.

All of the studies discussed so far have involved racial comparisons only between Whites and Blacks and, to a lesser extent, Hispanics. In studies which sampled Asian-Americans and Native Americans, the samples were too small to support any conclusions. No studies are available detailing the legal needs of Native Americans, and only one qualitative study is available projecting needs of Asian-Americans (Lee, 1988). Lee's study is not an empirical study, but a qualitative one based on interviews with attorneys and leaders of Asian-American community organizations in the cities of Boston and New York, and a review of the literature concerning prominent cases. Lee identified the principal areas of need for Asian-Americans as immigration, anti-Asian violence, labor and employment, and housing. Linguistic differences were also cited as an area of concern: Lee cited one case in which a defendant had to dismiss two interpreters in the course of her trial. The first interpreter spoke the same Chinese dialect as the defendant, but attempted to "help" her by trying to persuade her to plead guilty to the charges. The second interpreter did not speak the same dialect as the defendant, and after severe communication problems became apparent, had to be dismissed. A third interpreter was not readily available, and finally had to be selected from a list of recent applicants. Lee also cited a shortage of Asian-American community lawyers.

In 1985, Archibald Murray, Executive Director of the LAS, estimated that of the more than 2,000,000 people eligible for free civil assistance in New York City, approximately 400,000 each year are likely to require the services of a lawyer. The combined resources of all civil legal services agencies in the City reach less than 60,000 people a year (Murray, 1985).

The various studies of legal needs are unanimous in specifying that the needs of the poor are extensive, and the ones which broke down results according to race found that members of minority groups often experience problems requiring legal assistance to a greater extent than nonminorities, and that such delivery systems as exist currently are not sufficient to meet the needs that have been documented. This inaccessibility of representation was demonstrable even while the capacity of the LSC was at its zenith; the two studies conducted after cuts in LSC funding took effect show that the problem has worsened.

5.0 Pro bono Representation

The conditions brought on by the crisis in LSC funding have exacerbated the already extensive needs of the poor for legal assistance. Absent a widespread capability on the part of legal services programs to meet most of these needs, attention has refocused on the private bar, which was the principal provider of indigent legal services before the establishment of charitable and government-funded legal service agencies. The tradition of lawyers providing service to the poor, pro bono publico (for the good of the public), dates back at least to the Magna Carta, which declared, "To no one will we sell, to no one will we refuse or delay right or justice" (Vance, 1987). The Code of Professional Responsibility, (American Bar Association, 1970) Ethical Consideration 2-25, is no less clear in this regard:

> The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. (p. 11)

Ethical Consideration 2-25 is not widely considered to create a mandatory public service

obligation or to be enforceable through disciplinary means or reporting requirements (Maher, 1987). Proposals for mandatory pro bono requirements are always controversial--a recent report to the Chief Judge of New York State by the New York State Committee to Improve the Availability of Legal Services (1989), which called for the establishment of a limited mandatory pro bono requirement, generated significant discussion before its release, and the report itself was not unanimously endorsed by the members of the Committee, three of whom released dissenting statements. A previous report by the Special Committee on the Lawyer's pro bono Obligation of the Association of the Bar of the City of New York (1979) also recommended a pro bono requirement. Their report was not endorsed by the Bar's Executive Committee.

While it is certainly true that a great many lawyers are actively involved in the delivery of pro bono services, such involvement is far from universal in the profession. The American Bar Association estimated that nearly 100,000 lawyers participate in the 500 organized pro bono programs nationwide--about one-sixth of all lawyers (MacCrate, 1987). Pro bono service has been encouraged by legal services providers since 1982, when the LSC issued a directive requiring 10% of all LSC funds received by a legal aid group to be used either to retain private attorneys or to recruit volunteer attorneys (Fox, 1982). In New York City, the two principal legal services groups, the Civil Division of the LAS and CALS, launched a joint campaign to garner pro bono commitments from law firms and corporate law departments. Four years into the operation of the program, Volunteers of Legal Services, it was found that only 24 of the 99 participants responding to a survey reported meeting the program's commitment of 30 hours of pro bono work per lawyer per year

(Wise, 1988).

Aside from the public controversy over mandatory pro bono proposals, there exists evidence that many lawyers resist the concept of required public service. For example, the Florida Bar Membership Attitude Survey found that 76% of lawyers do not support a pro bono requirement (Maher, 1987). These results are consistent with the low rates of actual participation of lawyers in voluntary pro bono programs. However, where there is a mandatory program, as in Orange County, Florida, where each County Bar Association takes two legal aid cases or pays $250 to the local LAS each year, there appears to be widespread participation and no criticism (Maher, 1987).

Supporters of mandatory pro bono programs argue that lawyers may be required to perform service both as a compensation to the state, which grants lawyers an exclusive license to engage in legal practice for a livelihood, and as a realization of the role of the lawyer as an officer of the court (Norlander, 1989). Opponents of mandatory pro bono criticize it as conscription and the uncompensated taking of property, and they argue that the responsibility to guarantee due process to the poor is the obligation of society as a whole, rather than that of individual lawyers (Weiss, 1989; Bird, 1987).

If the issue as to whether pro bono service can be required is not entirely clear, then there is at least clear evidence that it can benefit poor people. In 1988, the Association of the Bar of the City of New York's Committee on Legal Assistance sponsored a pilot project to provide pro bono counsel in New York City Housing Court (Association of the Bar of the City of New York, 1988). An earlier study showed that tenants who are often facing eviction are generally unrepresented, whereas landlords generally are represented (Task Force on

Housing Court, 1986). Eighty-two percent of tenant litigants were minorities. More than 400,000 proceedings are filed in Housing Court every year, and nearly 30,000 eviction orders result from these proceedings. Surveyed in the City's homeless shelters, 27% of families cited eviction as the cause of their homelessness (Committee on Legal Assistance, 1988). The pilot project was small in scale; in 1986 and 1987, 58 associates from 5 law firms participated, handling a total of 158 cases. Poor persons represented by the associates were able to avoid eviction in every case. In 25% of the cases tenants obtained repairs to their apartments, and in 30% landlords either agreed or were ordered to forgive a portion of rent due because of failure to provide basic services (Wise, 1988). Although the number of cases handled by the pilot project was small, the results suggest that widespread pro bono representation of poor tenants in Housing Court could potentially have an effect in preventing homelessness.

6.0 Conclusions

In each area where legal representation can alleviate problems experienced by poor minorities, there is either a clear legal mandate (as in criminal cases), a prevailing sense of social obligation (as in civil legal services), or a professional tradition (as in pro bono representation) which compels a response on the part of government or the legal profession. To some extent, each of these needs has been recognized or acted upon. Systems for providing criminal defense do exist, legal services programs do provide representation and advice, and many attorneys are active providers of pro bono representation. Problems remain, however, with the extent and quality of these services. The criminal defense system has suffered from loss of funding and overwork; civil legal services struggle against funding

and staffing limitations in the face of increasing need; and not enough private practitioners have stepped in to fill the gaps in representation left by these conditions.

The restriction of access to the legal system to those able to pay for representation is naturally a society-wide concern. This concern is felt more intensely by members of minority groups, who are proportionally more concentrated among lower-income groups, who experience more legal problems than nonminorities in most civil areas, and who may have less access to representation as indicated by their lower level of reporting having consulted a lawyer. Clearly the impact of cuts in programs which provide access to representation has been great, and it has been greater for minorities.

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NONJUDICIAL EMPLOYMENT

BACKGROUND BRIEFING PAPER #4

New York State Judicial Commission On Minorities

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NONJUDICIAL EMPLOYMENT

1.0 Introduction

> An employer can act upon the results of any professionally developed test provided that such test . . . is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. (EEOC et al., 1978)

Since the Civil Rights Act of 1964, the potential discriminatory effects of selection procedures has been the basis of increasing social, political, and legal concerns (Smith & Robertson, 1988). This concern has focused on the rights of racial and ethnic minorities and on women's rights.

Personnel selection procedures are tools used to meet the human resource requirements of an establishment. Such procedures include, but are not limited to, standardized paper-and-pencil tests, performance tests, work samples, personality inventories, assessment center evaluations, biographical data forms or scored application blanks, interviews, educational requirements, experience requirements, reference checks, appraisals of job performance, computer-based test interpretations, or any other selection instrument, used either individually or in combination to assist in making personnel decisions (Society for Industrial and Organizational Psychology, 1987). Based on the results of these selection procedures, an organization makes personnel decisions that affect an individual's employment status.

In selecting an employee, an organization uses a combination of selection devices. A given selection device, however, should be used only as one component of the overall selection program of an organization. The role of the selection test is simply to provide some information on a job candidate's qualifications (Guion, 1976). In that regard, pre-

employment tests can be a useful tool in helping organizations hire the best possible candidate from among pools of applicants and/or avoid hiring persons who may be "high-risk", i.e., persons who may jeopardize the security of an organization (Evans & Brown, 1988). While a selection device can be used to fulfill both of these objectives, most devices are used to fulfill one or the other with the goal being to "adequately predict future job performance" (Schmitt & Ostroff, 1986). For example, if the goal is to avoid hiring a "high-risk" employee, an employer may use a psychological test such as an honesty test. Accordingly, selection procedures are used with the implicit assumption that future job performance can be predicted from scores on the selection procedure (Schmitt & Ostroff, 1986). However, not all the devices are well developed or measure what they are supposed to measure, creating the risk of making poor selection decisions.

The purpose of any selection procedure is to assist the employment managers in meeting the objectives of the business, which includes making sure that minorities are properly represented. However, making sure that the test works to meet these organizational objectives is the responsibility of management (American Educational Research Association et al., 1985).

2.0 Evaluation of Employee Selection Procedures

There is still some confusion as to what constitutes a test and what standards should be used to determine the fair and equitable use of these tests. To address this confusion, the Equal Employment Opportunity Commission (EEOC), in 1978, published the Uniform Guidelines on Employee Selection Procedures which emphasizes the need for personnel selection based on careful job analysis. The EEOC also requires that tests be empirically

validated, and has set guidelines by which governmental and nongovernmental employers with 15 or more employees can make sure that their personnel selection procedures are not discriminatory (Arvey & Faley, 1988). According to these guidelines, all selection tests must demonstrate that they are good predictors of performance and must indeed measure the job capability of the applicant.

In addition to government requirements, organizations are often faced with the limitations of their own internal requirements. From an organizational perspective, the user of the test must weigh the utility of the selection procedure. Utility of a selection process is concerned with the accuracy of the decisions made and the costs associated with the exam. Such costs include the actual and the potential costs of using the selection procedure. The actual costs are those incurred when an applicant is screened and hired. Potential costs are those associated with incorrect selection decisions and could conceivably be damaging to the organization. Furthermore, when those applicants are members of a legally protected group (e.g., minorities), the situation could evolve into legal action against the organization. These applicants may seek legal remedies either through the EEOC, other state and local agencies, or by suing the organization. Accordingly, the utility of a test should be closely examined. In addition to utility, the desire to hire the best qualified candidate, and the organization's affirmative action objectives should be considered (Evans & Brown, 1988). In an attempt to meet both government and internal organizational requirements, exams are evaluated for reliability and validity.

Reliability of a personnel selection test refers to consistency of the test (Arvey & Faley, 1988). Thus, a reliable test should provide the same information when the same test

is re-administered to the same employees; i.e., the results should be stable across different testing situations. If scores from the two administrations of the test do not correlate, then the test is not reliable (Evans & Brown, 1988). While reliability has to do with the consistency of the measurement, validity refers to the confidence that can be attached to decisions or inferences made based on the test scores. For example, a user who concludes that high scores on a selection test will determine who will do well on the job, is making an inference about the test scores and has a degree of confidence that the inference is correct based on the amount and quality of evidence gathered to substantiate it (Arvey & Faley, 1988). The validity of a selection device is probably the most important consideration in test evaluation, since it refers to the meaningfulness and usefulness of inferences made from the test scores in relation to the organization's goal of hiring the best possible personnel (American Educational Research Association, 1985).

A valid selection procedure is often referred to as a job-related procedure because an employee selection device which is found to be valid based on the specifications of the Uniform Guidelines and professional standards ensures that the test is measuring job relevant characteristics (Berger & Tucker, 1987). If a screening device is found to discriminate and is not job-related, its use should be eliminated (Scalise & Smith, 1986) or should be justified by business necessity. That is, performance on the test must be shown to relate to performance on the job. An organization that does not insure that its tests are properly validated is in danger of being found in violation of Section 703(h) of Title VII if those tests are challenged (Scalise & Smith, 1986) because the test will not be job related and may discriminate against minorities.

Finally, a selection process must also have face validity in order to be effective. A selection procedure with face validity means that the procedure appears to be related to the job and is viewed favorably by both applicants and the government. A process may have no adverse impact, but be so complicated that it does not make sense to either applicants or the government. An organization with such a process is leaving itself open to potential problems (Arvey & Faley, 1988).

2.1 Test Development

The first evidence of validity is in the care with which the selection device was developed. The development of a selection procedure should be based on an adequate job analysis. A job analysis is the process of collecting information about all aspects of the job. Such information includes: tasks, duties, responsibilities, knowledge, skills, abilities, and working conditions of the job. A proper job analysis requires that a job analyst meet with personnel who can brief him/her on the job. The analyst should also review various training and procedural materials (Berger & Tucker, 1987). On the basis of the job analysis, the researcher can then reasonably hypothesize about the characteristics needed to do the job properly. Job analysis procedures can emphasize different types of job-related information depending on the intended use. One procedure, task-oriented job analysis, focuses on collecting information about the tasks and duties of a position. A second procedure, worker-oriented job analysis, focuses on collecting information about how work is performed, the decision-making aspects, and the mental processes required to do the job. A third procedure, ability-oriented analysis, is concerned with collecting information on the abilities required to perform the job (Arvey & Faley, 1988). In most instances, one type of job-

analysis procedure is not used over the other. Instead, a mixture of the three types of procedures is used.

Once a description of the tasks and skills important to the efficient performance of the job is developed, the analyst along with the "job experts", people with a thorough knowledge of the job, develop the knowledge, skills, and abilities (KSAs) necessary to perform the job in a satisfactory manner. The tasks and KSAs are then rated and analyzed to determine which are the most important. It is those KSAs that become test items. When the items have been developed and reviewed, a preliminary test is conducted so that the test can be tried and critiqued before it is actually used for selection purposes. People who are currently working in the job are asked to take the test and to identify items that are ambiguous or trivial. They are also asked to make sure that questions are job relevant.

Once the test has been pretested and an adequate item analysis has been performed, the test should be submitted to the "job experts" and the people who constructed the test, so that they may revise it. Preliminary testing, statistical item analysis and revision may have to be repeated several times until the items are refined and until every question is job relevant, important, and clear. Accordingly, the formulation of a test requires that the test maker 1) performs all required stages of test development; and 2) provides evidence that these stages were performed satisfactorily and to completion (Society for Industrial and Organizational Psychology, 1987). A detailed job analysis should thus substantially increase the likelihood that the test results will be used in a valid prediction of job performance (American Educational Research Association, 1985). According to the Uniform Guidelines (1978), the criteria used to select candidates are relevant to the extent that they represent

important job duties, work behaviors, or work outcomes that were developed as a result of a review of such information. Thus, an appropriate job analysis is a key factor in determining the validity of a selection device. Moreover, judgments on the relevance of certain criteria are most often based on the presence of a properly conducted job analysis. A test that has been properly developed using an accurate job analysis could, for example, serve as partial evidence of the test's validity in a court challenge (Evans & Brown, 1988).

2.2 Types of Validity

The various means of accumulating validity evidence have been grouped into three categories: criterion validity, content validity, and construct validity. Use of these categories, however, does not imply that a specific strategy is best for each conclusion to be made from the selection device. Rather, the various types of validity evidence that span all three categories should be used. In addition, although more sources of evidence are clearly better than a few, it is the quality of the evidence and not the quantity that is important (American Educational Research Association, 1985).

Criterion validity is concerned with the predictive relationship between success on the test and success on the job. The correlation that exists between the two is indicated by a validity coefficient, a number ranging from -1.0 to +1.0, with a perfect correlation signified by +1.0. For a test to be deemed criterion-valid, the validity coefficient should fall between +.40 and +1.0. If a test has a zero validity coefficient, the probability of selecting the right personnel with that selection device is no better than chance and the instrument should not be used (Berger & Tucker, 1987).

Content validity refers to the degree to which the task relevant items on the

employment test represent the tasks to be performed on the job. This type of validity is normally established by defining the contents of the job and identifying aspects of the job that are critical for successful job performance. Accordingly, content validity is virtually assured if the test items were based on an accurate job analysis and were subjected to pretesting and statistical analysis (Berger & Tucker, 1987). In fact, there is no single index used to assess the validity of the test. Instead, the emphasis is placed on the thoroughness of the development process (Arvey & Faley, 1988). Although this type of validation seems rather simple, EEOC guidelines require that content validation be used only if the test measures knowledge or ability and not a trait, such as intelligence. If the test is measuring a trait, the employer should rely on construct validity (Scalise & Smith, 1986).

Understanding of construct validity, requires some knowledge about what constructs are. Constructs are defined as "psychological characteristics of individuals that many people have deemed important enough to define and measure" (Ghiselli, Campbell, & Zedeck, 1981). Examples of such characteristics are reasoning ability, reading comprehension, spatial visualization, and sociability. Construct validity is established when a significant relationship between the test and the identified trait required for job performance is found to exist. Determining whether a construct has been measured validly requires well-articulated ideas about what is being measured, what the measure of the construct should be expected to be related to, and what it should not be expected to be related to. Furthermore, the construct must be shown to be important for job performance and the instrument used must be shown to be valid for the particular construct and not for other unrelated constructs (Berger & Tucker, 1987).

2.3 Cutoff Scores

After determining whether a test is job-related, the employer then attempts to establish cutoff scores. The procedure for setting cutoff scores is a judgmental process which should consider all known information such as cost-benefit analysis, selection ratios, number of openings, social policies of the organization, affirmative action commitments, and adequacy of training programs to remedy hiring decisions that may have been erroneous to begin with (Society for Industrial and Organizational Psychology, 1987).

Based on the answers and distribution of scores of the preliminary test, the testing experts perform a statistical item analysis in order to divide the distribution of scores to form an upper and lower group to be used for comparison (Society for Industrial and Organizational Psychology, 1987). Following the division of the groups, it is the responsibility of the testing experts to ensure that each item does indeed distinguish the upper group from the lower group. Thus a significantly larger portion of the upper group should be choosing the "correct" answers while a large portion of the lower group should be choosing the "incorrect" answers (Society for Industrial and Organizational Psychology, 1987). In this manner, the cutoff score by which the applicants will be assessed is established.

In theory, cutoff scores are set to determine minimum competence for a particular position. In practice, however, passing scores do not have to be set at the lowest test score, but can be set at a somewhat higher level, as long as it can be justified. In fact, setting a passing score that is so low that anyone could pass it could destroy the credibility of the testing process. According to the Uniform Guidelines, cutoff scores should "normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency

within the work force" (EEOC et al., 1978). Furthermore, all cutoff scores, specifically those used as a basis for rejecting an individual, should be justified by demonstrating that the cutoff scores are a business necessity.

According to the Uniform Guidelines, an employer can use the scores on a selection procedure in three ways:

1) to screen out applicants who will not be able to perform the job successfully;

2) to group applicants based on the likelihood that they will perform successfully;

3) to rank applicants and select those with the highest scores.

No matter what the intended use of the scores, if the setting of a passing score results in adverse impact, the employer must justify the need for a cutoff score by demonstrating its need for an effective work force. In addition to meeting the standards set by the Uniform guidelines, the setting of good cutoff scores requires that organizations meet criteria set by the courts. In the case of Vulcan Pioneers v. New Jersey Department of Civil Service (1985), the courts stated a number of criteria for setting good cutoff scores. The courts require that a cutoff score be consistent with the results of the job analysis, enable the organization to select qualified candidates, and permit the organization to meet its affirmative action goals (Cascio et al., 1988).

Many of the issues relevant to cutoff scores involve the question of adverse impact. Review of the literature reveals that a passing score that results in adverse impact should be closely examined and all attempts should be made to adjust for adverse impact prior to the administration of the exam. A cutoff score established before the administration of a test cannot be changed after the test has been given, even if the established passing score

produces adverse impact. Such a score cannot be lowered to allow the affected groups to pass the exam; a new exam must be administered and a new cutoff score must be determined. Moreover, the cutoff score for the new exam cannot be lowered on the basis that the previous cutoff score was not appropriate (Cascio et al., 1988).

2.4 Rank Ordering

Using passing scores as a guide, an organization can make selections based on a rank ordering of how applicants performed on the test. Using this method, job candidates are ranked from highest to lowest test scorers and the top test scorers are considered for employment. According to the Principles, the relationship between test scores and job performance is linear. As a result, applicants can be ranked based on their test scores and can be selected from the top down. An employer using this method, however, needs to show mathematical support for the assumption that individuals receiving higher scores are indeed likely to perform better on the job (EEOC et al., 1978). Another rank ordering method requires that management set qualification status such as highest qualified, qualified, and least qualified, based on ranges of test scores. This practice allows anyone who falls within the score range of highest qualified, for example, to be placed in the test qualified pool. Whether one of these persons is selected would further depend on broader qualification considerations such as work experience, specific training, pre-employment interview results, and other employment criteria (Cascio et al., 1988).

Rank ordering of applicants based on examination scores represents one way in which management can utilize test performance data in filling personnel demand. There is considerable controversy as to whether tests should be used for ranking purposes since

ranking can result in more adverse impact than other methods (Cascio et al., 1988). Consequently, the Uniform Guidelines require that

> if a user decides to use a selection procedure on a ranking basis, and that method of use has a greater adverse impact than use on an appropriate pass/fail basis, the user should have sufficient evidence of validity and utility to support the use on a ranking basis. (Section 5.G.)

In light of this, some researchers have recommended that rather than relying on the rank order of an individual, broad qualification categories, which disregard numerical differences among those falling within the same score range, should be used (EEOC et al., 1978). This may help to:

1) decrease some of the difference between the groups; and
2) discourage management from giving test scores such a controlling force that the scores are used not as part of the decision-making process but rather as the deciding factor.

3.0 Test Fairness

In addition to conducting validity studies on a selection test, employers need to investigate and show evidence of test fairness (EEOC et al., 1978). According to the Uniform Guidelines, a test is considered unfair when members of a race, ethnic, or gender group repeatedly earn lower scores on a selection procedure than members of another group; unfairness is assumed to exist especially when the selection procedure does not measure skills needed in the actual job performance.

The issue of fairness of a selection procedure depends on the validity of the procedure and in what employment context the procedure will be used. Will the test be used for screening purposes or will the hiring decision be based solely on performance on

the test? When conducting a fairness study, the user should make sure that the samples of each group are comparable in terms of "actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences" (EEOC et al., 1978). If a test is demonstrated to be unfair, the employer can either revise the test to ensure compliance with the guidelines or replace the test with one that is fair.

The problem with determining the fairness of a test, however, is that employment tests are designed to be discriminatory. The purpose of the test is to hire some individuals and not to hire others. Thus, the tests are, by nature, discriminatory (Guion, 1976). Nonetheless, the Uniform guidelines require that an employer show evidence of test fairness, specially if the test is found to adversely impact minority groups.

4.0 Adverse/Disparate Impact

In developing and administering selection tests, organizations must be careful that the tests used in their selection procedure have been validated and do not cause disparate treatment or have disparate/adverse impact on legally protected groups such as minorities and women. The EEOC Uniform Guidelines define disparate treatment as an employment practice where the intent was to discriminate or where people were treated differently as a function of their membership in one of the classes covered by Title VII. Whereas disparate treatment focuses on the intent, disparate impact or adverse impact focuses on the consequences of the selection procedure. The Supreme Court in Griggs v. Duke Power Co. (1971), emphasized the consequences of an employer's employment practices rather than the intent to discriminate. Following that lead, the Uniform Guidelines defined adverse

impact as the lower group selection rate for minorities which results from group differences on employment tests.

The EEOC has developed a means by which organizations can determine adverse impact of their selection procedure. Unless the number of applicants is too small to provide statistical significance, this analysis must be used to determine adverse impact (Scalise & Smith, 1986). According to EEOC guidelines, an employer can determine adverse impact of a test in the following manner. The employer should first compute the passing rate of each protected group under Title VII. Second, the employer should calculate the highest passing rate for a group of applicants (this group usually consist of white males). Finally, the passing rate of each protected group is then divided by the highest passing rate. If the result is less than 80 percent, than the test has adverse impact. For example, an employer may have had 200 applicants over a period of time, 100 blacks and 100 whites. If out of the 200, 100 individuals are hired consisting of 70 whites and 30 blacks, then the percentage of whites hired is 70 percent and the percentage of blacks hired is 30 percent. The selection rate for blacks is then 43 percent that of whites (30%/70%) and thus the test would be considered to have adversely impacted the black applicants. If a selection test is found to have adverse impact, an employer should attempt to remedy it by finding an alternate screening device that predicts job performance equally well. If such an alternative is found, the employer should consider using it (EEOC et al., 1978).

In addition to the 80 percent rule, the Guidelines are also concerned with the "bottom line" of the total hiring process. Whereas a particular selection procedure may be found to have adverse impact, the whole selection process may in fact show no overall adverse

impact. This often occurs when the organization has compensated for the adverse impact by selecting a sufficient number of minorities who meet the requirements. As a result, the overall ratio of acceptance rates is often in equilibrium with or higher than the applicant flow. Many disagree with this approach, arguing that hiring some minorities should not justify discrimination against others (EEOC et al., 1978). As a result, the EEOC does permit an individual who has been screened out by a procedure having adverse impact on his/her group to file a discrimination claim, regardless of whether the employer makes up for the impact in the overall process.

The 80 percent rule has been criticized by personnel and industrial psychologists and organizations on technical grounds and because it has not provided the courts much guidance in deciding adverse impact cases (Sharf, 1988). Furthermore, some researchers argue that attempts to decrease adverse impact through minimum competency requirements or establishing low cut-off scores leads to large losses in employee productivity. Moreover, they argue that use of such methods merely reduce the discrepancy in employment rates but does not eliminate the adverse impact (Schmidt, 1988; Sharf 1988; and Gottfredson, 1988). As a result, the adverse impact standard set by the EEOC guidelines is far from settled and will likely lead to more court cases in an attempt to clarify the issues.

5.0 Alternative Selection Procedures

Many of the tests currently in use by many organizations have been found to adversely impact minorities. Moreover, minorities tend to do poorly on standardized cognitive ability tests. Thus, continued research on alternative selection procedures that are able to adequately predict future job performance while reducing adverse impact is critical.

There are several alternative selection procedures which an employer can utilize to select employees. However, there are problems with these alternatives that may preclude them as a replacement for cognitive ability tests. In considering suitable alternatives to a test, several issues should be weighed. One issue revolves around the subjectivity of the rating criteria. Because these alternatives have subjective rather than objective rating criteria, their use may result in unfair testing practices. Another issue deals with the extent to which the alternative selection device has less adverse impact and is of equal validity to the one it is replacing. The concern is not only how much less adverse impact the alternative should have, but also how statistically significant the difference in adverse impact should be. The other issue concerns the utility of the alternative. The utility of a selection device refers to the degree to which use of the alternative improves the quality of the individuals selected. In most cases, researchers advise that if the alternative significantly reduces adverse impact and is administratively feasible, an employer should consider using the procedure (Davey, 1988).

Below are three examples of alternative selection procedures that are often recommended by researchers. Assessment centers are the most common alternatives and are therefore discussed at some length.

5.1 Assessment Centers

The assessment center approach is a procedure used by many organizations in selecting people for managerial positions. The assessment center approach attempts to predict future performance of an individual based on observations of the individual's behavior in a series of situational exercises such as problem-solving, in-basket exercises, and

role-playing.

Of all the validity categories, content validity is frequently endorsed as the preferred approach to validate assessment centers. However, it is still unclear if this is the appropriate method to use. Based on a study of an assessment center for selecting assistant principals and secondary school principals, Schmitt and Noe (1983) concluded that content validity is the preferred method to validate assessment centers and that a detailed job analysis that relates job content to assessment dimensions and assessment dimensions to exercises may be used to demonstrate such validity. Norton (1981), on the other hand, argues that a comprehensive job analysis and a match between job activities and assessment center exercises are not needed. He went on to say that in most cases the major threats to validity are poor design and implementation, not whether a proper analysis has been done. He further asserts that assessment centers are comparable to what managers do on the job because a manager normally has to deal with large amounts of information, making decisions, obtaining information from others, and influencing others. These are skills that are required and that are tested in an assessment center. Accordingly, if the job being tested for is managerial, an assessment center that is properly implemented will be content valid.

Several concerns with using content validity to justify the use of assessment centers are raised by other researchers. To begin with, the effect of the scoring system used to determine the validity of an assessment center is often ignored. Sackett (1987), for example, points out that if the response options or the scoring system is not clearly laid out before the evaluation for content validity is made, the results will not represent a true validation. Second, as indicated by the literature, the assessment judgment process is not well

understood. Consequently, one type of assessment center exercise may be scored in several different ways, which may result in different results based on the method used (Sackett, 1987).

Third, there is often a marked variation in assessor training. According to the Task Force on Assessment Center Standards (1980), assessor training should provide detailed knowledge of the assessment techniques, thorough understanding of the dimensions, and requisite skills in behavior observation, integration, and evaluation. The Task Force further stresses the importance of certifying the assessor's competence in those areas. Assessor training, however, normally does not meet the standards set by the Task Force. While assessors in some centers have had full exposure to the assessment exercise and have been well trained in rating the responses, assessors in other centers have barely had the minimal exposure required for competence (Sackett, 1987).

Fourth, instructions given to the candidates may vary tremendously. This variation could have a damaging effect on the candidates ratings, causing some candidates to do better or worse than others (Sackett, 1987).

Finally, Dreher and Sackett (1981) point out that a problem exists with the content validity of assessment centers because, based on the situation, assessment center results can be viewed as a measure of the job applicant's current level of competence or as a predictor of the job applicant's potential for performance at some time in the future after some training has taken place. As a result, Dreher and Sackett contend that content validity is applicable only when the assessment center is measuring the applicant's current level of competence.

Controversy still exists as to whether assessment center results are valid. Guion (1987), for example, points out that stereotypes can influence ratings in the assessment center and that the same stereotypes can also influence later performance ratings. It is not clear, concludes Guion, whether the correlation of assessment center results to job performance is due to the assessment center's validity or if the correlation simply reflects shared stereotypes. In a study on an assessment center used to select police officers, which he helped develop and evaluate, Guion found that there was indeed a correlation between the assessment center ratings and the supervisory ratings that were taken two years later. He notes, however, that high assessment and supervisory ratings were going primarily to "people who were big, white, English-speaking males", while "little, black, Hispanic women" didn't do well on either rating. Guion concluded that it was difficult to be certain of the validity of the assessment center because the raters already held opinions on what a good manager was supposed to be and this stereotype influenced both ratings. If, as Guion states, stereotypes can influence ratings in assessment centers then it is apparent that minorities who are rated by all white assessors may be rated unfairly.

5.2 Personality and Interest Tests

Personality and interest tests are designed to reveal a number of psychological characteristics which have been determined to be relevant to a particular job (Evans & Brown, 1988). These tests are normally used as selection devices for jobs that are considered "sensitive." They usually focus on such psychological characteristics as a person's emotional stability, susceptibility to hysteria and depression, and ability to withstand stress. These types of tests bear very little relationship to cognitive ability tests. For example, a

person can score very high on a personality test while scoring low on the ability tests.

These type of tests are appealing alternatives to many because traits that are related to personality, attitude, motivation and interest are often considered to be more important determinants of job success than cognitive abilities. In addition, the performance of minority candidates on such exams tend to be similar to the majority (Davey, 1988). These instruments, however, have several weaknesses. First, these devices have not been successful at predicting job success because an individual can favorably alter his/her score by faking the results.

Second, personality and interest measures are influenced by the degree of confidence of the person and the desire of the individual to make a favorable impression. Because these factors account for many of the variances in personality tests, they reduce the tests' effectiveness (Davey, 1988). A third weakness which limits the use of such tests is that compared to ability tests, personality and interest tests are not reliable predictors of job performance. During re-administration of personality and interest tests, for example, scores often change considerably from one testing to another indicating that these tests may not be reliable predictors.

Finally, personality tests are often considered to be an invasion of an individual's privacy because of the personal nature of the questions which do not seem to have any relationship to the job. For example, some tests may ask questions regarding such personal matters as sex life and sleeping and dreaming habits (Davey, 1988). Consequently, personality and interest test do not seem to be a feasible alternative to cognitive ability tests.

5.3 Biodata

Biodata is a selection procedure that assesses job applicants on the basis of personal biographical history (e.g., past behavior, interests, attitudes, demographic background, etc.). This procedure involves giving information pertaining to an individual's personal history a mathematical weight to produce a score for each applicant. Historical factors that most predict future job success are given the most weight in the scoring process.

Two biodata techniques that are frequently used are the weighted application blank (WAB) and the biographical information blank (BIB). The WAB is a technique used to score an application blank. Any application blank can be used as a biodata instrument, however, it is recommend that the form be based on a job analysis (Gatewood & Field, 1987). While the WAB is an application blank with weighted items, the BIB is a specially designed questionnaire in a multiple-choice format that covers a variety of topics such as an applicant's reaction in a given situation or reactions to childhood experiences (Hammer & Kleiman, 1988)

Although biodata has been found to be a valid predictor of future job performance (Asher & Sciarrino, 1974; Muchinsky, 1983), few companies used it as a selection procedure. Employers have cited lack of knowledge about biodata and cost as the principal reasons for not using this selection procedure. The main reason given for the lack of use of this procedure, however, is the concern that use of the biodata may violate employee's EEO and privacy rights (Hammer & Kleiman, 1988). EEO concerns arise from employer's fear that questions on a biodata may violate Title VII. For example, questions that identify an individual's protected group classification (i.e., questions about race, sex, religion, national

origin, disability and age) may be considered discriminatory if their use limits employment opportunities for such applicants. Furthermore, even questions which seem to be neutral may trigger EEO concerns if they have an adverse impact on minority groups.

6.0 Validity Generalization

Because the search for alternatives has not been successful, many researchers have recommended that alternative ways to use cognitive ability test results should be considered. Ranking employees on a pass-fail basis rather than a top-down basis, is one alternative way to use test results. Another way is to use validity generalization. Validity generalization is a term used to describe a selection procedure that allows valid inferences about job performance across several jobs or groups of jobs (Society for Industrial and Organization Psychology, 1987). Validity generalization is based on the premise that certain abilities can be tested for a wide variety of jobs because those abilities are pretty much established by the time one reaches adulthood (Guion, 1987). Thus, one selection procedure could possibly be used for several jobs.

Validity generalization is concerned with the extent to which an unvalidated test can be supported by validity evidence collected elsewhere. Schmidt and Hunter (1981), based on their extensive research on previous validation studies, concluded that standardized tests of cognitive ability are fair and valid predictors of performance for all jobs. Hunter (1982) conducted another study in which he cumulated the results of over 500 studies of the validity of the General Aptitude Test Battery (GATB), a battery of tests used by the U.S. Employment Service, since 1947. The GATB consists of nine specific tests that include: general learning ability (vocabulary and arithmetic reasoning), verbal ability (vocabulary),

numerical aptitude (computation and arithmetic reasoning), spatial aptitude (three-dimensional space perception), form perception (tool matching and form matching), clerical perception (name comparison), motor coordination (mark making), finger dexterity (assembly and disassembly), and manual dexterity (placing and turning). Using the GATB scales, he identified three general abilities, cognitive, perceptual, and psychomotor, that were found to be valid predictors of job capability for all jobs.

These studies do not imply, however, that all aptitude or ability tests are equally valid for all jobs. Rather, validity generalization research implies that reliable measures of standard ability are valid predictors of performance on the job and performance for job training for all jobs in the occupational spectrum found in the Dictionary of Occupational Titles (Schmidt, Sackett et al., 1985).

The issues of fairness, job relevancy and adverse impact on minorities were addressed in several studies pertaining to ability tests such as the GATB. The studies revealed that the validity generalization program is consistent with the objectives of the EEOC (U.S. Dept. of Labor, Employment and Training Administration, 1983). However, it is still not certain that the GABT does not adversely limit job opportunities for minority group members. Madigan, et al. (1986), for example, argue that because differences in test scores between minorities and nonminorities are substantial for all three of the general abilities, use of the these GATB scores may produce a racially unbalanced work force.

Another problem with the validity generalization studies is that they are based entirely on reviews of published results of a number of validation studies. If the studies reviewed were not thoroughly examined to determine whether they had been performed in accordance

with professional standards, the conclusions reached based on the validity generalization studies could be misleading (Sharf, 1988). In addition, the Department of Justice views validity generalization as an approach that minimizes problems regarding test validation (Bolick, 1988). If this occurs, many employees may rely on validity generalization studies as the only means of validation, thus abandoning the search for fairer and less adverse alternatives. Other researchers conclude that validity generalization is not such a good predictor of job performance (National Research Council, 1989). Accordingly, they advise against using such studies as the only means of selection.

The Principles for the Validation and Use of Personnel Selection Procedures (Society for Industrial & Organizational Psychology, 1987), while supporting the current research on validity generalization, do so with caution, warning that those who wish to use validity generalization should be aware of continued work and critiques regarding this method.

7.0 Conclusions

The continuing search for objective measures on which all applicant groups perform the same, thus resulting in no adverse impact and equality of employment results has generally not been productive (Sharf, 1988). Schmidt (1988) suggests that this difficulty is due in part to the fact that differences found among groups are not created by the tests but that the tests merely reveal pre-existing group differences. Gottfredson (1988), concurring with Schmidt, states that there is no 'magic potion' that will solve the problem created by group differences. She believes that in the long run the only way to eliminate or at least reduce this problem is to increase educational opportunities and educational achievements by minority students. While these views point to better education as the way to eliminate

or at least reduce group differences, better education without organizational opportunities and a change in employment conditions will not solve the problem of adverse impact and unfair testing practices. Until these changes occur, testing will continue to be controversial.

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CIVIL OUTCOMES

BACKGROUND BRIEFING PAPER #5

New York State Judicial Commission On Minorities

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CIVIL OUTCOMES

1.0 Introduction

This literature review presents two studies which examine the role of race in civil court procedures, focusing in particular on case outcomes. The first study is Chin and Peterson's (1985) study, "Deep Pockets, Empty Pockets--Who Wins in Cook County Jury Trials?" which is the only major study of civil, jury-trial outcomes. The other study is the New York State Judicial Commission on Minority's (1990) secondary analysis of data from a previous study by the City Wide Task Force on Housing Court (1986); the latter explored the interaction between tenant race, court procedures, and legal representation.

The two studies represent exceptions to the general trend in research, which has traditionally been concerned with criminal case outcomes (Chin and Peterson 1985). Courts do not collect race data in civil cases; nor do Jury Verdict Reporters generally obtain these data. This accounts for the paucity of information from which to draw.

2.0 The Chin and Peterson Study

Chin and Peterson (1985) were able to conduct research in civil outcomes because the investigators had access to reports by the Cook County Jury Verdict Reporter (CCJVR), a private, weekly newsletter for law and insurance professionals in the Chicago region. This subscription newsletter describes civil cases in Cook County, based upon information obtained from the lawyers trying the cases. Using the public record, the CCJVR identifies cases which have reached verdict and then mails questionnaires to the attorneys. The CCJVR has been very successful in its data-gathering and obtains specific and detailed descriptions of almost all cases in the region. Because the CCJVR has kept records on race

(unlike most jury verdict reporters), Cook County offers a unique data base to researchers investigating the possibility of racial bias in civil outcomes.

2.1 Methodology

Chin and Peterson (1985) conducted an empirical analysis of 9,000 state and federal civil jury trials in Cook County, Illinois for the period 1959-1979. The general purpose of the research was to explore relationships between trial outcomes and party characteristics, including race. By "party characteristics" is meant variables regarding plaintiffs and defendants: whether they are corporations, governments or individuals. For individuals, further data were sought for factors such as age, race, occupation, and gender. Questions posed by Chin and Peterson included, among others: Who tends to litigate? Who tends to win? and Who tends to pay?

Because of the detailed nature of the CCJVR data, Chin and Peterson were able to draw conclusions about the relationship between race and case outcomes in civil litigation. They write,

> we can estimate how much more or less a black plaintiff is awarded in comparison with a white plaintiff who has the same injury, lost income, age, occupation, and type of lawsuit, in the same year against the same type of defendant. In short, the analyses let us estimate how types of litigants influence jury decisions when we account for these other case features. (p. 36)

But despite the major advances the Chin and Peterson study represents, there are nevertheless considerable limitations due to deficiencies in the available data. The CCJVR's data on race referred only to Blacks, and, therefore, Chin and Peterson included as "Whites" Hispanics, Asians, and Native Americans. Thus, Chin and Peterson's conclusions may underestimate the degree of disparity between white and black litigant outcomes, given that

the white outcomes include various minorities.

The methodology of the study suffers further from methodological shortcomings, especially with regard to income loss data. Even with the race/case outcome data available from the CCJVR, the data are limited and Chin and Peterson are careful to emphasize:

> While we included available information on lost income in our analysis, our measures of lost income are uncertain and perhaps somewhat incomplete. We did not know how much income, if any, was lost prior to trial for 56% of plaintiffs, some of whom were working; information about expected income loss after the time of the trial is reported so infrequently that we did not include it in our analyses. As a result, differences in awards to black and white plaintiffs may be partly due to difference in lost income for which we could not completely control. (p. 39)

2.2 Findings

Chin and Peterson found that "among individual litigants, blacks lost more often than whites, both as plaintiffs and defendants, and black plaintiffs received smaller awards" (p. v). Furthermore, the authors concluded:

> Litigants' race seemed to have a pervasive influence on the outcomes of civil jury trials in Cook County. Even after we adjusted for differences in case type, injuries, economic loss, and other characteristics, we found that both liability decisions and awards differed significantly between black and white defendants. Black plaintiffs won somewhat less often than white; 40% as opposed to 46%, for example, in automobile accident trials. When they won, black plaintiffs received smaller awards, only 74% as much as white plaintiffs received for the same injury.
>
> Black defendants also lost somewhat more often than whites, with the difference again similar to that for plaintiffs. Liability decisions were about the same, then, when both parties were of the same race, but law-suits between parties of different races produced substantial differences: white plaintiffs, for example, won 62% of slip-and-fall trials against black defendants, but black plaintiffs won only 50% of such suits against white defendants. (p.viii)

Moreover, a statistically significant association was found between race and the probability of plaintiff victory. The probability of a white plaintiff winning a lawsuit against a black

defendant was .61, whereas the probability of a black plaintiff winning against a white defendant was .45.

In addition to white plaintiffs winning a greater proportion of lawsuits, they also received substantially larger awards than Blacks, even when certain variables, such as the type of injury, income loss (based upon available data) and type of legal claim, remained comparable. They indicate:

> a white plaintiff would receive an estimated median award of $6,300 for a slip-and-fall injury of moderate severity, when suing one individual (white) defendant. In a similar case a black plaintiff would receive $4,600 . . .

and that

> [t]hese differences were greater for plaintiffs with major injuries. For example, the estimated award against a single corporate defendant for a very serious workplace injury resulting in substantial lost income, was $46,600 for a white plaintiff and $34,500 for a black - a $12,100 difference. Wrongful death awards were also considerably different, with estimated compensation of $79,000 for the death of a white in an automobile accident case involving a single business defendant but $58,000 for the death of a black in a similar case. (pp. 38-39)

The authors caution against assuming that these findings are in themselves proof of racial bias. Differences in awards to black and white plaintiffs, they argue, may merely be reflective of other conditions in the culture that are themselves more racist:

> [W]rongful death awards are made primarily to reflect the economic loss suffered by persons economically dependent upon a decedent; they are not meant to reflect the value of the decedent's life. Because whites have greater average income than blacks, we would expect them to receive higher awards. (Of course, to the degree that income differences reflect discrimination or other racial barriers, jury awards would perpetuate that discrimination.) Similarly, trial outcomes and settlement decisions could differ if the quality of legal services differs for blacks and whites. In short, although we are unable to account for the lower awards paid to black plaintiffs, we are also unable to conclude that the disparity results from juror bias. (p. 39)

The finding that Blacks lost more often than Whites appears to be stronger than the finding that Blacks received smaller awards. Analyses showed that the two most salient variables affecting awards were the severity of a plaintiff's injury and his or her economic losses, although race and defendant type (corporate, government, or individual) played a role. However, analyses also showed that only two litigant characteristics (race and the type of defendant) significantly affected liability. Thus, the finding that Blacks received smaller awards is compromised by a lack of data for economic losses, whereas the finding that Blacks lost more often is not affected by a shortcoming in the data. Though some of these patterns may be explained by other case features, Chin and Peterson could confidently conclude:

> Black plaintiffs were less likely to win and black defendants more likely to lose. The difference was greater for defendants. Since most black defendants were sued by black plaintiffs, this implies that black plaintiffs were more likely to lose against white defendants than against black. (p. 26)

2.3 Conclusions

Because of the limitations of Chin and Peterson's study mentioned above, the researchers draw conclusions with a degree of hesitation:

> Conventional wisdom, existing attitudinal surveys, and a few studies of court outcomes suggest that a majority of the public--rich and poor--are dissatisfied with justice system outcomes. But dissatisfaction alone does not imply inequity. Trial outcomes necessarily favor one disputant over another. Unfairness is only an issue if litigants in similar legal and factual positions consistently experience dissimilar outcomes. (pp. 61-62)

Whether or not this is completely borne out in the Cook County study is questionable. It was found that, overall, Blacks experienced dissimilar outcomes, but whether they were in similar legal and factual positions as Whites could not be determined. The shortcomings in

the data are, more than anything else, an obstacle in determining possible causes for disparities:

> The findings seem to suggest that jurors discriminated unfairly between blacks and whites and corporate and noncorporate defendants, but other explanations are possible. Features of trials that were not examined in the statistical analyses could have produced some of the results. The present statistical models are limited. . . . Perhaps most important, the analyses did not include information about liability issues--that is, theories of liability or contributory negligence, factual claims about parties' conduct--nor about the quality of legal representation. The influence of these factors on jurors' decisions might have contributed to the findings reported here. Future studies will add information about liability issues, but their absence from the present analyses limits the strength of our present conclusions. (pp. 58-59)

When including all available information about plaintiffs and other characteristics of parties, however, Chin and Peterson still found that "black plaintiffs and black defendants were more likely to lose than their white counterparts" (p. 37). They suggested that, given the uncertainties about why jury decisions differ, and the relatively marginal differences they were able to document between most types of litigants, recommending major changes in the system would have been premature at that point. They did, however, point to some procedures already in place in the justice system which could be used to promote greater fairness and uniformity of treatment: judges can use instructions, lawyers can use arguments, and both can use voir dire to identify and correct possible racist juror misconduct; after-trial judges can direct verdicts or use remittitur or additur to correct bias; and, attacking the problem closer to the roots, jury pools must be as representative of the community as possible. By highlighting the degree to which parties' characteristics can influence decisions, Chin and Peterson hope their study can bring these disparate outcomes to the attention of lawyers and judges and encourage them to use the above-mentioned procedures to help

correct bias.

The immediate value of the study, though, lies in its demonstration of a consistent relationship between litigant characteristics and jury verdicts over a twenty-year period in the same jurisdiction. The results were considered by Chin and Peterson to be "statistically robust, stable over time, and consistent with widely held expectations about how juries treat different types of litigants" (p. vi). While one cannot definitively conclude that differences in awards between black and white plaintiffs are racially motivated, the fact that these differences exist cannot be ignored. In short, Chin and Peterson's study indicates enough of a correlation between race and civil outcomes to necessitate further research, as part of a systematic research agenda.

3.0 Analyses of the Housing Court Task Force Study

As noted above, in November 1986, the City Wide Task Force on Housing Court published its study of the Housing Part of New York Civil Court. The study began in November 1983, with the major emphasis of the research focused on direct observations of pretrial conferences before mediators, law assistants, and judges; the research focused on cases in Manhattan, Queens, Brooklyn, and the Bronx. The New York State Commission on Minorities (1990) obtained the Task Force data and carried out secondary analyses that correlated tenant race and the effects of legal representation.

3.1 Summary of Significant Findings

Race was found to be a determining factor in a number of civil court proceedings. Though it cannot necessarily be assumed that racial bias was the direct cause of all of the disparate outcomes, statistically significant differences were found to be associated with race.

In addition, the effect of legal representation, or lack thereof, can be seen in the exacerbation of some of these differences.

The Commission's two-way analyses examined whether the City Wide Task Force's data showed any significant relationships between a tenant's race and other variables regarding court process or case outcome (e.g. the identity of the party writing the stipulation; the payment of court costs; case adjournment; judges' explanations of settlement agreements; orders to pay rent; the permission to present evidence; and rent abatement requests). Moreover, the Commission's three-way analyses tested for possible correlation between the variables of tenant race, court procedure, and tenant legal representation.

3.2 Significant relationships

Many court procedure variables were examined. Only the relationships that proved to be significant are reported here. This section will present the findings (percentages and possible explanations) broken down by court procedure variables, first for mediators and then for judges.

3.2.1 Cases Heard by a Mediator or Law Assistant

Analysis of the relationship between the identity of the writer of the stipulation (i.e., the written agreement between landlord and tenant that becomes final when 'so ordered' by the judge) and tenant race shows that the mediator wrote the stipulation much more often for black and Hispanic tenants than for white tenants (47% and 40% vs. 14%); conversely, the landlord or landlord's agent wrote the stipulation more often for white tenants than for Hispanic or black tenants (81% vs. 54% and 51%). In cases in which it is known that tenants were unrepresented by legal counsel, the mediator wrote the stipulation

in 60% of the black cases, 44% of the Hispanic cases, and 18% of the white cases; the landlord or landlord's agent wrote the stipulation in 79% of the white cases, 50% of the Hispanic cases, and 39% of the black cases without attorneys. It may be that the mediator was acting to protect the interests of black and Hispanic tenants without attorneys, although this is speculative; the results may be due to other factors, such as systematic differences in types of cases among tenants of different races.

Another matter at issue in the study is court costs[1] (administrative fees, not legal fees). Generally, costs constitute the sum that the winning party is entitled to recover from the losing party as reimbursement for the winner's expenses of going to court and recovering a judgment. Courtroom observers were asked to respond to two separate questions regarding these variables: 1) Were court costs paid? and 2) If yes, by which party? There was a significant difference based on race as to whether or not the first question was answered: court costs were paid much more frequently when the tenant was black than when the tenant was Hispanic or white (52% vs. 17% and 22%, respectively). The issue here is simply whether court costs were paid at all, not by whom they may have been paid. There is a very strong relationship between the race of the tenant and whether or not court costs were paid.

Furthermore, when controlling for legal representation, tenant race was significantly

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[1]Costs awarded in an action shall be in the amount of:
1). $200 for all proceedings before a note of issue is filed; plus
2). $200 for all proceedings after a note of issue is filed and before trial; plus
3). $300 for each trial, inquest, or assessment of damages. (CPLR §8201)

related to whether court costs were paid when the tenant did not have an attorney. Thus, court costs were paid (by either party) in 62% of black cases, 55% of Hispanic cases, and 32% of white cases without attorneys. When court costs were paid, they were paid more frequently by the tenant than the landlord when the tenant was black, than when the tenant was Hispanic or white (91% vs. 71% vs. 56%, respectively). However, these last percentages are not statistically significant differences because court costs were recorded by courtroom observers as being paid in a relatively small number of cases, and when paid, were seldom paid by tenants. It was also found that when the tenant did not have an attorney (but only then), black and Hispanic tenants were offered installment payment plans more frequently (62% and 55%) than white tenants (32%). It may be that, more often than not, white tenants had the financial means to pay back rent in full.

Another significant finding was that when the tenant had an attorney (but only then), courtroom observers' first description of the mediator was favorable more often when the tenant was black or white (100% and 88%) than when the tenant was Hispanic (60%). This is possibly due to language differences between non-Hispanic mediators and Hispanic tenants. This hypothesis is supported by the fact that the most frequent adjective used by courtroom observers to describe the mediator in Hispanic cases was "impatient."

3.2.2 Cases Heard by a Judge

A significant relationship was found between tenant race and whether or not tenants were represented by attorneys when appearing before judges. Blacks and Hispanics were represented by attorneys in cases before judges much less often than were Whites: 18% for Blacks and 17% for Hispanics vs. 38% for Whites. If, as seems likely, having professional

legal representation is related to getting a better case resolution, then minorities were seriously disadvantaged relative to Whites.

In analyzing tenant race and case adjournment, it was found that cases with white tenants were adjourned substantially more frequently than those with black or Hispanic tenants: 55% of white cases were adjourned, vs. 40% of black cases and 36% of Hispanic cases. Perhaps this is due to Whites having an attorney more often, but whatever the reason, this finding is significant since adjournment means that the tenant stays in the dwelling.

Judges explained the consequences of failure to abide by the terms of a settlement agreement much more often for white tenants (82% of the cases) than for Blacks (51%) or Hispanics (a race/court procedure significant relationship). When legal representation was taken into account in the analysis, it was found that when the tenant did not have an attorney, judges explained the consequences of failure to abide by the terms of a settlement agreement in 90% of whites cases, 50% of black cases, and 56% of Hispanic cases. This finding is particularly important, since it implies that when minority tenants were the most vulnerable (being without the benefit of counsel), they were placed at a disadvantage relative to Whites by not being provided with as much information. However, when tenants had attorneys, the rates were much closer: judges explained the consequences of failure to abide by settlement agreements to 57.1% of Blacks, 58.3% of Hispanics, and 64.7% of Whites with attorneys (though still disparate, these differences are not statistically significant). This probably reflects the influence of the attorneys in seeing that their clients received any necessary information. On the other hand, among those without counsel, it appears that

judges were more solicitous of Whites than of Blacks or Hispanics.

For cases in which the tenant did not have an attorney, the race of the tenant was significantly related to whether or not the tenant was permitted to present evidence. In such instances, when the tenants were arguing their cases without the benefit of counsel, black and Hispanic tenants were permitted to present evidence much less frequently (16% and 26%) than white tenants (50%). This finding is just as striking as the one about judges' explanations of consequences. On yet another dimension (permission to present evidence that could directly affect the quality of their cases), minority tenants were disadvantaged relative to Whites.

Overall (race/court procedure relationship), black and Hispanic tenants were ordered to pay rent significantly more often than white tenants (62% each for Blacks and Hispanics vs. 32% for Whites). When controlling for legal representation it was found that in those cases in which the tenant had an attorney, there were significant differences between Blacks and Hispanics on the one hand, and Whites on the other: 56% of black tenants were ordered to pay rent, compared with 46% of Hispanic tenants and none of the white tenants (out of fourteen). Overall, not taking race into account, having an attorney was quite beneficial: the rate of being ordered to pay rent was 62% for tenants who did not have an attorney, but only 38% for those who did. However, the beneficial effect of having an attorney was not distributed uniformly across the racial groups, as the significant differences just noted imply. For white tenants, the rate of rent payment dropped from 47% when they had no attorney, to 0% when they had attorneys; for Hispanics it only dropped from 63% to 46%; for Blacks the reduction was even smaller, from 64% to 56%.

In cases where the tenant did not have an attorney, tenant race was significantly related to whether or not a rent abatement was requested. The relationship was not found to be significant when the tenant had an attorney. The overall rate of rent abatement requests (not taking race into account) was 23% when tenants had an attorney and only 10% when tenants did not have an attorney. However, as with payment of rent, the adverse effect of not having an attorney was not experienced equally by the three racial groups. The difference this time was not between white and minority tenants, but between black and white tenants on the one hand, and Hispanic tenants on the other. Black and white tenants without attorneys requested rent abatements in 13-14% of their cases, but Hispanic tenants without counsel never made such a request. This may reflect a language difficulty more than anything else, and thus underscores the need for interpreter services in Housing Court.

The data discussed above (Sections 3.2.1 and 3.2.2) are presented in concise form below:

TWO-WAY ANALYSES

Cases Before a Mediator:

Party-writing stipulation: Mediator wrote stipulation much more often for black and Hispanic tenants than for white tenants (47% and 40% vs. 14%).

Payment of court costs: Court costs were paid (by either party) much more frequently when the tenant was black than when the tenant was Hispanic or white (52% vs. 17% and 22%).

Cases Before a Judge:

Legal representation: Blacks and Hispanics were represented by attorneys in cases before judges much less often than were Whites (18% and 17% vs. 38%).

Case adjournment: Cases with white tenants were adjourned substantially more frequently than those with black or Hispanic tenants (55% vs. 40% and 36%).

Explanation of consequences: Judges explained the consequences of failure to abide by the terms of a settlement agreement much more often for white tenants than for Blacks or Hispanics (82% vs. 51% and 57%).

Tenant ordered to pay rent: Black and Hispanic tenants were ordered to pay rent much more often than white tenants (62% and 62% vs. 32%).

THREE-WAY ANALYSES (significant race/court procedure relationships, taking into account legal representation)

Cases Before a Mediator Without an Attorney:

Party writing stipulation: Mediator wrote stipulation much more often for black and Hispanic cases than for white cases (60% and 44% vs. 18%).

Payment of court costs: Court costs were paid (by either party) much more frequently in black cases than Hispanic cases, and in Hispanic cases than white cases (62% vs. 55% vs. 32%).

Offered installment payment plans: Black and Hispanic tenants were offered installment payment plans significantly more frequently than white tenants (62% and 55% vs. 32%).

Cases Before a Judge Without an Attorney:

Explanation of consequences: Judges explained the consequences of failure to abide by the terms of a settlement agreement much more often for white tenants than for Blacks or Hispanics (90% vs. 50% and 56%).

Permission to present evidence: Black and Hispanic tenants were permitted to present evidence much less frequently than white tenants (16% and 26% vs. 50%).

Rent abatement requested: Black and white tenants without attorneys requested rent abatements significantly more than Hispanic tenants without counsel, who never made such a request (13-14% for black and white tenants vs. 0% for Hispanic).

Cases Before a Mediator With an Attorney:

First description of mediator: Courtroom observers' first description of the mediator was favorable more often when the tenant was black or white than when he or she was Hispanic (100% and 88% vs. 60%).

Cases Before a Judge With an Attorney:

Tenant ordered to pay rent: Black and Hispanic tenants were ordered to pay rent significantly more often than white tenants (56% and 46% vs. 0%).

3.3 Conclusions

Though the variables examined by the New York State Commission on Minorities (1990) produced different results for judges and mediators, the overall effect of not having an attorney is striking. The data from the Housing Court Task Force (1986) seem to suggest that, relative to Whites, minority tenants are significantly disadvantaged when they do not have the benefit of counsel; and a disproportionate number of minorities do not have counsel. Overall, 17.3% of Blacks and 18.6% of Hispanics were represented, compared to 32.7% of white tenants. Even when minorities did have attorneys, the beneficial effects of having counsel in Housing Court were not uniformly distributed among different racial groups, with Whites tending to fare the best.

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INTERPRETATION AND TRANSLATION IN THE COURTS

BACKGROUND BRIEFING PAPER #6

New York State Judicial Commission On Minorities

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INTERPRETATION AND TRANSLATION IN THE COURTS

1.0 Introduction

This review summarizes research conducted on the problem of interpretation and translation in the courts. The most extensive study was conducted by the New Jersey Supreme Court Task Force on Interpreter and Translation Services [hereinafter, New Jersey Task Force] (1985). This Task Force was charged with determining the areas of the judiciary in which linguistic barriers prevent equal access to the courts, documenting the nature and extent of the linguistic barriers, and recommending reforms and strategies for their implementation. Washington State also conducted a study (State of Washington Court Interpreter Task Force [hereinafter Washington Task Force], 1986; 1989), the primary goal of which was to educate the legislature, judges, attorneys, and court personnel regarding interpreter issues, as well as to create a statewide training and certification procedure.

2.0 Summary of New Jersey and Washington State Projects

The most extensive research and information-gathering was conducted in the New Jersey study. Surveys were circulated to the state's judges, court interpreters and bilingual court support personnel, Legal Aid and Legal Services attorneys, Public Defenders, County Prosecutors, and bilingual attorneys. The study also relied on interviews with administrators, interpreters, and bilingual court support personnel, as well as linguistic evaluation of current interpreters. Similarly, the Washington study was based on questionnaires sent to interpreters, judges, and court administrators, as well as courtroom observation of Spanish interpreters. Many of its recommendations were based on premises derived from the New Jersey Task Force because the Washington project lacked the "budgetary, staffing and

resource advantages" of the New Jersey group (Washinton State Task Force, 1986, p. 15).

Two communication environments were identified in the New Jersey study: proceedings inside the courtroom (e.g., documents, evidence, and arguments presented) and interaction outside (e.g. consulting with an attorney or seeking information). The nature of both types was found to vary significantly. "The language level [inside] the courts is high due to the fact that lawyers, expert witnesses and judges represent groups of professionals who have had at least 15 to 20 years of formal classroom education," one member argued (p. 15). Citing an expert witness, he found it appropriate "to talk of courtroom language as a separate register of English . . . which has its own characteristics, its own set of vocabulary" (p. 22). Courtroom vocabulary was thus found to be incomprehensible to many laypersons and even standard jury instructions were found to be often misunderstood because of esoteric vocabulary and special grammatical constructions.

A court observer in the Washington report reiterated this finding, positing that "college level vocabulary is necessary to accurately interpret judges' and attorneys' discourse, legal argument, and expert witnesses" (Washington State Task Force, 1989, p. 44). The obvious disparities resulting between court personnel and less-educated, English-speaking users of the courts are multiplied greatly for those who speak English as a second language or not at all. This disparity can lead to a loss of trust in the legal system; as the New Jersey Task Force suggests, "If linguistic minorities feel that they are foreclosed from access to the legal system, then public confidence in the Judiciary is lost for a significant proportion of the state's population" (p. 55).

The New Jersey Task Force concluded that the linguistic needs of minorities appearing

in court were not being met adequately by the common approach of leaving the task of court accessibility for linguistic minorities to each judge, administrator, or employee of the Court Support Services. Seven key findings are articulated in the study relating to this conclusion.

The first suggests that persons providing court interpreting services generally do not possess requisite skills, knowledge, and training. Only 17% of the persons interpreting in the courts "meet or exceed a minimum standard of acceptable proficiency," and friends, children, and even inmates are currently used as interpreters if none other is present (p. 84). Persons interpreting often do not have command of legal terminology; critical testimony is often omitted completely or partially added to or amended by the unqualified interpreter. Frequently, testimony undergoes changes in the interpretation and may result in altered perceptions that jurors, attorneys, and others may be forming of a witness or litigant. The Task Force evaluators found that in 73 of 142 cases observed, some facet of the interpreter's performance had an "actual or potential negative effect on the outcome of the proceeding or interfered substantially with someone's understanding" (p. 93).

The second finding enumerated by the Task Force was the lack of translated procedural forms and documents. Documents are typically drafted by well-educated professionals and are rarely written in easily-translatable English. An ambiguous text forces translators to assume the meaning of the document. Therefore, access to justice by linguistic minorities is sometimes limited, since rights and procedures may not be understood. Unintended violations may occur, resulting, again, in frustration, alienation, and reduced confidence in the courts.

Finding three focuses on the lack of court support personnel with bilingual and

multicultural knowledge and training in the Court Support Services. The consequences of this problem include inaccurate or misleading investigative reports (e.g. Hispanics being incorrected labeled as having an alias, since the two parts of a compound surname appear to confuse people unfamiliar with Hispanic culture). When a report contains errors or omissions, it can be very difficult to correct, especially once it has been read and an impression has been made. Professionals from outside agencies should be bilingual also, especially mental health professionals, because linguistic minorities run a high risk of being inappropriately diagnosed and inadequately treated.

The fourth finding expresses concern over the lack of defined qualifications, articulated ethical standards, or opportunities for initial and continued training for personnel. Only 13% of court interpreters had any form of certification, while only 6% of bilingual support staff personnel had a related certificate. There is no uniform procedure for determining the qualifications of people serving as court interpreters. Similarly, there is no established code of ethics, which may prevent an interpreter from simplifying, explaining, or adding to communications, perhaps to the point of prompting the witness.

Finding number five determined that there are no guidelines for the conduct of interpreted court proceedings and no uniform policy regulating the payment of costs and provision of the administrative duties associated with court interpreters. In criminal cases the county pays for the interpreter, but in civil matters the litigants usually must provide their own interpreters, since official court interpreters are rarely used. Judges determine for themselves whether the request for an interpreter is bona fide, and not all interpreters are sworn in or given instruction by the judge. There is a general attitude that interpreting is

a clerical position, which is demeaning to the personnel and may cause problems with morale. Rates of compensation vary greatly, and no one interviewed by the Task Force received any professional performance evaluation.

The sixth finding expresses the need for a statutory basis for providing court interpreting services for linguistic minorities. Presently, there is no statute on court interpretation for linguistic minorities that says who has the right to an interpreter, what courts and types of cases merit an interpreter, or what qualifications must be met.

The seventh finding details the lack of sensitivity of some court personnel, attorneys and others in the legal system to the plight of linguistic and cultural minorities. It was found that "many linguistic minorities feel vulnerable to potential abuse by the legal system," and that "the shortcomings surely erode the confidence of the public as well as linguistic minorities that the limited English proficient clients will find justice in the courts. They cannot develop a healthy trust in a system that does not understand them and treats them insensitively" (p. 173). People who have acquired even substantial competence in English may, in stressful situations, have great difficulty communicating comfortably in English. Others may be afraid to speak for fear of ridicule or because of pride. The New Jersey Task Force also found a belief among respondents that parties who use interpreters "suffer from a lack of credibility in the eyes of jurors, attorneys and judges and are more likely to be convicted in criminal matters and receive lower awards in civil cases" (p. 168). According to the report, few non-English-speaking defendants choose to be represented by counsel, and those who do believe that the attorneys know what they are doing and, therefore, the client lets the attorney take whatever action the attorney deems necessary. Many linguistic

minorities do not know their legal rights nor how the courts work nor how to use them. Hispanic prisoners in New Jersey were asked the degree to which they understood the American court system. A majority seemed to have less than adequate knowledge: 25% stated they had "no" understanding; 45% had "some" understanding; 19% understood "for the most part"; and 12% understood "completely." Apparently, many Hispanic prisoners make complaints about inability to communicate effectively with the defense counsel. This may mean plea bargains took place without the defendant's full knowledge of what was occurring.

In order to ameliorate the problems discussed above, the New Jersey studies presented fifteen recommendations. The first six are constructed to ensure equal access to justice and judicial services for linguistic minorities; recommendations seven through 12, on the other hand, advocate an "adequate statutory basis" and a set judicial policy and administrative structure. The thirteenth, fourteenth and fifteenth recommendations concentrate on ensuring equal access to justice by improving the sensitivity of court personnel and attorneys.

In sum, the New Jersey Task Force found that "current judicial and court support services are not generally being delivered to linguistic minority clients by linguistic or culturally qualified persons" (p. 175). They arrived at fifteen recommendations for the eradication of linguistic barriers in order to insure equal access and justice for linguistic minorities. The Washington Task Force agreed with these findings. Utilizing information from their own questionnaires and the framework from the New Jersey Report, their recommendations are as follows:

- The Supreme Court should prescribe the qualifications of persons who interpret or translate in or for the courts.
- The Legislature should establish a State Board of Court Interpreting and Legal Translating to ensure a uniform certification process.
- The Supreme Court should prescribe the qualifications of appropriate bilingual and multicultural court support personnel to ensure effective communication.
- The Department of Higher Education should designate several public institutions of higher education as centers for the training of court interpreters and legal translators and developing the requisite skills of present court personnel.
- The Supreme Court should recognize the need for on-going training and provide for continuing professional education.
- Canons of ethics should be adopted by the Supreme Court, to be binding on all persons who interpret or translate in or for the courts.
- The Legislature should establish a comprehensive statutory basis providing adequate court interpretation and legal translation services for all linguistic minorities.
- Uniform standards should be adopted to govern all phases of court proceedings and determine responsibilities for paying the

related costs.

- The Supreme Court should assure effective organization and efficient administration of court interpreting, legal translating, bilingual and multicultural court support services at the state and local levels.
- The Supreme Court should adopt policies which will attract, employ and retain sufficient numbers of qualified court interpreters and support personnel.
- All judicial documents and forms should be in easily translatable English and translated into additional languages.
- The Supreme Court should adopt a program of informing linguistic minorities about the Judiciary and its services and establish a procedure to enable linguistic minorities to bring allegations of any unprofessional performance or unequal access to the legal system.
- Programs to "orient and sensitize" all court personnel to diverse bilingual and multi-cultural persons, including instruction regarding techniques of working with a court interpreter.
- The state's law schools should offer instruction to attorneys and other legal personnel on how to work with court interpreters and best provide service for cultural and linguistic minorities.
- Evaluation of the accessibility of services by the offices of the

Attorney General (County Prosecutors), Public Advocate, and

Legal Services to linguistic minorities (pp. 178-197)

New legislation as a result of both task forces is still pending (Washington Task Force, 1989; New Jersey Task Force, 1985; State of New Jersey, Assembly, 1988). New Jersey's Administrative Office of the Courts has disseminated a draft Code of Professional Responsibility for Interpreters, Transliterators and Translators (State of New Jersey Administrative Office of the Courts, 1987a). Similarly, the Washington Task Force's final report includes a prposed Code of Ethics for Court Interpreters and Legal Translators (Washington Task Force, 1989). The New Jersey Administrative Office of the Courts has created a three-member Court Interpreting, Legal Traslating and Bilingual Services Section (State of New Jersey Administrative Office of the Courts, 1986), which has undertaken a number of projects geared to improving the quality of court interpreting, to enhancing the administration of court interpreting, and to enhancing the accessibility of courts to linguistic minorities (State of New Jersey Administrative Office of the Courts, Court Interpreting, Legal Traslating and Bilingual Services Section, 1988; State of New Jersey Administrative Office of the Courts, 1989). A comprehensive Standards for Interpreted Proceedings has been drafted (State of New Jersey Administrative Office of the Courts, 1987b), as well as Guidelines for the Effective Use of Interpreters in Interviews (State of New Jersey Administrative Office of the Courts, 1988).

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CRIMINAL SANCTIONS AND PRETRIAL PROCESSING

BACKGROUND BRIEFING PAPER #7

New York State Judicial Commission On Minorities

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CRIMINAL SANCTIONS AND PRETRIAL PROCESSING

1.0 Introduction

The issue of racial bias in the criminal justice system has been the subject of extensive research. The findings of this large body of empirical work support conclusions of racial bias, but the findings are not always consistent and are largely dependent on the stage of the criminal justice process under investigation, the methodologies and analytic strategies of the investigators, and the variables and types of data that are examined. Rather than pervasive racism in the court system, small and indirect effects of race at arrest and at different points in case processing are discernible. These differences at various stages in the court process have a cumulative effect on the fairness of the system as a whole. The research suggests that racial bias plays a role in case processing in some jurisdictions but not in others. The initial charging decisions made by the district attorney's office, bail decisions, and the type and length of sentence imposed by the judge are influenced by race, either directly or indirectly, through the relationship between race and other variables (e.g., employment and region).

There are several key events which can each be regarded as a case outcome in the criminal justice process where researchers have sought to locate racial bias. The decision to prosecute and the related charging decisions, made by the district attorney's office according, ideally, to the strength of evidence and to the circumstances of the arrest, have been analyzed to determine whether they are susceptible to racial bias (e.g., Myers & Hagan, 1979; Spohn et al., 1987). Next, decisions are made at the arraignment stage that are either systematized (i.e., release decision) or allow a wider range of discretion (i.e.,

amount of bail set); these have been studied for their adverse impact on minority defendants (e.g., Petersilia, 1983; Radelet & Pierce, 1985; Zatz, 1985; Spohn et al., 1987). The decision to plead guilty or to seek a trial has significant consequences for the defendant in terms of conviction and sentencing, and race differences in the plea bargaining process have been examined by a few researchers (e.g., Holmes et al., 1987). Finally, race differences in sentencing (e.g., imprisonment versus probation) and parole release have been examined (e.g., McDonald, 1983; Petersilia, 1983; Pruitt & Wilson, 1983; Kemph & Austin, 1986). One important issue relevant to minority treatment in the criminal justice system, juror bias, is examined in a separate review in this volume.[1]

There are several important determinants, or process variables, of these case outcomes that are discussed in this review, and, therefore, require some introduction. First, the extent of defendants' prior criminal justice involvement often dictates the type of treatment they will receive. Those with relatively serious prior criminal records tend to be evaluated as incorrigible or even guilty by court actors, and, therefore, are generally treated more harshly at all points in the system. Additionally, having certain types of prior convictions can, by statute, determine the type of sentence that awaits the defendant convicted on the current charge. That prior criminal record has an effect on case outcomes is generally regarded as legitimate. Researchers must assess criminal justice treatment of defendants according to race by comparing racial differences within each type of criminal record category. Racial differences in pretrial decisions and sentencing can be minimized

[1]New York State Judicial Commission on Minorities, Juror Attitudes Toward Minority Defendants and Attorneys (Background Briefing Paper #10).

or exaggerated if this important determinant of outcomes is omitted.

The offense with which the defendant is charged is another important and legitimate determinant of case outcomes. The arraignment charge determines, in part, the latitude the defendant has in plea negotiations. Often the result of plea negotiations is a guilty plea on a charge that is one or two severity levels lower than the original charge (e.g., a D-felony arraignment charge will lead to a conviction on an A-misdemeanor), so the severity level of the initial charge determines the severity of the final charge. Also, the higher the severity level of the arraignment charge, the less likely the defendant will be released on recognizance or have a low amount of bail set for pretrial release. However, while the arraignment charge is considered a process variable, there are also ways in which it is an outcome as well, and this is why the study of case processing becomes as complicated as it is. For instance, prior criminal record can partially determine the severity level of the arraignment charge. Defendants with serious criminal records generally have less bargaining power (e.g., they may be seen as "career criminals" and, hence, incorrigible). Therefore, the prosecutor is freer to introduce more severe charges. Also, although the strength of the evidence clearly determines the severity of the arraignment charge, included in "strength of the evidence" might be an assessment of the victim's credibility. To the extent that the testimony of white victims is more likely to be believed, or that white victims are more likely to be seen as deserving of some kind of retribution, the arraignment charge itself can be discriminatory. Clearly, the initial charge is a very important determinant of case outcomes; however, because it is caused by so many potentially racially biased factors, some of the research includes it as a case outcome as well.

Other process variables analyzed by researchers include the defendant's release status, type of attorney used by the defendant, and jurisdiction of the arrest. Being released pretrial has an impact on the quality of the defendant's court experience: released defendants are better able to organize a good defense and will more likely make a better impression in court than held defendants (e.g., they may be better dressed; they are able to prove that they are reliable because they have willingly appeared in court). Like arraignment charge, pretrial release has also been considered an outcome variable, that is, an event that is caused. Prior convictions, seriousness of the current charge, and community integration generally determine the defendant's pretrial release status. Type of attorney, publicly appointed or privately retained, affects various court decisions, so race-based differences in the type of attorney used by defendants are examined. By definition, social class affects the resources that different groups are able to mobilize in their confrontation with the criminal justice system. To the extent that publicly appointed counsel are less likely to serve their clients well, and to the extent that the minority arrest population is less likely than the majority arrest population to have access to resources, there will be racial differences in case outcomes. Finally, studies that have compared jurisdictions have found large differences in the extent of racial bias in court outcomes. Generally, urban areas have been found to have less bias in their criminal justice outcomes than suburban or rural areas.

2.0 Crime Commission

Although Blacks represent about 11% of the United States adult population, they constitute nearly half of its prison population (Langan, 1985). Also, the rate of imprisonment per 100,000 people in 1980 was 90 for Whites, 212 for Native Americans and

Alaskans, and 567 for Blacks (Dehais, 1987). Less than one in seven white males living in large urban areas is arrested at least once for index arrests (i.e., murder or manslaughter, forcible rape, robbery, aggravated assault, larceny, auto theft, arson), compared to one in two black men (Blumstein & Graddy, 1981, cited in Petersilia, 1983). In New York State, the black and Hispanic populations account for 23% of the total population, whereas they represent 60% of the arrest population and approximately three quarters of the prison population.[2] While striking, such disproportionality does not warrant a conclusion of racial bias in the courts. The fundamental issue is the degree to which the concentration of minorities in prisons is due to racially biased treatment by the criminal justice system apart from greater rates of crime commission among minorities.

There are three ways that researchers have used aggregate statistics to settle this issue. Briefly, they compare the proportion of minorities in the prison population with the proportion of minorities 1) arrested for specific crimes; 2) reported by victims to have committed crimes; and, 3) self-reported to have committed crimes. While each of these methods gives somewhat flawed information (discussed below), when all three types of data are examined it can be assessed with some degree of certainty whether and to what extent

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[2]According to the Division for Criminal Justice Services (DCJS), the arrestee population in New York State for felony or misdemeanor charges in 1988 was 39.7% white, 41.1% black, 18.4% Hispanic and 1.3% "other," or unknown (DCJS, 1989). The imprisonment data available to us do not allow for such precision: the New York City Department of Corrections reports that of its 14,694 average daily prison population in 1987, approximately 9.2% were white, 55.8% were black, 34.6% were Hispanic and 0.4% were "other." The average daily population in New York county jails and penitentiaries was 9,299 in 1987 and consisted of 54.9% white, 36.5% black, 7.7% Hispanic and 0.9% "other" inmates. Finally, on May 1, 1989, the population of non-New York City prisons was 46,004: 18.1% white, 49.5% black, 31.9% Hispanic, and 0.6% "other" (New York State Commission of Correction, 1989).

the overrepresentation of minorities in the prison population is due to reasons other than their overrepresentation in crime commission.

The first way of examining this question is to compare the degree of correspondence between the racial composition of the prison population and the racial composition of police arrest statistics for offenders who committed crimes punishable by imprisonment. Blumstein (1982) used data from two inmate surveys sponsored by the Bureau of Justice Statistics as a measure of the racial distribution in state prisons on specific days in 1974 and 1979 and police arrest statistics published in the FBI's Uniform Crime Reports as a measure of criminal activity. The study found a close correspondence in race between arrest and prisoner statistics. While the percentages were not identical (black arrestees: 42.7%, black prisoners: 48.3% in 1974; black arrestees: 43.5%, black prisoners: 49.1% in 1979), they were close enough for Blumstein to conclude that while the "analysis by no means argues that no discrimination exists . . . it does indicate that the predominant fraction of the racial disproportionality in prison is attributable to differential involvement in arrest, leaving a much smaller residue that may be attributable to racial discrimination" (p. 1270).

Relying on arrest statistics alone, however, can be misleading. Some crimes are more likely to lead to arrest than others, and, to the extent that Whites, Hispanics and Blacks differ in the types of crimes they commit, arrest statistics are a misleading indication of crime rates. Also, there are trends in enforcement strategy that do not necessarily indicate trends in crime commission. Low-level drug sweeps are the current vogue in New York City law enforcement; to the extent that minorities are more involved in street drug sales, their inflated appearance in the arrest statistics is more a result of the allocation of law

enforcement resources than of the overall rate of crime commission. Finally, the most obvious danger in relying on arrest statistics is that if the police are overarresting minorities, the statistics would deceptively show that minorities are committing a larger portion of crimes.

Another criticism of arrest statistics is that they may mask racial disparities. Dehais (1987) argues that conclusions stemming from Blumstein's statistics and similar statistics which compare the proportion of minorities at the beginning of the criminal justice process (i.e., arrest) and at the end (i.e., incarceration) are invalid. First, Dehais focuses on the fact that the Hispanic population is not often disaggregated; an estimated 90% are labeled "white" and the remainder are labeled "black." If Hispanic arrestees have a higher imprisonment probability than white arrestees, then including them in the white statistics inflates the white probability and, therefore, minimizes the white-black imprisonment rate disparity. Therefore, whereas Blumstein was able to account for 80% of the prison population using arrest statistics, Dehais proposes that if only non-Hispanic Whites are included, the disparity is higher; less than 80% of the prison population is "explained". Second, Dehais argues that it is inappropriate to posit, as Blumstein does, that if the proportion of minorities in the arrest population is the same as it is in the prison population, then discrimination does not exist. There is sufficient evidence (discussed below) to propose that minorities are arrested on weaker evidence and that, therefore, their cases are either not prosecuted (i.e., minority arrestees are released prior to formal charging) or minority arrestees are convicted less often than white arrestees. If this is true, and if there is no discrimination in postarrest treatment, minorities would make up a smaller proportion of the

prison population than of the arrest population because more minority cases would drop out of the system before conviction.

Victim surveys can eliminate some of the bias caused by reliance on arrest statistics. Hindelang (1976; Hindelang & Gottfredson, 1978) compared arrest data with victim survey data collected by the National Crime Survey. As part of the victim surveys, representative samples of the general population report on whether they have been victims of crime during a particular period (including crimes not reported to the police), and on the race of the perpetrator(s). Thus, these data provide a measure of minority involvement in crime independent of police arrest statistics. In the first study, which compared arrest data and household victim report data for rape, robbery, and aggravated assault in eight American cities, Hindelang and Gottfredson found no evidence of arrest bias against Blacks. The percentages of Blacks in each data base (i.e., victim report and arrest statistics) were nearly identical. In the second study, Hindelang used data covering the entire nation and investigated rape, robbery, and aggravated and simple assaults. Proportions of Blacks were identical for arrested and victim-described robbers. Arrest records contained slightly larger proportions of Blacks than victim reports for rape and aggravated and simple assault. When only those victims who reported crimes to the police were examined, racial disparity remained only for aggravated and simple assault.[3] Hindelang (1978) concluded that "some of the arrest percentages can be attributed to selection bias [Hindelang's term for racial disparity] but, by far, most of the arrest percentages appear to be attributable to the

[3]The racial disparity between victim and arrest data for rape and robbery is explained by the finding that rape and robbery victims were more likely to report the crime when the perpetrator was Black (See Hindelang, 1978, Table 2, p.102).

substantially greater involvement of Blacks than Whites in these crimes" (p. 104).

Langan (1985) replicated Hindelang's studies using data from 1973, 1979, and 1982 and enhanced their representativeness by analyzing victim survey data for all seven index charges covered in both victimization surveys and police arrest records (adding burglary, larceny, and auto theft), thereby studying the crimes that account for 60%, instead of 30%, of national prison admissions. The 1973 data showed no difference between the proportions of Blacks in prison and the proportions of Blacks reported in victim surveys. In 1979 and 1982, however, there were significant differences; 84% of the Blacks in prison in 1979, and 85% in 1982, could be accounted for by victim surveys. In other words, had the probability of imprisonment been the same for Blacks as for Whites, Blacks would have comprised only 44.9%, instead of the actual 48.9%, of the prison population in 1982. This pattern held for the 1979 data as well.

However, victim surveys do not produce infallible accounts of crime commission. Victims are more likely to know the race or ethnicity of the perpetrator in certain crimes (e.g., assault) than in others (e.g., auto theft). Moreover, some so-called victimless crimes (e.g., drug sales, statutory rape) cannot be included in the surveys because the respondents might not perceive themselves to have been victims. While victim survey statistics can be used to compare the prison population to the criminal population for specific crime types, their usefulness in comparing the racial differences in crime commission in general is diminished to the extent that there are race differences in the types of crimes committed, which may covary with the likelihood of reporting the crime and knowing the race of the offender.

The Rand Corporation administered a confidential survey to 1,380 male inmates in California, Michigan, and Texas in 1978 which included questions about their criminal backgrounds (Petersilia, 1983). The findings indicated that all types of crime had a low likelihood of leading to arrest: about 6% of burglaries, 21% of business robberies, 5% of forgeries, and 1% of drug sales resulted in arrest. There was little consistent racial difference in this general pattern: Blacks and Hispanics had a higher rate of arrest per crime for personal robbery and Whites had a higher chance of being arrested for fraud.[4]

The reasonable conclusion that can be drawn from examining Blumstein's, Langan's, and Petersilia's studies is that the overrepresentation of minorities in the prison system relative to their representation in the United States population is, for the most part, attributable to their greater involvement in crime. The evidence for the possibility of racial discrimination, especially in light of Dehais' critique, is significant enough that it becomes important to consider findings from those studies that have posed questions about racial disparities in treatment at various stages of the criminal justice system.

3.0 Decision to Prosecute and Arraignment Charge

Several studies have examined the possibility of racial bias in prosecutorial decision-making, i.e., the initial assessment of the severity of the offense and decision-making regarding specific charges. Spohn et al. (1987), in a study of prosecutor decisions to reject felony charges against black, Hispanic and white defendants in Los Angeles, found that

[4]Self-report data of juvenile criminal activity lead to a drastically different conclusion about racial disparity than do Petersilia's findings on adult males. For example, an early study of lower-class, white, black, and Japanese high school students showed that while Blacks had a much higher official delinquency rate, they reported committing delinquent acts at the same rate as whites (Chambliss & Nagasawa, 1969, cited in Hindelang, 1978).

Whites were significantly more likely to have their charges reduced to misdemeanor charges or dropped entirely before the initial screening. Prior record, seriousness of the charge, and use of weapon were all controlled for in this study. Despite equivalence in these factors, 59% of Whites, but only 40% of Blacks and 37% of Hispanics, had their charges reduced or dropped. Racial differences in postarraignment dismissals were not found. The authors hypothesized that "[a]s the process becomes more visible, norms against racial discrimination become more pronounced" (p. 184). Therefore, racial disparities are more likely to show up in areas, such as the district attorney's office, that are somewhat more immune from scrutiny.

In contrast, Petersilia (1983) found that among felony arrestees in California, white arrestees were less likely to have their charges dropped prior to arraignment. This was explained by the fact that white arrestees were somewhat more likely to be arrested on an arrest warrant, demonstrating that probable cause has already been assessed by the district attorney, than to be arrested "on view." A greater portion of minority arrests are dropped from the system prior to prosecution because minorities are arrested before a more careful assessment of the strength of the case is made. (Further evidence for this interpretation is that 95% of all prearraignment releases are due to insufficient evidence.) The apparent harshness in treating Whites as compared to minorities, then, is explained by the different circumstances of arrest. The interesting issue here is the police's tendency to make most of their arrests "on site." This suggests an over-attentiveness to street crime, predominantly perpetrated by minorities, vis-a-vis crimes which Whites are more likely to commit.

Hagan and Zatz (1985) add more evidence to Petersilia's suggestion that minorities

are overarrested. They found that race interacts with the size of the jurisdiction to influence police and prosecutiorial decision-making. Compared to Whites, Blacks and Hispanics in small cities were repeatedly arrested and subsequently released by the police or prosecutor because of insufficient evidence. The high degree of overarresting could legitimately be labeled as police harassment of minorities.

The race of the crime victim also has an effect on the charging decision. Myers and Hagan (1979) examined data from Marion County, Indiana on a random sample of felony cases disposed of between January 1974 and June 1976. They found that prosecutors were more likely to fully prosecute rather than reject a case when the victim was white, regardless of the defendant's race. Race had a significant effect even when evidentiary strength, victim credibility and culpability, defendant credibility, presumed dangerousness, and charge severity were held constant.

The interaction of the race of the defendant and of the victim in terms of perceived seriousness of the crime has also been examined. Radelet and Pierce (1985) examined 1,017 homicide defendants in Florida by comparing the initial police assessment of severity with the initial prosecutorial assessment to determine whether the prosecutor upgraded or downgraded the police assessment. They concluded that the race of the defendant and the race of the victim have a significant and independent impact on the process. Crimes involving black offenders and white victims were significantly more likely to be upgraded by prosecutors in severity assessment while crimes involving white offenders and black victims were significantly more likely to be downgraded. These decisions led to more serious charges, more vigorous prosecution, and more severe sentences for the black offender. Of

the homicides classified as felonies by police. prosecutors accepted the felony classification in 92% of black defendant-white victim cases. 83% of white defendant-black victim cases, 78% of white defendant-white victim cases, and 62% of black defendant-black victim cases. Conversely, homicides not classified as felonies by the police remained nonfelonies in 64% of black-white cases, 86% of white-white cases. 93% of white-black cases, and 95% of black-black cases. These findings are particularly important since they suggest that "severity" of crime, which is always controlled for in better designed studies, is itself highly susceptible to racial bias. If severity of crimes committed by Blacks and Whites is not judged by the same standards, then controlling on this variable and finding no racial disparity in sentencing outcomes does not warrant a conclusion of the absence of racial bias.

It is essential that racial disparities in the decision to prosecute and the setting of arraignment charges be taken into account. Minority arrestees are less likely to be prosecuted, suggesting that police overarrest minorities. There are two possible reasons for this phenomenon: 1) the police, like many other groups in American society, have been socially conditioned to perceive a situation as threatening, or potentially criminal, when the actors in the situation are black or Hispanic, and these perceptions lead to false arrests; and 2) the police harass minorities to assert their dominance, to express racist sentiments, or to deter those whom they perceive to be potential criminals from committing crimes. Charging decisions by predominantly white prosecutors are also biased against minorities, and this is probably due to either their own biases against non-Whites or their catering to what they perceive as the biases of the court or voting public. These two early stages in case processing are extremely important since racial bias here can influence subsequent phases

of case processing even if there are no discernible racial disparities at those later stages.

4.0 Pretrial Case Processing

While social scientists have focused predominantly on racially-disparate case outcomes, racial disparities at earlier stages in case processing are equally important because decisions made at such stages, such as release decisions at arraignment, can influence later outcomes. For instance, persons not detained in jail prior to sentencing have been shown to have a better chance at organizing their defense, creating a better impression at trial, and are more likely to avoid incarceration (e.g., Bernstein et al., 1977a; Hagan et al., 1980; Kemph & Austin, 1986). Also the criteria employed in making pretrial release decisions have profound implications for racial disparity. For example, since employment is a factor in assessing community ties, and, hence, eligibility for release, to the extent that unemployment is more common in the minority than in the majority arrest population, the employment criterion may have a relatively more harmful impact on minority defendants. Similarly, if bail is set, the unemployed may be less able to post bail. Unfortunately, few studies have examined the effects of race on pretrial release decisions. (Further discussion of the importance of making bail appears in the section 5.0, below.)

Nagel (1983) conducted research on pretrial release decisions in all criminal cases (N=5,594) first arraigned in one New York City county between December 1974 and March 1975. Nagel chose pretrial release decisions for investigation because at the time of the study it was the only significant stage of criminal court processing "for which there is a formal set of statutorily prescribed guidelines specifying particular factors to be considered in the making of the decision" (p. 484). She examined the effect of a number of variables

three different decisions: 1) release on recognizance; 2) amount of bail set for those who are not released on recognizance; and 3) the decision to offer a cash alternative to a surety bond (ordinarily in the amount of 10% of the surety figure). Defendant's race was found to have no effect on the decision to release on recognizance and small but statistically significant effects on the bail amount decision and on the cash alternative decision. Whites faced lower bail than defendants whose primary language is Spanish, and Whites were more likely to be offered a cash alternative. Nagel concluded that "the evidence of some discrimination, however small, in favor of Whites (as compared to Blacks and Hispanics) and against those whose primary language is Spanish suggests that discrimination . . . is still a problem with which to wrestle" (p. 510).

Swigert and Farrell (1977), having access to rather unusual defendant data, were able to test the hypothesis that court decisions are influenced by whether defendants "fit" some kind of conception of the criminal type. The sample court, in a "large urban jurisdiction in the Northeast," has a clinic which evaluates the mental fitness of defendants accused of murder, and their sample cases consisted of a 50% random sample of all murder cases in that court between 1955 and 1973. If the result of the evaluation is that the defendant need not be diverted to a mental hospital, the evaluation is made inaccessible to the judge until conviction. The evaluation, then, serves as a sort of presentence investigation report. Notably, the report includes an assessment about whether the defendant is a "normal primitive," a label usually reserved for black and foreign-born men. The characteristics of a "normal primitive" include poverty; sporadic employment in unskilled, menial occupations; lower-than-average intelligence; the attitude of an 8-to-12-year-old boy; an overconcern with

masculinity where challenges to masculinity can result in violent defense; and, for black men, promiscuity. In general, then, "'normal primitive' constitutes a social description of a group of people whose behavior, within their own social setting, is best described as normal" (p. 19). Having these data allowed Swigert and Farrell to examine whether fitting this criminal stereotype led to harsher pretrial treatment because various court actors held this same conception of the criminal type (the court actors did not have access to the evaluation). They indeed did find that being a "normal primitive" limited a defendant's options in court. They found that three factors determined whether the court would set bail or remand defendants charged with murder: prior criminal record, type of attorney, and having the "normal primitive" label. Also, only the "normal primitive" label determined the type of trial the defendant received. Finally, bail status and type of trial determined the severity of the final disposition (conviction on the original murder charge, a lesser felony charge, a misdemeanor charge, or a dismissal). The results, therefore, indicate that the stereotypical conception of the criminal, which contains race-based and class-based assumptions, influence pretrial treatment and case outcomes.

Convicted cases are far more likely to be convicted by plea bargaining than by trial. The informal nature of plea negotiations would, theoretically, make it an area that is more ripe for racially biased outcomes than other statutorily guided processes. The most important outcome of the plea negotiation is the conviction charge on which the defendant and prosecutor agree. Since plea negotiations and case disposition affect sentencing outcomes, the range of sentences available to a defendant is highly contingent upon the conviction charge. If minority defendants are offered less attractive plea bargains than their

nonminority counterparts, equality in sentencing of comparable conviction charges obscures the very real discrimination at the plea negotiation stage of criminal case processing.

The evidence for discrimination at this stage in case processing is not clear cut. First, an overwhelming majority of criminal cases are resolved through plea bargaining, so analyses of racial bias in the prosecution's decision either to offer a defendant a plea bargain or to seek a trial are not conducted often and are suspect because of the limitations for statistical analysis that that type of distribution (about 95% of convictions are by plea and only 5% are by trial) imposes.

Holmes et al. (1987) tested racial differences at these early stages by examining the effects of status variables (i.e., race/ethnicity, age, and employment status of the defendant), legal variables (i.e., bail status and type of counsel) and evidentiary variables (i.e., existence of an eyewitness and confession) in order to find the determinants of reduction in severity between indictment charge and conviction charge. They found that in Delaware County, Pennsylvania, "status characteristics of the defendants operate indirectly through their influence on access to legal resources. Black and unemployed defendants were less likely to be represented by private counsel, the lack of which increased the likelihood of pretrial detention" and more severe sentences (pp. 247-248; emphasis added). However, the direct effects of race/ethnicity were somewhat different. The authors found that black defendants in Pennsylvania and defendants of Mexican origin in Pima County, Arizona were more likely to have received greater charge reductions and lighter sentences than Whites. Except for those held on bail, minority defendants, in general, are hypothesized by these researchers to be treated more leniently than white defendants because the adjudication process negates

the initial overcharging of minorities.

However, these findings might be peculiar to the jurisdictions examined. Bernstein et al. (1977b) showed that in New York City in the mid-1970s, black and Hispanic defendants had a smaller reduction in charge from arraignment to plea than did white defendants.

5.0 Sentencing and Time Served

After conviction, there are a few more ways in which the processing of offenders in the criminal justice system can be biased. The type and length of sentence imposed and time actually served have been the two main areas that researchers have examined, and the general conclusion gleaned from these studies is that the degree of racial disparity in sentencing is contingent upon the degree of judicial discretion available in decision-making.

5.1 Determinate versus Indeterminate Sentencing

Currently, there are two types of sentencing procedures in use in the United States. About 50% of the states, including New York, use indeterminate sentencing where the court imposes probation or imprisonment, and a minimum and maximum imprisonment time (Harvard Law Review, 1988). Judges rely on legal and social variables in determining sentences. The remaining states either have adopted or are experimenting with a modified version of determinate sentencing where sentencing guidelines set up by the state legislature offer a calculus of only legally-relevant factors to determine a sentence. Judges rely on a grid that offers several possible sentences for an offense, using information such as prior criminal record to determine the variation. Judges can stray from the guidelines only to the extent that there are mitigating circumstances not taken into account by the guidelines that

make the selection of sentences untenable. If, under determinate sentencing, offenders must be sentenced similarly according to their final disposition charge, the process by which these charges are set needs to be reexamined (McDonald, 1983). Under a system of indeterminate sentencing, judges rely on the presentence investigation report prepared by the Probation Department to determine the offender's sentence. The report informally predicts whether an offender would be at a "high risk" for recidivism if released rather than incarcerated. It includes legal and extralegal information about the offender's current offense, prior criminal record, employment history, family background, and history of substance abuse. To the extent that socioeconomic variables are used to assess risk and determine sentencing, minorities are more likely to receive imprisonment rather than probation and to serve longer portions of their sentences than Whites. The decision to release the offender after the minimum time has been served is made by the parole board. The same types of legal and extralegal variables that determine sentence are generally used by the board; however, at this stage there is greater likelihood for racial discrimination against minorities insofar as parole boards operate in a relatively independent and secret way. Parole board meetings are private, the proceedings are not transcribed, and, therefore, parole-eligible offenders are less able to locate racial discriminatory behavior and to seek legal redress.

Presenting a systematic analysis of parole boards is beyond the scope of this review.[5] The power of parole boards, however, to promulgate, or even to negate, racial disparities

[5]The corrections system is another area that is not covered here. For a description of the often racist and dehumanizing nature of prison culture, see National Minority Advisory Council on Criminal Justice (1982).

evident in other points in the criminal justice system is, in the very least, curious and might even be somewhat dangerous insofar as they may be extending their activities beyond their mandate. For example, Petersilia (1983) notes that in Michigan, Blacks were sentenced to 7.2 months longer than Whites for the same crime but they eventually served only 1.2 months longer than white inmates. She further points out that Michigan's parole board in 1976 used a risk assessment scheme in making parole decisions. Among the criteria used in these assessments are juvenile criminal record, conviction crime, and prison behavior. Sentencing decisions purportedly take into account the first two variables, and therefore, should not be necessary for parole board decisions. Although in states like Michigan this may serve to the advantage of those groups or individuals unfairly treated at the sentencing stage, the fact that parole boards operate in relative independence and secrecy suggests that this type of power could also be used to exacerbate whatever injustice the sentencing procedures produce.

If prosecutors offer better plea alternatives to white defendants than to minority defendants, or are more likely to refuse to negotiate with minority defendants, the process by which the final charge is determined is biased. A similar bias can arise in the patterns of charge changes between arrest and arraignment. If prosecutors are found to be more likely to reduce charges of white, as opposed to minority, defendants, then minorities start the plea bargaining process at a different level than do Whites. While research so far has not found substantial levels of this type of bias, it could arise if the opportunities for discretion at the sentencing level are removed. In other words, the unintended outcome of determinate sentencing could be to transfer discretionary power from the judiciary to the

prosecution.

The second area that needs to be examined is the criteria by which judges exercise the right to deviate from the guidelines due to "mitigating circumstances" of the case or defendant. Bias can be said to persist at the sentencing stage to the extent that judges are found to deviate from the guidelines in order to treat minorities and Whites differently. Consider Zatz's (1987) hypothetical:

> The wealthy executive who is an "upstanding pillar of the community" may be viewed as having "suffered enough" if conviction results in a loss of position, wealth, or reputation, but these same losses are apparently not sufficient for the poor and minorities who fill our prisons (p. 84).

Several studies suggest that irrespective of whether minorities and whites receive similar sentences and have similar case characteristics, minorities tend to serve longer portions of their sentences. Bynum (1981) found that white inmates were likely to receive a longer prison term than Native American inmates but they were paroled far more quickly than Native Americans; thus, whatever disadvantage Whites had in sentencing was reversed at the parole stage. Conversely, the New York State Committee on Sentencing Guidelines (1985), which conducted a study of sentencing disparity under the State's indeterminate sentencing policy, discovered significant sentencing disparities by region, race, gender, and age but found that only regional differences remained when they searched for the determinates of the amount of time served beyond the court-imposed minimum. Although black males were significantly more likely to be imprisoned than the state averages, holding constant prior criminal record and offense severity, the parole board did not act to exacerbate the disparity in any way.

Petersilia (1983) found that the effect of race/ethnicity on time served (i.e., parole

release decisions) varied by sample site. In Texas, when other relevant factors were controlled for (e.g., participation in prison programs or prison violence) black and Hispanic inmates served greater proportions of their sentences than did white inmates. In California, the disparity in time served was due only to disparities in time imposed. In Michigan, however, the parole boards almost negated the effects of sentencing disparities and black inmates served a smaller proportion of their sentences than did white inmates.

Klein et al. (1988) replicated the Petersilia study for California using data postdating that state's implementation of its Determinate Sentencing Act. They found no racial differences in either the likelihood of a prison sentence or in the actual length of time served. Although they attribute this lack of racial difference to determinate sentencing, they may have found no disparity because they controlled for several variables (e.g., controlled substance addiction history, pretrial detention, and type of attorney) that Petersilia's study did not. Had the first study controlled for these variables, it might not have shown racial disparities either. A more systematic comparison of sentencing under the two types of programs is needed before a final determination of the newer policy's effect can be made.

5.2 Interaction of Race and Other Variables in Sentence Severity

Some researchers have argued that if factors that can legitimately influence sentencing (e.g., severity of crime or prior record) are controlled for, it is often possible to attribute most or all of the seeming racial disparities to such factors. For example, Pruitt and Wilson (1983) studied defendants in Milwaukee charged with armed robbery and burglary at three points over ten years from the late 1960s to the late 1970s. Holding constant variables that are usually relevant, as well as some others not often examined by

researchers (e.g., bail amount, pretrial detention, and case processing time), they found some evidence of racial disparities in the earliest time frame (1967-68) but none in the later periods (1971-72 and 1976-77). The authors suggest that this change marks some kind of "declining significance of race" due to changes in the composition of the judiciary (leading to an overall liberalization among judges), as well as constraints on judicial discretion in sentencing decisions.

However, other researchers argue that race is an important factor in the decision to incarcerate, and in the length of incarceration, but that controlling for factors such as bail status may hide the importance of race in sentencing. These researchers concede that there are no strong main effects of race on sentencing but instead have found that race interacts with other variables in certain circumstances to determine sentence. For example, Lizotte (1978) found that race interacts with making bail to affect sentence length. In his study of Chicago criminal cases from 1972, Blacks were 15.5% less likely to make bail than Whites, and because of their pretrial detention, Blacks received 4.3 months more incarceration. Also, Zatz (1984) found that the use of certain legitimate determinants of sentencing, such as prior criminal record, varies by race of defendant. By differentially invoking the right to take into account prior record, prosecutors and judges can cloak racial bias in discretion.

Research in sentencing suggests that the effects of race can be discerned when jurisdictions are examined separately. Zimmerman and Frederick (1984) studied about 11,000 defendants in New York State who were eligible for probation in 1980 to predict whether they would receive probation or imprisonment. They examined many relevant variables (e.g., charge type, severity, and prior criminal record) and found that race/ethnicity

had a negligible effect on decisions to incarcerate in New York City but a substantial effect in suburban and "upstate" jurisdictions. Similarly, Kemph and Austin's (1986) research on defendants in rural, suburban, and urban areas in Pennsylvania also "provide evidence of racial bias against Blacks within each level of urbanization, and for sentence length, the greatest likelihood was in suburban jurisdictions" (p. 43).

A Washington State study isolated factors associated with racial disparity in imprisonment on the national level and in Washington State (Crutchfield & Bridges, 1986; Bridges & Crutchfield, 1988; Bridges et al., 1987). The first phase of this project consisted of determining the degree of racial disparity in imprisonment in each state. North Central states were most likely, and the Southern states were least likely, to have imprisonment rate disparities by race. The factors that contributed to differences in disparity included social, structural, and legal variables. Notably, it was found that states with a low overall percentage of Blacks, but with a large urban concentration of Blacks relative to Whites, have high black imprisonment rates and low white imprisonment rates. This was true even after controlling for arrest rates, suggesting that the disparity found is not due to differential involvement in crime in urban areas but rather to the social standing of Blacks in states characterized by these types of demographics. The researchers also found that states which are characterized by heavy parole use are characterized by larger imprisonment disparity; black rates of imprisonment are reduced less than white rates with the use of parole releases. Bridges and Crutchfield concluded that "racial differences at arrest for serious criminal behavior may be coupled with differential treatment in the legal system" (1988, p. 718) to produce racial disparities in imprisonment rates. At the state level, Bridges and

Crutchfield found significant county differences in imprisonment rates which parallelled their findings at the national level. They discovered that economic inequality, measured as the percent nonwhite below the poverty line divided by the percent white below the poverty line, affected racial differences in arrest rates but not in imprisonment rates. They also showed that urbanized counties (where a high percentage of the county population resides in the central city) are more likely to imprison minority defendants and less likely to imprison white defendants than rural counties.

Preliminary data from an ongoing statewide study in New York by the New York State Division of Criminal Justice Services (DCJS) suggest that harsher sanctions are visited on minorities, even controlling for prior criminal record, and current offense severity (Nelson, 1988). They are analyzing all persons charged with an offense in New York State in 1985 and 1986 (over 17,000), excluding arrests for A-felony offenses, Driving-While-Intoxicated and prostitution[6]. The researchers examined racial differences in the probability of being incarcerated, taking into account the arrest charge severity, prior criminal record, and county of arrest. They found that racial disparity was largest for cases with misdemeanor arrest charges and no prior criminal justice involvement. Where the arrest charge was a felony and the defendant had some prior criminal justice involvement, the degree of racial disparity was smaller. While differences among misdemeanants were large,

[6]DCJS has excluded A-felony arrests because there are too few to conduct the multivariate analyses used in the study. DWI charges have been excluded because their sentencing is determined solely on past DWI convictions (see New York State Vehicle & Traffic Law §1192). Finally, most prostitution cases occur in New York City and their processing is quite different from the processing of other types of offenses; therefore, they were excluded from the study.

in practical terms it means that the prison population would not change very much if these disparities were to disappear. Misdemeanants with no prior criminal record are less likely to receive jail time than other offenders, and even when they do, they are not sentenced to more than one year of jail time.

Nelson (1988) argues that examining statewide data obscures racial disparities: only when examining the ten most populated counties separately did racial disparities emerge.[7] For instance, while state-wide figures did not show much disparity, for defendants with a prior criminal record who have now been arrested in Westchester on felony charges, there were large racial differences in the probability of incarceration: Whites had a 39% chance of being incarcerated and minorities had a 52% chance. While differential involvement in crime commission is the primary cause of minority representation in jails and prisons, the probability for jail or imprisonment is higher for minorities than Whites under certain circumstances. Had the probability of imprisonment been the same for minorities as it is for Whites, the overall percentage of minorities imprisoned for felony charges would decrease from 77.2% to 74.5% and the percentage of minority misdemeanants in jail would decrease from 73.6% to 66.7%.

The importance of Nelson's study will lie in its ability to provide information about New York State. Significant regional differences in case processing, as well as in the type and scope of racial biases, limit the generalizability of any one study; studies of New York

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[7]The disparity is obscured at the state level because the racial composition, and the probability of imprisonment, are very different across counties. Generally, in the New York City counties, there is a large proportion of minorities and a low probability of incarceration. Outside New York City, the reverse is true.

case processing illuminate the circumstances under which there is racial bias in New York courts.

Aside from jurisdiction and charge, the impact of race has been found to vary by situational variables. Unnever and Hembroff (1988) found that the importance of race is detectable when the legitimate criteria for decision-making are unclear. They found that for male drug offenders in Miami, race/ethnic disparities did not occur when the case characteristics consistently indicated a sentence type, but in circumstances that were more ambiguous (i.e., those that required discretion), race/ethnic differences occurred. For example, in "low ambiguity" cases, where arrests resulted from the sale of an opium-derivative drug and defendants were unemployed, had four other arrest charges, and had prior convictions, defendants were likely to be incarcerated almost regardless of race. An example of "high ambiguity" case includes ones in which the defendants were arrested for the possession of an opium-derivative drug, were unemployed, had two other arrest charges, but had no prior criminal record. In these cases, the racial disparities were more pronounced; the probability of incarceration--a scale from 0 to 1.00--for white offenders was .285, and the probabilities for black and Hispanic offenders were .502 and .520, respectively. Similarly, Spohn et al. (1981-1982) found that when case characteristics suggest either a long probation term or a short prison sentence, judges are more likely to sentence white offenders to probation while sentencing black offenders to prison.

5.3 Racial Disparities in Sentencing in Rape Cases

The effect of race on criminal sanctions might also operate through sexism in rape cases (LaFree, 1980; Schwendinger & Schwendinger, 1983; Walsh, 1987). Walsh (1987),

testing an assumption of the sexual stratification hypothesis that "women are viewed as the valued and scarce property of the men of their own race" (p. 155), found that "blacks who sexually assaulted members of their own race receive significantly more lenient penalties . . . than did blacks who crossed the racial lines to commit sexual assault," thus concluding that "black victims are considered less valuable than their white counterparts" (p. 170). His data show no significant differences in incarceration rates according to the race of the victim when the offender was a black stranger. Both groups of offenders were incarcerated in about 80% of the convictions. However, when the victims knew their rapists, incarceration was not only less likely, but racial differences became pronounced: 60% of black offenders who were convicted of raping white women with whom they were acquainted were incarcerated, but only 30.9% of black offenders in similar circumstances involving black women were given this sanction. Finally, Wolfgang and Riedel (1975) found that in Georgia between 1945 and 1965 (when rape was a capital crime in Georgia) "black defendants who rape white victims are more likely to receive the death penalty" (p. 667) than black men who rape black women or white men who rape either black or white women.

5.4 Racial Disparities in Imposition of the Death Penalty

The ultimate consequence of a racially-biased criminal justice system is the discriminatory use of the death penalty. This special area of sentencing has been widely debated by social science researchers and legal theorists. Many earlier social science findings indicated grave differences in state-imposed death by the race of the victim and the race of the offender for conviction on a murder charge (e.g., Garfinkel, 1949; Johnson, 1957; Wolfgang et al., 1962) or a rape charge (e.g., Johnson, 1957; Florida Civil Liberties Union,

1964). For example, in a study of the first 204 homocides reported in Philadelphia in 1970 it was found that among black convicted of felony murder, 65% were sentenced to life imprisonment or to death when the victims were white, but only 25% received similar sentences when the victims were black (Zimring et al., 1976). Also, Johnson (1957) found that in North Carolina from 1909 to 1954, about 44% of white offenders, but 62% of black offenders, sentenced to death for murder were executed. Another early study, one with a better research design, yielded similar results. Wolfgang et al. (1962), in a study of offenders sentenced to death in Pennsylvania between 1914 and 1958, found that after controlling for type of counsel (private or court-appointed) and type of murder (felony or non-felony), black offenders awaiting death were less likely to have their sentences commuted than similarly situated Whites. For felony murder convictions, 83% of Whites, but 94% of Blacks, sentenced to death were actually executed. Similarly, for felony and non-felony murder convictions combined, 91.2% of black, and 81.2% of white, offenders had their sentences executed.

However, as Kleck (1981) has argued, these early studies--excepting Wolfgang's--rarely controlled for even the most rudimentary variables which may explain these differences. Kleck proposed that the relationship of the offender and victim and the offense circumstances should be used to explain racial differences in sentencing of murder cases. As Kleck argued,

> [b]lack offender-white victim killings are more likely than other killings to involve an offender and a victim who are strangers to each other, and such killings are much more severely punished, regardless of the races involved. Such killings are also more likely to be committed in connection with some other felony, like a robbery (p. 792).

To complete Kleck's proposition, felony murders are legitimately treated more seriously in sentencing than murders with no other felony circumstances. Kleck concluded that, except in black rapist-white victim cases in the South, black offenders have not been sentenced in a discriminatory way.[8] Finding relative lenience in the sanctioning of black offenders, Kleck proposed that factors such as the devaluation of black victims and white paternalism operate to produce this more favorable treatment of black offenders.

Radelet's (1981) findings of racial bias in the processing and sentencing of Florida murder cases takes into account those crucial factors proposed by Kleck. Radelet examined all murder indictments in 20 Florida counties in 1976 and 1977. The variables included for analysis were race of offender, race of victim, seriousness of indictment (Murder I, punishable by death, or a lesser charge), relationship of offender and victim, and sentence (death penalty or a lesser sentence). He found that "acquaintance murders" were very unlikely to be found deserving of a Murder I indictment or a death sentence, regardless of race. However, descriptive statistics did show important differences in "stranger murders." For example, the probabilities (on a scale from 0 to 1.00) of receiving a first degree murder indictment in "stranger" cases were .921 in black offender-white victim cases, .821 in white offender-white victim cases, .544 in black offender-black victim cases, and .444 in white offender-black victim cases. Radelet found that the race of the victim, but not that of the defendant, was very important in determining the indictment and the penalty in "stranger murders" only. Thus, with a more sophisticated model of sentencing, Radelet concluded that

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[8]Subsequently, Kleck (1983) noted that discriminatroy imposition of the death penalty against black rapist in the South had disappeared, given that rape conviction no longer carried the death penalty.

"[r]acial differences in the processing of those in Florida appears to place a lower value on the lives of Blacks than on the lives of Whites" (p. 926).

Baldus et al. (1983) evaluated over 2,000 murder cases in Georgia occurring between 1973 and 1979. Without controlling for any other relevant variables, they found that defendants charged with murdering Whites were 11 times more likely to be sentenced to death than those accused of murdering Blacks. Their final model contained a formidable list of 39 variables related to sentencing and they concluded that race of victim was still an overwhelmingly important determinate of receiving the death penalty. Defendants accused of murdering Whites were, all else equal, 4.5 times more likely to be sentenced to death than defendants accused of murdering Blacks. Additionally, they found that race of victim increases in salience as the circumstances of the crime become less clear. For the most aggravated and least aggravated homicides, race was not a consideration in sentencing. However, for cases with circumstances that are not so extreme as to lead to an obvious sentence, race of victim takes on a larger significance.

The significance of Radelet's and Baldus' findings lies in the fact that their sample cases were prosecuted after Furman v. Georgia (1972), when the Supreme Court decided that the capricious or discriminatory use of the death penalty is unconstitutionally "cruel and unusual punishment." The findings of the Radelet and Baldus studies suggest that the various constraints that states, in response to the warnings of Furman, imposed on judicial discretion in dispensing the death penalty have not erased racial bias.

Bowers and Pierce (1980) directly challenged the assumption that state controls on judicial discretion would ultimately eradicate racial differences in the imposition of the death

penalty. They studied the probability of receiving the death sentence and having it be executed for offenders in the four states--Florida, Georgia, Texas, and Ohio--which together account for 70% of the nation's executions. In Georgia, for example, the authors report that for felony murders, 29% of the black offender-white victim cases, and 20% of the white offender-white victim cases, were given the death sentence while 4% of the black offender-black victim cases, and 15.4% of the white-black cases resulted in death sentences. Therefore, like other studies, this one showed that the race of the victim matters greatly in the imposition of the death penalty.

The authors then tested the proposition that the automatic appellate review of death sentences in Georgia (instituted in response to Furman) would negate the racial differences found in sentencing by commuting more sentences involving black offenders. Another stated function of the review board was to minimize regional differences in the imposition of the death penalty, thereby assuring proportionality. Upon finding that racial and regional differences were not thwarted by appellate review, they concluded that "there is no tendency for the appellate review process to correct the racial differences in treatment" (p. 662).

The Bowers and Pierce study controlled neither for the offender-victim relationship nor for any other important variables beyond region and felony circumstance. As such, this study cannot be regarded as a definitive test of the effectiveness of curtailing judicial discretion. However, in general, even if the statistics eventually show that minorities and Whites with the same charges and prior criminal records are being sentenced in the same way, researchers will need to re-examine the earlier phases of case processing to ascertain whether racial bias has instead taken root there. The statistical comparison of sentencing

patterns before and after a given sentencing reform is a very complex endeavor. A successful comparison must examine presentencing as well as sentencing decisions because the process by which a defendant is convicted can influence sentencing.

6.0 Conclusions

Among the taken-for-granted "truths" in our culture is one which asserts that the police and the courts are biased against minorities. This type of unqualified assertion is misleading but probably remains in our collective consciousness because it is easier to assimilate than the actual truths. In truth, racial bias exists at some points in criminal processing but not in others; it exists in some regions and not in others; it exists for some crime types but not for others; and it exists in some situations but not in others.

For those who have been acquainted with social science research in the area, the salience of the more unqualified characterization of the criminal justice system as racist rests on 1) old data from a point in our history when legal institutions were overtly and unquestionably racist; and, 2) data analyses that were relatively unsophisticated (from today's standpoint). However, current research shows that the criminal justice system can no longer be characterized by such terms. While there are racial differences in sentencing, the overall differences are very small and can be found only in certain types of cases. This conclusion, however, does not suggest that there are no significant racial disparities in criminal processing and sanctioning. The disparities that are found are important but can only be found with more careful analysis. Therefore, current research on racial disparities has narrowed the question; now the task is to isolate the circumstances in which race/ethnicity is likely to enter into court decisions.

There are two general conclusions which can be formulated with this type of analysis. First, researchers have found that the degree of discretion afforded criminal justice actors influences the degree of discrimination that is found. Where statutorily prescribed guidelines exist, overt discrimination is less likely to be found. For instance, the decision to grant release on recognizance to a defendant, as opposed to setting bail, is a decision that is relatively systematized, and, therefore, no racial differences in release on recognizance rates have been found (Nagel, 1983). However, the amount of bail set (which is not governed by narrowly written guidelines) in cases where release on recognizance was denied did vary to the disadvantage of minority defendants.

A corollary to this first conclusion is that situations which demand discretion, such as sentencing defendants whose case and background characteristics do not clearly suggest the appropriate sentence, are more prone to racial bias than decisions for which there are clear criteria (Unnever & Hembroff, 1988; Spohn et al., 1981-1982). This suggests that decision-makers do not use racial categories in the first instance; rather, they fall back on assumptions about race when the information they have to assimilate produces some dissonance.[9] Intuitively, this finding makes sense. In everyday life, one often evaluates situations while equipped with ambiguous, contradictory, or insufficient information to do so (Berger & Luckmann, 1966). When there is little information with which to "make sense" of a situation, we use our general assumptions about the world. Then, as we continue in the situation and, thus, learn more about it, our interpretations realign continually until we are

[9]Another way of interpreting this finding, however, is that court actors are quite inclined to use racial categories in decision-making but "can't get away with it" when case factors clearly indicate appropriate treatment.

satisfied with our evaluation. Obviously, in cases where there is no opportunity to find out more about a situation, evaluations rest on general, diffuse assumptions about the world. In a society defined by racial and economic stratification, entrenched assumptions of the predominately white court system will most likely include class- and race-based elements that can be used to make decisions in the absence of other criteria. While various types of guidelines limiting discretion may reduce the number of cases that can now be described as ambiguous, that portion of decisions that require individual discretion will still remain problematic so long as various larger prejudices exist.

The second generalization that can be made is that the importance of race in various case decisions is often masked in other legitimate differences. Continuing with the example of bail status, research has shown that defendants who are detained pretrial are more likely to receive longer sentences. The pervasiveness of the problem uncovered by Nagel (1983) can, therefore, explain part of the observed racial disparity in sentencing. Also, some objective, race-neutral, and therefore "legitimate," criteria for various case-related decisions are not race-neutral in their consequences. For example, minorities face employment discrimination and greater lack of legitimate economic opportunities than Whites and, therefore, may be less likely candidates for parole release since being employed is a good predictor of low recidivism. It is legitimate and desirable for states to devise objective criteria for decision-making, especially since such criteria have minimized the likelihood of overt racism.

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LEGAL PROFESSION

BACKGROUND BRIEFING PAPER #8

New York State Judicial Commission On Minorities

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LEGAL PROFESSION

1.0 Introduction

This review is concerned with minority access to various types of legal practice, particularly to positions of influence within the profession. Much of the discussion centers on large urban law firms, for two related reasons. First, prestige and power in the legal profession accrue largely to members of these large firms, whose clients include large businesses and government agencies. Second, most research on the legal profession has focused on these firms for the very reason that they represent the pinnacle of the legal hierarchy. Participation in Bar Associations is also discussed as membership represents another form of access to leadership positions in the legal profession.

Not all of the data in this chapter are from the State of New York, since many useful and relevant studies have been conducted both on a national level and in other localities, particularly studies conducted by the Philadelphia Bar Association (1988) and the Bar Association of San Francisco (1989).

Although access to the legal profession has, in raw numbers, improved since the first national efforts to integrate legal education and employment began in the 1960s and 1970s, the representation of minorities in the profession remains a fraction of their representation in the population. In addition, the most lucrative and powerful areas of legal practice continue as the nearly exclusive province of majority attorneys, while minority attorneys, save some token exceptions, "are overwhelmingly concentrated in the least lucrative and prestigious specialties, virtually absent from major law firms and corporate law departments" (Jordan, 1980).

Limited progress was achieved in lessening the racial segregation of the legal profession under affirmative action, tuition and scholarship assistance, and minority-directed recruitment and preparation programs. However, recent trends indicate that such progress may have stagnated or reversed due to the political backlash and funding restrictions of the 1980s. Since these problems are not particular to the legal profession but endemic to society as a whole, they have been magnified by related problems (e.g., the decline of college enrolment by minorities) and imposed barriers (e.g., the Bakke decision).

The climate of the legal profession creates special problems for minority practitioners. Among the small proportion of minority attorneys within large firms, complaints of isolation and alienation are widespread, as are reports of professional development stymied by residual racist attitudes, lack of critical support, and limited opportunity. Among solo and small firm practitioners, opportunities for minority attorneys may be more limited and the types of cases they are compelled to take may result in their overrepresentation as defendants before grievance and disciplinary boards. Even in governmental and public interest practice, where minority attorneys have taken advantage of affirmative action programs, there remains a severe underrepresentation of minorities, particularly at higher supervisory and administrative levels. Minority practitioners have had, historically, an aversion to majority bar associations, which have been perceived as racist and indifferent to the concerns of minority lawyers.

Despite the good intentions of the past two decades, and despite the leading role played by the legal community in breaking down many discriminatory structures, the legal profession has not succeeded in providing equality of opportunity for its members. In its

report, the American Bar Association's Task Force on Minorities in the Legal Profession (1986) observed that inequality still persists today as a residue of history.

2.0 Statistical Profile

In the legal profession as a whole, minority representation falls far behind the proportional numbers of minorities in the general population. According to the 1980 U.S. Census, minorities comprised 20.3% of the population, but only 4.8% of the 600,000 lawyers in the United States (2.6% Black; 1.5% Hispanic; 0.6% Asian Americans; and 0.1% Native American). Census data for the State of New York mirror these figures. Although in 1980 minorities represented 25% of the State's population, of the 62,032 lawyers in the State, 58,896 (94.9%) were white, 1,652 (2.7%) were black, 992 (1.6%) were Hispanic, 433 (0.7%) were Asian, and 35 (0.06%) were Native American.

Table 1 provides data on the proportion of minority lawyers in New York, both statewide and in the 15 counties with the largest minority populations. Although all but one of these counties (Albany) had a population with more than 10% minorities, minority attorneys are underrepresented in all counties. In New York County, for example, where the minority population is 50%, the minority lawyer population is only 6%.

Table 1. Race Breakdown of Lawyer Population in 15 New York Counties

AREA	TOTAL	WHITE	BLACK	HISPANIC	ASIAN	NAT. AM.	OTHER
STATEWIDE	62,032	59,582 (96.%)	1,652 (2.7%)	992 (1.6%)	433 (0.7%)	35 (0.06%)	330 (0.53%)
ALBANY	1,651	1,617 (97.9%)	24 (1.5%)	8 (0.5%)	0 (.3%)	5 (0.03%)	5 (0.03%)
BRONX	1,399	1,140 (81.4%)	154 (11%)	127 (9%)	13 (0.9%)	0	92 (6.58%)
DUTCHESS	450	445 (98.8%)	0	2 (0.4%)	5 (1.1%)	0	0
ERIE	2,584	2,546 (98.5%)	22 (0.9%)	37 (1.4%)	0	0	16 (0.92%)
KINGS	5,233	4,914 (93.9%)	243 (4.6%)	121 (2.3%)	28 (0.6%)	0	48 (0.92%)
MONROE	1,830	1,758 (96%)	43 (2.3%)	5 (0.3%)	14 (0.8%)	0	15 (0.82%)
NASSAU	7,811	7,711 (98.7%)	37 (0.5%)	71 (0.9%)	50 (0.6%)	7 (0.09%)	6 (0.08%)
NEW YORK	17,892	17,053 (95.3%)	567 (3.2%)	272 (1.5%)	195 (1.1%)	8 (0.05%)	69 (0.38%)
ORANGE	370	370 (100%)	0	0	0	0	0
QUEENS	4,972	4,497 (90.4%)	309 (6.2%)	194 (3.9%)	84 (1.7%)	5 (0.1%)	44 (0.88%)
RICHMOND	925	899 (97.2%)	9 (1%)	11 (1.2%)	17 (1.8%)	0	0
ROCKLAND	1,051	1,014 (96.5%)	31 (2.9%)	11 (1.1%)	0	0	0
SUFFOLK	2,705	2,683 (99.2%)	10 (0.4%)	57 (2.1%)	7 (0.3%)	5 (0.18%)	0
SULLIVAN	112	112 (100%)	0	0	0	0	0
WESTCHESTER	6,989	6,823 (97.6%)	146 (2.1%)	50 (0.7%)	3 (0.04%)	0	17 (0.24%)

Source: U.S. Census, 1980.

* Total is not represented in all instances by the sum of the columns, due to the elimination of the category "Race, NEC," or ethnic and racial minorities not recognized by the Federal government. Also, the census counts lawyers according to county of residence.

While affirmative action at some law schools produced a "catch-up rate" of minority entry into the legal profession above the rates of the past, even these gains were modest. Holley and Kleven (1987) estimate that during the heyday of affirmative action in the federal

government, from the time it was mandated by President Johnson's Executive Order #11246 (1965) until it was dismantled under President Reagan, 4.5% to 5.5% of new lawyers entering the profession were black or Hispanic, a figure still well below the proportion of these groups in the general population.[1] Moreover, even this modest rate of improvement has not been sustained. Along with the demise of several financial aid programs which made legal education accessible to minorities, affirmative action suffered in the 1980s from "the popular myth that black progress has been so significant that further national concern is not necessary" (Jordan, 1980).

Minority attorneys are not only underrepresented in the profession as a whole, they also lack access to positions of prestige, power, and high remuneration. A smaller proportion of minority than nonminority attorneys are involved in influential and lucrative areas of the law, particularly in large firm practice.

Table 2 shows the low representation of minorities in large law firms over the last 10 years.

[1]Holleyand Kleven argue that even the low figures of the census may overstate minority representation, since the 1980 census counted fewer lawyers than did the American Bar Association's own figures, and since the increase in representation indicated between the 1970 and 1980 censi seems discrepant with the number of minority law school graduates in the intervening decade.

Table 2. Minority Representation Among Lawyers at "Top 250" Firms, 1979-1988

Year	Black	Hispanic	Asian American & Native American
1979	1.6%	--	--
1981	1.6%	0.50%	--
1982	1.5%	0.61%	--
1984	1.5%	0.65%	--
1985	1.5%	0.79%	0.9%
1987	1.39%	0.97%	1.6%

Sources: Burke (1979); Flaherty (1982); Sylvester (1985); Stille (1985); Weisenhaus (1988a, 1988b).

While there have been nominal increases for Hispanic attorneys, the representation of black attorneys in these firms has actually decreased somewhat since 1979. It is worth noting, too, that this lack of progress occurred during a time of tremendous growth for large firms. Representation of Asian Americans has increased to the point at which it now exceeds Asian American representation in the lawyer population, but for all other minority groups, representation continues at a lower rate than their representation in the lawyer population.

While most of the available literature focuses on employment in large law firms, the problem clearly encompasses smaller firms as well. The Philadelphia Bar Association (1988) found virtually no minorities employed at firms with 10 to 75 members, but was unable to generate precise figures because, as with other surveys, these midsized firms generally did not respond to the survey.

As Culp (1980) points out, this marked underrepresentation in positions of prestige

is particularly important to the capacity of the legal profession to advocate concerns, since:

> Law is a profession in which not all the members have equal opportunities to influence change. Large corporate law firms produce an inordinate amount of the legal changes. The result is obviously true in corporate law, anti-trust and other areas involving large corporations, but the efforts of a small segment of these corporate lawyers has become increasingly important in environmental, civil rights and civil liberties areas. If blacks are to have a substantial influence on shaping legal strategies and policies in the future, they have to have access to the resources and authority of these law firms. (p. 160)

Minorities are also underrepresented on law school faculties,[2] which represent positions of prestige and influence the future of the law. Thus, the exclusion of minorities from the most powerful areas of legal practice amounts to the denial of influence over the future course of the law.

It is often asserted that minorities are overrepresented in solo and very small practices (ABA Task Force on Minorities in the Legal Profession, 1986). However, the absence of race data on the New York State attorney registration form makes it impossible to determine the validity of this assertion.

While there are no precise data on the distribution of minority attorneys in the profession at large, data nevertheless exist on the distribution of lawyers immediately following graduation from law school. This information is presented in Table 3. It is important to note, though, that the distribution of new lawyers does not necessarily accurately reflect the distribution of all lawyers in various types of practice.

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[2] See chapter 1 of Volume 3 of the Commission's report, Review of Data and Literature on Legal Education.

Table 3. Employment Categories by Race, Class of 1986

PRACTICE CATEGORY	TOTAL 23,591	WHITE 21,196	BLACK 817	HISPANIC 512	ASIAN 322	NAT. AMER. 141
PRIVATE PRACTICE	64.0%	65.6%	44.4%	60.4%	66.2%	54.6%
Self-employed	2.7%	2.7%	2.6%	2.9%	2.2%	4.3%
Small firms (2-10)	20.0%	20.7%	9.5%	16.2%	16.5%	8.5%
Midsize firms (11-50)	17.0%	17.5%	10.3%	16.6%	18.6%	7.8%
Large firms	22.0%	22.3%	19.8%	19.9%	27.0%	14.3%
BUSINESS/INDUSTRY	9.2%	9.1%	11.3%	7.8%	12.4%	12.8%
GOVERNMENT (Fed., State, Local	12.1%	11.4%	23.4%	16.8%	2.2%	15.6%
JUDICIAL CLERKSHIPS	12.5%	12.6%	11.3%	10.3%	11.1%	13.4%
PUBLIC INTEREST (Legal Aid, Pub. Defender, Pub. Interest Orgs.)	3.0%	2.6%	9.7%	8.4%	2.1%	7.8%
ACADEMIC	1.7%	0.6%	4.2%	3.5%	1.9%	0.7%
OTHER	2.1%	2.2%	6.7%	0.6%	8.4%	0.0%

Source: National Association for Law Placement, 1986

These data, from a single graduating class, demonstrate the early pattern of differential career paths. White, Asian, and Hispanic attorneys are overwhelmingly concentrated in private practice, with Whites and Asians relatively overrepresented in midsize and large firms. Black, Hispanic, and Native American lawyers tend to enter government practice in greater proportions than their white counterparts, and Asian American lawyers practice in government to a much lesser degree. Public interest organizations, while employing only a small fraction of lawyers from all groups, employ proportionately more than twice as many Blacks, Hispanics, and Native Americans as Whites or Asians. Black and Hispanic graduates are also more concentrated in academic positions. It should be noted, though, that the response rates of different groups to this survey render it less reliable for minorities than for Whites. While these data do not bear out the assertion

that black and Hispanic lawyers are overwhelmingly concentrated in solo practice, they should not be taken as conclusively disproving the proposition either, since they represent only the distribution of lawyers immediately following graduation and may be unrepresentative of the distribution of lawyers later in their careers.

3.0 Hiring and Recruiting Practices

The underrepresentation of Blacks and Hispanics in large law firms is in some degree a function of the process by which firms recruit and select new associates. In most large firms, this process works against minority aspirants and fosters perceptions of discrimination. For example, the Bar Association of San Francisco (1988) found that among lawyers graduating in the top 25% of their class, 94% of Blacks, compared to 47% of Whites, perceived discrimination in the hiring process.

One of the key factors in determining who will be hired by a firm is where a firm decides to recruit its new employees. If a firm does not visit sources of minority law students, for example, minorities will be shut out of that employment opportunity:

> Many employers recruit at some law schools where minorities are relatively well represented [i.e., "national" law schools] . . . . However, two important sources of minority students are much less frequently visited by recruiters. In the Law Firm Survey only 9 percent of the firms reported recruiting at any of the four predominantly Black law schools. Moreover, about three dozen ABA-approved law schools have 100 or more minority students. Although some of these schools have national reputations, others receive visits from nearby recruiters, but not from more distant employers. (ABA Task Force on Minorities in the Legal Profession, 1986)

In fact, most large firms restrict recruiting to schools which are predominantly white. Figures from the 1983-84 recruiting season at Howard University serve as an example of the degree to which such employers neglect minority institutions: of 1,211 law firms invited for

recruitment, only 33 accepted (ABA Task Force on Minorities in the Legal Profession, 1985). These findings suggest that employers' common complaint--that they are willing to hire qualified minorities but cannot find them--is actually a function of the failure of these employers to look for them where they are located.

A major deterrent to recruitment of minorities is the reliance on certain hiring criteria which favor Whites, among these Law School Admission Test (LSAT) scores, GPA, and law journal membership. These supposedly objective measures of ability, however, are weighed differently when determining the qualification of a candidate, depending on the candidate's race/ethnicity. Davila (1987), quoting Silas (1984), argues that "often white law students with average backgrounds are considered for positions while minority students with similar backgrounds are not" (p. 1413). In order to be considered as equally qualified as an average white student, a minority student must in fact have superior qualifications, such as high GPA and law review membership. Moreover, these minorities have tremendous opportunity, while those with more modest achievements are not considered.

Particularly suspect is a firm's reliance on the LSAT score as a hiring criterion. This reliance goes beyond the purpose of the test, which was designed to serve admissions functions only and has not been validated for any other purpose (Law School Admission Council, 1988). In particular, according to the Law School Admission Council (1988), LSAT results should not be included on transcripts, which are frequently supplied to inquiring employers.[3]

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[3]It should also be noted that even if LSAT score data were valid for any other purpose, their use in employment decisions would still be unreliable, since the Buckley Amendment prohibits law schools or anyone with access to scores from providing them. Thus, there is no guarantee that employment decisions in favor of candidates with higher LSAT scores do not actually favor people who misrepresent their scores (Univ. of

This misuse of the test disadvantages minorities for two reasons: 1) they score less well on the LSAT; and 2) after the first year, their grades are often higher than predicted by the test. Thus, the LSAT is an especially unreliable predictor of minority student ability.

Finally, some firms are unwilling to employ minorities "because of concern about adverse client reaction" (Philadelphia Bar Association, 1988). These firms believe that client contact with a minority attorney would cause them to lose business.

Even when firm recruiters do find and interview minority candidates, the process used for screening and selection is often discriminatory. Foremost among candidates' complaints is that hiring partners who conduct interviews are often white, that they are either uncomfortable in the position of interviewing a minority or untrained at interviewing itself. As a result:

> Minorities perceive many interviewers as insensitive to their concerns, from questions about why they are not seeking a civil rights job to inquiries about their parental background and employment. To interviewers, such questions may seem innocuous, but minorities find them offensive. (ABA Task Force on Minorities in the Legal Profession, 1986, p. 28)

Foremost among the assumptions expressed in these interviews is the stereotyped belief that minorities are uninterested in private or business practice and prefer to work in government or other public service. Asked this question, minority candidates feel pressed to justify having applied to a private firm. One Hispanic attorney recalled an interview at a large law firm during which it was suggested that his background--i.e. his ethnicity--might lend itself more to public service (Silas, 1984).

Problems like this signal what many minority candidates may already suspect: partners

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Pittsburg Law School Placement Office, 1988).

who are at best untrained in hiring seek candidates who resemble themselves or their colleagues. By this process they exclude candidates with different personality types, economic situations, and/or race/ethnic backgrounds. Thus, they shut out able and qualified minorities (ABA Task Force on Minorities in the Legal Profession, 1986).

Minorities often do not apply to firms with few (or no) minority attorneys because they do not believe that such an effort would be worthwhile. This phenomenon is apparently widespread, as indicated in a survey of minority members of the Philadelphia Bar (1988), which found that:

> 44% of the minority lawyers who responded to the Attorney Survey reported that they had never had an interview with a large firm. Of that group, 56% indicated that they had no interest in large firms and 16% felt that they had no chance of employment. Although firms will object to the suggestion that they discriminate in the hiring process, the Survey revealed that 37% of the respondents who were interviewed by Philadelphia area employers perceived that they had been discriminated against in the interviewing process . . . . In all, a total of 72% of the respondents who did not interview with large law firms did not do so because of their own perceptions about the value of such an effort. (pp. 24-25)

Thus, the fact that a firm does not regularly engage minority lawyers works to deter minority lawyers from applying.

Conversely, when a firm with no minorities attempts initially to hire a minority lawyer, it still may find it difficult. Even provided the opportunity to work in an exclusive firm, many minorities may refuse, given the stress and isolation of being the only one. White partners at some firms recognize desirable minority candidates but recommend them only selectively, eschewing commendations at firms they know to be all white. As the Philadelphia Bar Association (1988) observed:

> Ironically and unfortunately, the white 'old boy network' tends to steer

> minority lawyers toward either minority or fully integrated law firms. The white partners at one fully integrated, smaller firm frequently receive unsolicited recommendations concerning minority lawyers from white colleagues. Whether consciously or not, these colleagues draw a nexus between minority lawyers and firms with minority partners. (pp. 30-31, footnote 8)

Therefore, the division between majority firms and minority or integrated firms is perpetuated, with progress not realized for majority firms or for minority applicants.

As a result of these problems, many minorities view the employment process skeptically, seeing it as unfair or insensitive. Thus, it is reasonable to conclude that without a concerted attempt on the part of the legal community to address the problems of discrimination in the hiring process, the problem of inadequate representation of minorities is likely to continue.

4.0 Professional Compartmentalization

The exclusion of minority lawyers from large, influential private firms forces minorities to concentrate in less lucrative, less powerful areas of practice. A greater proportion of minorities can be found employed in government agencies or other public service areas of practice. One of the implications of this is clear: median income for minority attorneys is well below that of majority attorneys. Data from the U.S. Census (1980) demonstrate this discrepancy. A study by the Bar Association of San Francisco (1988) found that such income and status differences apply even when rank in law school graduating class and law school ranking are controlled. Studies conducted in Texas, Wisconsin, and Utah also demonstrate the phenomenon of race-biased earnings differentials; this information is summarized in Table 4.

Table 4. Median Income of White and Minority Attorneys in Three States

STATE	WHITE	MINORITY
TEXAS	$61,850	$42,700(Black) $45,000(Hispanic)
WISCONSIN	$48,000(Men) $33,000(Women)	$39,500
UTAH	$50-75,000(Men) $30-50,000(Women)	$30-50,000

Sources: State Bar of Texas, 1987; State Bar of Wisconsin, March 1987; Utah State Bar, July 1988

Income discrepancies between white and minority attorneys are rooted partly in the dominance of white attorneys in senior positions and lucrative practices, and partly in the concentration of minority attorneys in solo, small firm, and public practice. In Texas, for example, 73% of white attorneys surveyed by the State Bar were engaged primarily in private practice, while 71% of Hispanic attorneys and 48% of Black attorneys reported private practice as their primary occupation (State Bar of Texas, 1987). The figure for Hispanic attorneys in private practice may seem inordinately high, but the Texas study did not distinguish between solo practice and firm practice. A 1983 study by the Mexican Bar Association of Southern California found that of 400 bar members at that time 2.8% practiced in large firms and 6% practiced in midsized firms (Davila, 1987). It can be inferred that the remaining 91.2% were engaged in other types of practice, including small firm or solo practice.

The Texas study also found that 22% of Black attorneys, compared to 7% of white attorneys and 3% of Hispanic attorneys, listed their primary occupation as government service. The San Francisco (1988) study found that 25% of black lawyers and 21% of Hispanic lawyers have worked in public interest or legal service, compared to 7% of Whites

and 15% of Asians. It also found that the proportion of black lawyers significantly exceeds the proportion of other groups who have worked for federal and state governments. Even in government jobs, however, representation of minority lawyers is low, relative to the representation of minorities in the general population.

Within private practice, the reportedly greater concentration of minorities in smaller practices creates obstacles. Small firms face particular business obstacles, such as lack of access to capital and exclusion from business networks which produce client referrals. Despite the goals they have set for themselves, many such small practices are forced to carry a heavy caseload of personal injury, family, and liability cases in order to maintain cash flow. This can prevent practitioners from developing other client sources, since so much time is taken up with individual cases. Compartmentalization into this type of practice also decreases the probability that a larger firm may wish to engage the small firm in a joint venture or hire a small firm lawyer laterally into the larger practice. To a great extent, a small firm or solo practitioner has little opportunity to develop the skills sought by corporate or government agencies contracting for private services, since these agencies tend to prefer firms with more resources and whose members are known to them. These problems, which are endemic to small practices, are often compounded for minorities who lack access to business connections and financial as well as social capital to carry on a practice. The first long-term consultancy arrangement to alleviate this problem was initiated only recently, between a large majority firm and a small minority firm in Seattle.[4]

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[4]The firms of Karr Tuttle Campbell (a large, predominantly white firm) and Brown Mathews (a five-member, all-black firm) are collaborating "to improve opportunities for minority lawyers to serve major clients" (Evans Communications, 1989, p. 1).

Minorities in private practice thus cluster in the less respected sector of the legal profession. They face careers with smaller renumeration, receive less respect and enjoy less prestige in the ranks of the profession, and face unique difficulties in financing and operating a successful practice.

Another problem related to the type of cases small and solo practitioners are compelled to take is that minorities are reported to be overrepresented as defendants before grievance committees and disciplinary boards. Solo and small firm practitioners face disciplinary proceedings more often than others. According to the National Legal Malpractice Data Center, of 29,000 malpractice claims reported by insurers, 35% involved solo practitioners and 44% involved firms with two to five lawyers. These data probably overstate the case, however, since factors such as self-insurance and size of deductibles would cause large firm claims to go unreported. As observed by the Maryland State Bar Association (1987),

> Of the attorneys disciplined in Maryland during the past five years, 74% have been sole practitioners, 24% have been lawyers in small law firms, and only 2% have been members of large law firms. The percentage of sole practitioners disciplined compares to that in New Jersey of 84%, 74% in Colorado, and 72% in Illinois. (p. 5)

The overrepresentation of minorities in solo and small firms may account, at least in part, for their reported overrepresentation before grievance and disciplinary committees. It is possible that the problem may be one of institutional bias: minorities are infrequently represented on disciplinary panels. Specific figures on representation of minorities among attorneys brought before disciplinary boards are not available for the State of New York, as no data on race of attorneys are gathered by the various disciplinary boards.

5.0 Experience Within Firms

Minority attorneys within large, majority firms often encounter professional barriers rooted in the environment of the firms and in their real or perceived social exclusion from this environment. This partly explains the overwhelming response given in a Young Lawyers Division of the American Bar Association (1983) survey, in which of 200 respondents 157 believed that major discrimination problems existed on the job, in the judicial system, and other places, while 38 respondents believed that minor discrimination existed. Thus, 195 of 200, or 97.5%, identified problems of racism (Luney, 1984).

The types of racial problems identified by minority lawyers in large firms range from complaints of social ostracism to diminished promotion and partnership opportunity. A study of Hispanic graduates of Stanford Law School in corporate firms found that "44 percent of responding Hispanics stated that they have experienced a sense of isolation at work that they attributed to being Hispanic" (Davila, 1987). Given the serious underrepresentation of minority attorneys in such firms, the sense of isolation is hardly surprising. Culp's (1980) study of prestigious law firms found that of 69 firms in New York City, 44.9% employed no Black attorneys. An additional 23.2% employed only one Black attorney, while 17.9% employed two. Thus, 86% of prestigious firms employed two, one, or no, black attorneys, and the overwhelming majority of black attorneys in such firms therefore had a minority cohort which was minimal or nonexistent.

Also contributing to this sense of isolation is another problem rooted in the historic discrimination on the part of large firms. Minority attorneys rarely encounter a senior or supervisory minority attorney with whom they can establish a mentor or sponsor relationship.

The presence of a senior firm member who can teach younger attorneys about firm practices and advocate promotion is essential to feelings of success in a law firm (ABA Task Force on Minorities in the Legal Profession, 1986). Yet a Philadelphia Bar Association (1988) study found that about one third of study participants were the only minority in their firm or organization, and that about 60% of respondents worked where there were no minorities in supervisory or partner positions. This precludes establishing a mentor relationship with a minority partner and deprives minority associates of role models at the work place. Without such support, a situation is created wherein minorities may receive less challenging and important job assignments than their majority counterparts, and thus have less opportunity to advance by "proving themselves."

Minority attorneys also complain of having less opportunity to meet with clients, and of being excluded from informal social functions where contacts are often made which can lead to client relationships. These factors reduce the capacity of minorities to bring business to their firms, thus reducing their chances for advancement. Also, the perception that they are being treated differently may demoralize minority attorneys and affect their work, further impeding opportunity (ABA Task Force on Minorities in the Legal Profession, 1986).

Another complaint voiced by minority attorneys is the constant pressure to defeat stereotypes of incompetence. In the Stanford study of Hispanic attorneys mentioned above, it was found that:

> Thirty percent of the Hispanic respondents stated that a presumption exists that Hispanics are not qualified. This belief was reinforced by the fact that various non-Hispanics, at firms with no Hispanic attorneys, responded that Hispanic attorneys probably face a problem in their ability to communicate due to deficiencies in the English language. This preconception is likely to occur because, as one respondent said, "Many minorities carry the extra

> baggage of racial stigma. That is, many colleagues assume that minorities get their jobs primarily because they're minorities." Another commented, "[There exist] distorted perceptions and misplaced generalities about Latino articulateness, intelligence, work ethics, etc." (Davila, 1987, pp. 1420-1421)

A similar sentiment was voiced by a participant in the Philadelphia Bar Association (1988) study: "Minorities get promotions AFTER they have proven themselves. Nonminorities are promoted on the basis of potential to perform and are expected to grow into the job" (p. 49).

Thus, even those minority attorneys who practice in large firms have to cope with a kind of professional stigmatization, and have greater difficulty advancing in the firm and in the profession than do their majority counterparts. The restricted opportunity within single firms also has repercussions, in that denying opportunities to expand and develop broader legal skills and experiences impedes minority attorneys' efforts to pursue lateral opportunities in other firms. It seems, therefore, that opportunities for minorities in large firms are restricted as well, not just numerically, but qualitatively.

6.0 Bar Association Involvement

Minority attorneys generally have not used county, state, and national bar associations to publicize and address the problems detailed above, because of the widespread perception that majority bar associations traditionally are inhospitable and unconcerned with problems facing minority attorneys. Historically, this has been the case. The American Bar Association (ABA) was founded in 1878. Black attorneys were first expressly forbidden to join the Association in 1908, when three "colored" lawyers who had been accepted for membership were immediately voted out. The ABA then changed its membership application form to require applicants to note their race or ethnic origin. Several minority

groups responded to this exclusion by forming minority bar associations; the National Bar Association was formed to represent the interests of black attorneys in 1924. In New York State, the Harlem Lawyers Association was formed in 1929; the Bedford-Stuyvesant Lawyers Association was founded in 1932 (the two later merged to form the Metropolitan Black Bar Association); and the Chinese Lawyers Association was founded in 1935. The American Bar Association finally lifted its racial bar in 1943, but the first black attorney was not permitted to join until 1950. The first record of black lawyers being active in the ABA was in 1966. The ABA did not begin actively to pursue the involvement of minority attorneys until after 1979, when the Minorities in the Profession committee was formed by the Young Lawyers Division. Finally, in 1983, the Task Force on Minorities in the Legal Profession was formed. The ABA task force began a concerted effort to gather information, seek testimony, and propose changes consistent with the interests of minority lawyers. In 1986, the Commission on Opportunities for Minorities in the Profession was appointed to implement the Task Force's proposals. With regard to the past exclusion of minorities, the Task Force report (1986) criticized the Association for its long history of inaction in reaching out to minority lawyers.

State and local bar associations have also begun responding to the impetus for inclusion represented by the ABA Commission. Both the New York State Bar Association and the Association of the Bar of the City of New York have formed committees on minorities in the profession. The State Committee has actively pursued expansion of the employment opportunities for minorities through an internship program which places 70 students annually, and through participation in minority job fairs. It has also sought out

minority lawyers for membership and participation in the Association, and recommended that Association functions be restricted to locales which do not discriminate. This year, it sponsored a legislative and electoral law workshop for minorities which attracted several hundred participants. The City Bar Committee has also established as its principal goal increasing the number of minorities in the profession. It has sponsored an employment workshop for the hiring and managing partners of New York's 100 largest law firms and has collaborated with other groups in placing minority interns, developing a minority law firm project for corporate clients, and providing management assistance to small minority law firms.

As a result of the historic exclusion of minorities, many minorities prefer not to join the ABA or State Bar, and are active instead in minority bar associations, which they believe are more responsive to their particular professional needs. In response, the ABA has begun to encourage minority attorneys to maintain membership in both minority and majority bar associations. Programs have begun to encourage joint projects on the part of bar associations, to offer a dues credit for members of minority bar associations, and to offer continuing education programs of relevance to minority attorneys. The ABA has also begun to offer minority bar associations a voice in ABA deliberations: the National Bar Association has been represented in the ABA House of Delegates since 1971, and the Hispanic National Bar Association was admitted in 1985 (Patrick, 1987). The American Indian Bar Association, founded in 1976, is also seeking to be seated in the ABA House of Delegates.

Nevertheless, many minorities still perceive the majority bar as a predominantly white bar association with little to offer the minority practitioner. Among members of the ABA,

minority participation is less than white participation. While 65% of white members of the Texas State Bar reported membership in ABA sections, only 57% of Hispanic members, and 46% of black members, reported the same (State Bar of Texas, 1987). Several local bar associations have found that an aggressive outreach and recruitment program are necessary to encourage minority enrollment, as the majority bar's record of discrimination may prevent minorities from joining of their own volition. Without such programs, many minority attorneys do not receive the professional and educational benefits offered by the majority bar.

7.0 Conclusions

It is apparent from the preceding discussion that minorities are underrepresented in the legal profession and in the most prestigious positions within the profession. It is also apparent that the absence of race data makes it impossible to determine the areas of practice in which minorities are concentrated and the possible consequences associated with minority concentrations in certain types of practices. The only way that the legal profession will be able to monitor the progress of minorities in terms of their integration within all levels of the profession will be to maintain race data on attorney registration forms. Once race data are available, the numbers and proportions of minority attorneys in different types of practice and in the profession as a whole can be tracked and addressed programmatically.

There are a number of aspects of the minority experience in the legal profession that have not been studied, such as the experience of minority attorneys in the courtroom and the extent to which they are accorded respect by judges, nonminority attorneys, and courtroom personnel. The perceptions and experiences of minority attorneys in terms of

their access to the judiciary, to fee generating appointments, and to governance positions in majority bar associations also have not been systematically studied. Finally, there are no data on the incidence of minority attorney appearances before grievance committees and on their experiences with the New York State Bar Exam, both in terms of its perceived relevance to their practice and the number of times they had to take it. Moreover, studies of attorneys to date have not included sufficiently large samples to be able to disaggregate information about black, Hispanic, and Asian attorneys.

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BAR EXAMINATION

BACKGROUND BRIEFING PAPER #9

New York State Judicial Commission On Minorities

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BAR EXAMINATION

1.0 Introduction

Though neither the New York State Board of Law Examiners nor any other agency maintain official records on the race/ethnicity of examinees, there is nevertheless a consensus that race/ethnic minorities fail the New York bar exam at much higher rates than Whites. This is true nationally as well; compilations of examinee race data which do exist suggest that a white-versus-black pass rate disparity is commonplace. California has maintained bar examinee race data for several years, all of which support this assertion.

Studies aimed at identifying the causes of pass rate disparities generally conclude that differences in examinees' academic abilities contribute more to minority failure rates than does any bias inherent in the exams. Critics counter that the skills required for success on bar exams are not exclusive indicia of minimum competence to practice law, and, therefore, bar exams tend to delay the entry to practice of, or exclude from practice, individuals actually capable of competent legal practice.

This paper discusses available data on race/ethnic disparities in bar exam pass rates, studies on the underlying causes for those disparities, criticisms of the exam and of the examination procedure, and pending advances toward lessening minority exclusion from the profession by means of the bar exam.

2.0 Data on Pass Rate Disparities

Before 1977, no state compiled comprehensive data allowing comparisons of the pass rates of white and minority bar examinees. The need for such data seemed compelling, given the implications sometimes drawn from what informal data were available. As shown

in table 1, unofficial data from 14 jurisdictions presented during a 1976 symposium showed relatively high failure rates for black examinees:

Table 1. Black Bar-Examinee Pass Rates: Various States, Early 1970s

STATE	TEST DATE (N=Black Takers)	% BLACKS PASSING	AGGREGATE % OF BLACKS PASSING
Alabama	1968 (4)	50 %	
	1969 (4)	25 %	
	1970 (8)	25 %	
	1971 (13)	30.8%	
	1972 (17)	29.4%	
	1973 (4)	50 %	32%
Colorado	Feb. 1972 (10)	20 %	
	July 1972 (13)	23.1%	
	July 1973 (12)	75 %	37.1%
Connecticut	1972 (10)	37.5%	
	1973 (4)	25 %	33.3%
Delaware	June 1973 (6)	33%	33%
D.C.	June 1973 (200)	8%	8%
Georgia	1972 (41)	0%	0%
Illinois	Aug. 1972 (40)	25%	
	March 1973 (16)	25%	25%
Indiana	July 1972 (16)	31.25%	
	March 1973 (6)	16.7 %	27.3%
Maryland	Feb. 1970 (11)	18.2%	
	July 1970 (15)	13.3%	
	Feb. 1971 (19)	5.3%	
	July 1971 (24)	50 %	
	Feb. 1972 (15)	13.3%	22.7%
Missouri	Feb. 1972 (4)	50 %	
	July 1972 (16)	18.7%	25%
Nebraska	June 1972 (10)	50 %	
	Jan. 1973 (9)	88.9%	68.4%
New Jersey	1970 (2)	0 %	
	1971a (14)	50 %	
a = 1st try	1971b (7)	85.7%	
b = 2nd try	1971c (1)	100 %	
c = 3rd try	1972a (16)	56.3%	
	1972b (7)	14.3%	0% 1970
	1972c (6)	50 %	100% 1971
	1973a (13)	85 %	81.25% 1972
	1973b (2)	100 %	100% 1973
	1974a (45)	33 %	
	1974b	NA	61.1%
Rhode Island	July 1972 (3)	0 %	
	Feb. 1973 (3)	33.3%	
	May 1973 (20)	35 %	30.8%
Virginia	1970 (30)	20%	20%

Source: Black Law Journal, 1976.

The same source also alleged marked disparities between minority and white bar exam pass rates in other states. For example, it was said that in South Carolina only 15% of

black bar applicants passed that state's exam while 90% of Whites passed. In California, 76% of Whites, but only 44% of Blacks and Hispanics, passed the state's bar exam.

In 1975, the New York State Court of Appeals received evidence that between March 1969 and March 1975, when the overall, state-wide pass rate on the New York bar exam was 71%, the pass rate for minority examinees in the Fourth Department was only 18% (Pollard & Greene, 1975). The total numbers were small (148 Blacks took the exam in the Fourth Department during that period; 26 passed), and the State Board of Law Examiners questioned the accuracy of these figures, but the data are consistent with the findings of studies from other states (Jones et al., 1975).

Information from Washington State were similarly discouraging. From the summer of 1974 through the summer of 1976, only 31 percent of specially admitted students at the University of Washington (comprised predominantly of minorities) passed the state's bar exam while 75.4% all first-time applicants passed the exam (Washington State Bar Association Committee on Third World Students, Law Schools and Bar Examinations, 1977).[1]

California has kept race data on bar examinees since 1977; the pass rate patterns for various race/ethnic groups have remained fairly constant since then. In California, nearly twice as many white as minority first-time takers pass the bar exam. For example, in July 1986, 73% of white, but only 43% of minority, first-time takers passed the California exam. Among Asians the pass rate was 57%, among Hispanics 40%, and

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[1] One of the points of contention regarding the bar exam is that critics point to pass-rate disparities among first-time takers, ignoring less disparate ultimate pass rates for minorities. Note that the New Jersey data presented in Table 1 show a near 100% pass rate for minorities after several attempts.

among Blacks it was 31% (Klein and Bolus, 1987).

Data from five more recent California exams appear in Table 2.

Table 2. California Bar Exam First-Time Takers' Pass Rates by Race/Ethnicity*

	White	Black	Hispanic	Asian	Others
February 1989	63.1% (65.2%)	24.5% (46.7%)	36.2% (57.9%)	47.5% (65.4%)	41.2% (83.5%)
July 1988	70.5% (75.5%)	30.1% (43.5%)	43.1% (55.2%)	54.3% (60.9%)	44.6% (69.8%)
February 1988	60.8% (65.9%)	29.3% (9.1%)	34.5% (31.8%)	64.0% (58.8%)	20.5% (25.0%)
July 1987	69.3% (76.8%)	22.1% (23.6%)	43.7% (46.7%)	63.7% (67.8%)	38.2% (50.0%)
February 1987	61.6% (60.5%)	10.9% (7.7%)	25.0% (33.3%)	42.6% (29.4%)	25.8% (40.0%)
AVG. OVER 5 EXAMS	65.1% (68.8%)	23.4% (26.1%)	36.5% (45.0%)	54.4% (56.5%)	34.1% (53.7%)

* Pass rates are for all first-time takers; numbers in parentheses indicate rates for first-time takers from ABA-approved California law schools.[2]

Source: Committee of Bar Examiners of the State Bar of California, 1988 (data for Feb. '87-July 88); 1989 (data for Feb. '89).

Several efforts have been made to examine the factors underlying the pass-rate disparities demonstrated in the foregoing statistics. The Boddie petition to the New York State Court of Appeals is reviewed in the next section, as the case raised many of the issues which would characterize later studies attempting to explain the causes underlying minority vs. white bar exam pass rate disparities.

3.0 The Boddie Petition

In September 1974, a group of black law school graduates (the Boddie group)[3]

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[2]The pass rates for examinees graduated from ABA-approved schools should probably be looked at for an analogy to pass rates in New York State since all New York law schools currently enjoy ABA approval. By contrast, California has 35 non-ABA-approved law schools and, unlike New York, permits correspondence courses to count toward a law degree (American Bar Association Section of Legal Education and Admissions to the Bar, 1990).

[3]Petitioners were graduates of Syracuse (Boddie), SUNY-Buffalo (Lobbins, Davis), Howard (Felton, Robinson), and Georgetown (Smith). Smith was, at the time of the original petition, a member of the California bar. Each had "failed the New York Bar Examination on one occasion or more from July 1969 to March 1974" (Boddie et al., 1974, p. 3).

called for the creation of a commission to study and evaluate the validity--i.e., predictive validity and job-relatedness--of the New York State bar exam (Boddie et al., 1974). Subsequently, a second group (the Johnson group)[4] petitioned the Court of Appeals to establish a commission to study the administrative procedures connected with the exam and simultaneously sought consolidation with the Boddie Petition (Pollard & Greene, 1975a).[5] In both instances the Court was petitioned under its statutory responsibility for attorney licensure.

The petitioners maintained that between 1964 and 1974 an average of 88% of Blacks in the Fourth Department failed the bar exam while only 32% of White applicants failed. The Johnson group also alleged that "since 1967 approximately 71 per cent of each year's candidate pool has passed the bar examination, . . . [reflecting] a percentage limitation of the number of candidates the New York State Board of Law Examiners ("Board") will adjudge competent to practice law each year" (Pollard & Greene, 1975b, p. 3). Petitioners submitted data demonstrating that between 1967 and 1974 the pass rate on the July administration hovered around 76% while that of the February/March administration hovered around 59%. As to the import of the figures covering 1967 through 1974, petitioners argued:

> These statistics support a strong inference that the Board has made a prior determination of the percentage of candidates sitting for each bar

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[4]Intervening petitioners were graduates of Harvard (Johnson, Melchor, Ormes) and Columbia (McClary, Pollard). Ormes was not then admitted to the New York bar. Petitioners alleged that while the overall pass rate on the July 1974 New York bar exam was 77%, 5 of 15 (33 1/3%) black law graduates of Harvard, 3 of 12 (25%) black law graduates of Columbia, 5 of 12 (42%) black NYU graduates, and 0 of 6 (0%) black law graduates of Syracuse passed the exam (Pollard & Greene, 1975a).

[5]As requested, both petitions were consolidated (New York State Court of Appeals, 1975).

> examination it will pass. While the range of number of candidates at different examinations has been 42 per cent (July 1970 and 1974), the percentage found competent at all examinations has remained statistically constant. There is no basis in logic to support the Board's passing 76 percent of the July and 59 per cent of the March candidates. Unless this result is premised upon consistently applied uniform standards that are clearly related to the determination of legal competency, the Board has acted in an irrational and arbitrary manner which violates equal protection and due process (Pollard & Greene, 1975b, p. 17)

The Johnson group asserted that the use of an unvalidated bar examination having an adverse impact on Blacks violated the Fourteenth Amendment of the Constitution. Petitioners relied on several federal circuit decisions which held that tests shown to have discriminatory impact, even in the absence of any showing of intentional discrimination, had to meet professional standards of validation.[6]

A court-appointed expert subsequently defended the attacked procedures:

> In some respects, the scoring methods employed in the Bar Examination resembles the "curving" procedures often used by teachers who must assign grades in the absence of absolute performance standards . . . . [E]xaminations such as this have limited sensitivity to annual fluctuations in the quality of the candidates . . . . [T]he evidence offered in support of the contention that the Bar Examination is used to restrict the supply of lawyers[7] can also be used to support an alternative interpretation that the

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[6]Petitioners sought to dismiss the Fifth Circuit's decision in Tyler v. Vickrey (517 F2d 1089 (CA5 1975)) which held Title VII testing standards inapplicable to bar examinations because bar examiners are not employers within the meaning of Title VII. Petitioners asserted that the Fifth Circuit then had before it a second case regarding Title VII standards and bar examinations (Jones, Meyerson, & Hairston, 1975). Ultimately, the Fifth Circuit upheld Tyler's rule, at least so far as holding that Title VII test validation standards do not apply to bar exams (Parrish v. Board of Commissioners of Alabama State Bar, 533 F2d 942(CA5 1976)).

[7]In addition to attacking the bar exam procedure on constitutional grounds, petitioners asserted that setting admission limits violated antitrust laws. The United States Supreme Court has since ruled that bar admission procedures are immune from attack under these laws. In Hoover v. Ronwin 466 U.S. 558 (1984) the Court held that the defendants, the lawyers who set grading standards on the Arizona exam, were merely advisers to the state's high court, that the court--not the defendants--restrained the trade, and that the court was immune from antitrust attack under the rule of Parker v. Brown 317 U.S. 341 (1943; antitrust laws are addressed to action by private parties and not action by state administrative bodies).

> Examiners take precautions to ensure that fluctuations in the difficulty of the examination do not unduly penalize the candidates in a given year. (Vandament, 1976a, p. 7)

Vandament, noting that grading of the bar exam in New York is anonymous, asserted:

> [Anonymous grading procedures] ensure also that intentional discrimination cannot exist in the examination process. Any discrimination against minority candidates which might exist must be considered as a de facto or prior social condition resulting from factors that are not yet fully defined or completely understood . . . . [Such factors] probably originate in social or educational factors that are beyond the direct control of the Board (p. 3).

Vandament asserted that available validation techniques could not be applied to the legal profession and to bar exams and that any effort to validate bar examinations would have to await the results of then-pending efforts to establish definitions of competence to practice law.

Petitioners' experts directly refuted the assertion that professional test validation standards could not be applied to the legal profession. However, they did not then propose a method of validating the bar exam. Rather, they simply asserted that "[t]ests

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Petitioners also attacked on due process grounds the Board of Law Examiner's procedure limiting failing candidates' review of their exam papers to a comparison with a model answer prepared by the Board. Petitioners called for institution of a procedure allowing a failing candidate to compare his or her paper against an actual essay adjudged passing by the Board. The petitioners sought to dismiss decisions from other jurisdictions holding that the right to retake the exam satisfied due process:

> Tyler v. Vickrey . . . and Whitfield v. Illinois Board of Law Examiners, 504 F. 2d 474 (7th Cir., 1974) emasculate and make empty the concept of procedural due process by holding the opportunity for re-examination satisfies any constitutional necessity of providing a method by which the grading determination of a bar examiner may be independently reviewed and challenged. Both Circuit Courts affirmed findings that it would be too burdensome to impose upon the bar examiners a duty to afford a failed candidate the opportunity to meaningfully review his paper, make an independent determination of the grading and, if so elected challenge the bar examiner's determination. These findings were untested by trial in Tyler and discovery and trial in Whitfield (Pollard & Greene, 1975b, p. 24-25).

The Court's expert adopted a middle ground, supporting release of actual passing responses to failed candidates (Vandament, 1976a).

and other selection procedures have been developed and validated for executives, insurance salesmen, servicemen, and white and blue collar workers in countless settings" (Barrett, Dugan & Polite, 1976, p. 3). Vandament countered that there was then no precedent for professional licensing exam or certification having met the standards[8] on which petitioners' expert relied (Vandament, 1976b, p. 3).

The State Board of Law Examiners also tendered a partial response to the Boddie petition after Vandament had submitted his report (New York State Board of Law Examiners, 1976). The Board asserted, among other things, that the accuracy and reliability of the statistics put forth by petitioners were subject to question, that any meaningful comparison between bar performance of minority and white candidates "should be made only between candidates having substantially the same standing in their law school classes (and perhaps also those having substantially the same LSAT scores)," (p. 1) and that "a good share of the responsibility for the problems of minority candidates may relate to policies pursued by the law schools" (p. 2)--i.e., that the schools were both admitting minorities with LSAT scores substantially below those of other admittees and retaining and graduating minority students with poor law school grades.

Even before Vandament filed his report, petitioners had put strong emphasis on the fact that all candidates sitting for the New York exam were graduated from ABA-approved law schools:

> The manifest discrepancy [in pass rates] cannot be readily explained away by hypothesizing that the Black and other minority applicants are less qualified than their white counterparts. For each minority applicant has, in

[8] American Psychological Association, 1974.

> accordance with the rules of the State Court of Appeals and State Board of Law Examiners, graduated from an accredited law school just as have their white counterparts (Jones, Hairston & Meyerson, 1975, p. 15).

Following up on their experts' condemnation of Vandament's report, petitioners called for the Court of Appeals to "withdraw the use of the bar examination in the licensure process and accept a law degree from an accredited law school as a finding of competency to practice law" (Jones, Meyerson, Topkis, Pollard, Greenberg, & Greene, 1976, p. 8). The Court of Appeals was not prepared to take such a step. Rather, the Court, following one of Vandament's recommendations, decided to consider adoption of the Multistate Bar Examination for use in New York State; to the extent that Vandament's report and several conferences between the Court and involved groups constituted a "review" of the attorney licensure procedure, the Court deemed the petitioners' petition granted but in any and all other respects denied (Jones, 1976; New York State Court of Appeals, 1976).

In summary, the Boddie Petition raised--and left unresolved--issues of: the possibility of cultural bias in bar exams; the validity (or lack thereof) of bar examinations; the lack of objective criterion to define competence to practice law; the responsibility of law schools for preparing students to practice law; and the impact of facially neutral grading practices. Several of these issues have been addressed in studies discussed in the next section.

4.0 Studies on the Causes of Pass-Rate Disparities

In 1973, responding to allegations of cultural bias on the California bar exam, the Board of Governors of the State Bar assigned a 15-member commission to study the

question (Black Law Journal, 1976). The commission's working definition of cultural bias was "any bias produced by a person being a minority of a racial or ethnic group, but not one solely produced by a person's socio-economic status" (p. 169). The commission requisitioned studies of California's July 1973 exam for "item bias"[9] and "test bias"[10] and of the July 1974 exam for grader bias.[11]

The item bias study found statistically significant differences on MBE subsets[12] and on essay items, but in neither case did statistical significance translate into practical significance (Klein & McDermott, 1975). As to test bias, "if an Anglo or a Chicano candidate had the same predictor score [e.g., LSAT score, undergraduate GPA, or law GPA], the Anglo would generally do better on the Bar . . . [suggesting] that the Bar is biased against minority candidates" (p. 555). The significance of that finding was

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[9]"If on certain items the difference between the average performance of the Blacks and/or Chicanos and the Anglos was significantly greater (or less) than the difference between the average performance of the groups on the whole Examination then these items could be deemed biased against (or in favor of) the minority groups" (p. 553).

[10]"If an Anglo and a Black have the same predictor score, such as [LGPA], they should do equally well on the Bar. If the Anglo does better on the Bar examination, there is reason to believe that the Examination is not fair to the minority student" (p. 555).

[11]The California study elicited significant negative response at a 1976 U.C.L.A. symposium (Black Law Journal, 1976). According to presentations there, the commission had originally been charged with a task much different from that which it finally carried through. Specifically, it was asserted that the commission had been created to determine measures of attorney effectiveness and to examine cultural bias in legal education as a barrier to success in law school (p. 173). However, the commission "determined that, at the present time, at least, it was practically impossible to arrive at an acceptable measure of one's effectiveness as an attorney" (p. 173); therefore, the commission amended its agenda.

[12]"The Multistate Bar Examination (MBE) is a 200 item ([i.e.,] question) multiple choice test. Each item contains four choices. The six areas [i.e., subtests] covered by the MBE and the number of items in each area are: Constitutional Law (30), Contracts (40), Criminal Law (30), Evidence (30), Real Property (30), and Torts (40). The items in an area are distributed throughout the test rather than presented together. As many as 4 items may deal with the same fact pattern ([i.e.,] reading passage) although many items stand by themselves" (Klein, 1982, p. 14).

lessened, however, by the fact that "the groups do not have comparable predictor scores" (p. 555; emphasis in original). In correcting for test bias, the researchers found "no evidence that more minority applicants would be expected to pass the Bar than actually did pass" (p. 556; emphasis in original).[13] The grading practices study drew on a random sample of Anglo, Black, and Chicano students from four large California schools. Three Anglos, three Blacks, and two Chicanos, all of whom had recently passed the California exam "and otherwise represented the kind of individuals who would normally be selected by the Committee of Bar Examiners as graders of the essay answers" (p. 558), received instructions similar to those given "real" graders of the same questions. Grades assigned by both "real" and study graders were compared. This study found good, but far from perfect, agreement among graders on relative quality of essay responses; minorities were more lenient graders, but all three test groups, like "real" graders, "agreed that Anglos generally wrote better answers . . . than did minority candidates" (p. 556).[14]

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[13] In attempting to correct for test bias, Klein and McDemott premised that "the seriousness of the bias in the Examination is a function of how many minority candidates actually passed the Examination relative to the number that would have passed had no bias existed" (p. 555). They tested two methods: 1) award minority candidates bonus points so that their Exam score matches that of Anglos with identical predictors; 2) apply probability curve to the average predictor score for the minority group to determine what percentage would be expected to achieve the predictor score which, for Anglos, predicted passing the Bar; then compare the expected percentage of passers to the actual proportions.

In addition to the ultimate finding (quoted in the accompanying text) method 1 demonstrated that "more minority group members passed than would be expected relative to their adjusted predictor scores and to that extent it indicated a slight bias in favor of minority group members" (p. 556).

[14] This substudy has been criticized as methodologically unsound:

> Simply put, the problem is that all graders employed knew that they were involved in a study and specifically in a study on grading practices. This fact of knowledge, on the part of the graders, creates a demand characteristic that tends to alter the normal pattern of responding to essay questions. The specific demand inherent in this procedure is that the graders be "extra fair" because they are involved in a study. This alteration in response, that is, being possibly "extra fair" because of their involvement in a study and not just being their normal

The conclusions from this research were:

- [W]hatever bias against minority groups existed on the Bar Examination . . . was not serious enough to influence the proportion of minority group members who passed versus those who did not pass the examination. (p. 556)[15]

- [T]he difference in Bar performance that exists between Anglo and minority candidates is most likely a function of differences in their respective skills and knowledge rather than in any bias in the Bar examination or in how it is graded." (p. 560)[16]

"fair" is well documented in the research literature. It is called the "Hawthorne Effect" . . . It can, therefore, be safely concluded that this study does not represent a test of the effects of ethnicity on grading practices. What we have here is a dynamic non-test. (Black Law Journal 1976, p. 179; criticisms of Dr. C. Polite)

Polite's counterthesis was "that minorities have a writing style that is sufficiently unique from that of the majority Anglo population so as to be recognized as different and improper thereby resulting in inappropriately lowered scores when presented in an examination" (p. 179).

Polite explains that he basically agreed with Dr. J. L. Dillard, a linguist who provided expert testimony in Tyler v. Vickrey 517 F. 2d 1089 (1975) rehearing en banc denied 521 F. 2d 815 (1976), cert. denied 426 U.S. 940 (1976; class action on behalf of all Blacks having failed and who would subsequently take the Georgia exam). However, Polite's thesis differed somewhat from Dillard's. Dillard's testimony in Tyler was presented to support the inference that graders could identify exam papers written by Blacks--a possibility which in turn, the Tyler plaintiffs asserted, raised the issue of whether or not graders did in fact identify and systematically "underrate" the papers of black examinees. The Tyler court held that Dillard's deposition actually contradicted contentions that the papers of black examinees could be identified. That is, the court emphasized that Black English is one aspect of Southern English, used by some Whites as well as some Blacks, and a nonlinguist--such as the attorney graders of the Georgia exam--would not recognize Black English as anything more than nonstandard usage. Polite argues that "linguistic snobbery" (p. 180) influences graders such that upon encountering a significantly unique writing style, graders summarily deem the writing "improper thereby resulting in inappropriately lowered scores when presented in an examination" (p. 179).

[15]Asan additional "control" against allowing bias to influence grades, the California Committee reportedly would distribute bar exam questions to California law faculty requesting their comments on , among other things, whether they perceived cultural bias in a question (Black Law Journal, 1976). It was argued that this procedure could not uncover bias if those who created the questions and those who "examined" them for cultural bias were of the same cultural background (ibid., p. 147).

[16]In an addendum to the Commission's final report, two Commissioners note:

The Bar Examination cannot be viewed in a vacuum. We must recognize that culturally it reflects the language and mores of this American society . . . . Most experts would now agree that creating a culturally free test is next to impossible. Whatever cultural biases exist in society to produce the academic performance differences between the minority and the Anglo are not increased or decreased by the bar examination. (Vandament, 1976a, p. 11)

Vandament's own observation regarding this "admission" of cultural bias puts forth an important question:

Those Commissioners suggest that administration of an examination that excludes a disproportionate number of minority candidates from practice in the absence of demonstrated validity may in itself be discriminatory (ibid., p. 12).

In light of these findings, the committee recommended:

- Creation of a subcommittee of the State Committee of Bar Examiners to monitor complaints of bias.
- Continued efforts to recruit minority graders so as to address the perception of many minority examinees that the grading process was biased against them.[17]
- Increased financial assistance for prospective examinees.[18]
- Future study into the effect of time pressure on examinee pass rates.[19]
- Model answers be made available to unsuccessful candidates.

(Black Law Journal, 1976).

A series of studies in Washington State (Washington State Bar Association, 1977) found that bar exam passage was most closely related to LSAT scores and to first-year LGPAs, which essentially repeats the California Commission's findings regarding pre-enrollment academic ability. The results "show unequivocally that pre-law school academic characteristics . . . are strongly related to Bar Examination success" (p. 16). Yet another indicator that success on the bar exam requires more than knowledge and

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[17]Though the Commission, through its commissioned research, did not find evidence of actual cultural bias in the grading process, the Commission had, through a questionnaire sent to everyone taking the July 1973 exam, "uncovered a general lack of confidence in the bar examination among minority candidates" (Black Law Journal, 1976, p. 171).

[18]The Commission found that "minorities were more likely to have worked in the month preceding the examination" (Black Law Journal, 1976, p. 172). However, it is not at all certain that being able to dedicate one's full time to "cramming" before the bar exam would significantly improve the pass rates of minorities as a group. In subsequent research, Klein posits that "applicants may have varied in the type of post-law school preparation they had for the examination and/or in how much they were able to profit from this preparation, such as if applicants differed in ability to "cram" for the test" (Klein, 1979, p. 18) but that variable would explain little of the variance between white and minority pass rates. Having time to cram was but one of several subjective variables which in combination could, at most, account for 30% of the variance between minority and white examinee pass rates.

[19]Subsequent research found no practical gains from allowing more time to complete the exam (Klein & Bolus, 1987).

skills acquired exclusively during law school was the finding that Special Admission students to the University of Washington Law School[20] had lower bar success rates than candidates who were regularly admitted but who had approximately equivalent grade averages upon graduation. The Washington State Commission called for continued and strengthened "deliberate steps to increase the number and quality of Minority applicants for admission to the bar" (p. 50).

The Washington State study departed from the earlier California study in at least one finding, i.e., the presence of cultural bias on law school and bar exam essay questions. Vasquez (1977) examined 10 questions each from University of Washington law exams and Washington State bar exams and, unlike Klein and McDermott, "found" several elements which Vasquez deemed biased:

- Lack of balance: Questions "seldom . . . appeal to the sense of social justice and legal issues involved in social justice areas which relate clearly to the life experience of many minority students" (p. 2).
- Emphasis on "big business," an area, Vasquez asserts, rarely familiar to minority students.
- Emphasis on the "field independent mode of cognitive style" (inductive reasoning; p. 44) pervasive among Anglos rather than a deductive approach to information processing.[21]

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[20]The Washington commission dedicated much attention to the Special Admission Program of the University of Washington Law School because: it was believed that most of the minority applicants to the Washington bar had been graduates of the Law School, the Law School provided relevant statistics and records not otherwise available, and the University's program was one of the earliest of its kind. Though students admitted via the Special Admission Program generally had more difficulty passing the state bar than their regularly admitted peers, the program was lauded because it "has enabled persons to acquire a legal education and apply for admission to legal practice who could not have done so in the absence of such a program" (p. 51).

[21]The Committee's reaction to this finding was:

> The Committee believes that Bar Examination questions must necessarily require an applicant to analyze independent facts (using inductive reasoning) and to apply the applicant's

- Use of standard English.
- Emphasis on speed writing, a skill highly related to familiarity with standard English.[22]
- Humorous referents based on common experience with Anglo literature and names.[23]
- An implicit acceptance of the platitude "equal justice for all," a platitude readily accepted by Anglos but not the experience of many minority students.

Vasquez concluded: "[T]he test items . . . are clearly and unequivocally biased in favor of students from middle class Anglo backgrounds, and to that degree they are biased against those students whose socioeconomic and cultural backgrounds differ from such norms" (p. 4; emphasis added).

Despite Vasquez's conclusions, the Committee did not call for an overhaul of the exam[24] except to the extent that the exam "be modified so as to provide more emphasis

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substantive knowledge to answer the questions. However, the Committee believes Bar examiners should attempt, whenever possible, to include a deductive approach so as to be as fair as possible to all applicants (p. 44).

[22]The Committee believes that the giving of fewer questions with a greater time allotment per question is a more reliable indicator of an applicant's competence. . . . The Committee believes that additional time for all applicants to answer may be appropriate" (p.47).

The California Committee had, similarly, suggested looking into giving more time (Black Law Journal, 1976). Klein had, at that time, suggested that increased time to answer would not chance intergroup performance disparities, (Black Law Journal, 1976), which Klein and Bolus substantiated in later research (Klein & Bolus, 1987).

[23]Vasquez here asserted that "references to Chicano and Black experiences ought to be included for balance" (p. 4).

[24]The Committee commented:

> The bias described by Dr. Vasquez in effect is a structural bias inherent in the entire educational testing system. It is not something peculiar to either the Law School or the Bar Examination. Whatever difficulties are fostered for students by this bias exist prior to the commencement of law study. . . . . [E]fforts must be continued to try to improve the skills and knowledge of those specially admitted students needing such additional assistance, and thereby reduce or neutralize any adverse effect from this bias. (pp. 47-48).

The Committee's relevant recommendation was:

on personal law subjects (e.g., torts, criminal law, constitutional law, creditor-debtor relations and family law), provide more time for answering questions, and involve a deductive approach whenever possible" (p. 59).

Klein's (1979) study of the 1977 California bar exam refutes many of the criticism's implied in the Washington study. Klein sampled fall 1977 first-time applicants from 16 ABA-approved schools, eight schools accredited by the state but not by the ABA, and 14 unaccredited schools. Pass rates for Anglos, Blacks, Hispanics, and Asians were 71.9%, 26.6%, 40.5%, and 53.2% respectively.

Klein sought to "asses[s] the extent to which differences in bar scores between applicants could be explained by factors that were independent of how well these applicants performed in law school" (p. 8). He used five variables: race/ethnicity; gender; school attended; LSAT score; and law GPA (LGPA). Klein found that LGPA accounted for 38% of the variation in bar scores. Other variables contributed as follows: gender, 0%; race/ethnicity, 6%; school attended, 17%; and LSAT score, 25%. Next, variables were combined so as to ascertain whether the additional variable improved prediction of

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Specially admitted students should be required to take a course during the first year of law school, either as part of but in addition to the present legal writing course taken by all first year students or as a separate course of study, which focuses attention on and provides assistance with the particular needs of the specially admitted student with respect to analytic skills, examination-taking techniques, legal analysis and language and writing skills (p. 56).

Two Commissioners dissented:

Committee member Luvern V. Rieke does not concur in this recommendation. He finds the mandatory nature of the recommendation especially unwarranted. In his judgment, the recommended special course of study (a) would impose an unnecessary stigma on specially admitted students, (b) is not needed by all specially admitted students and (c) would cause an unwise disruption in normal course scheduling and an inevitable delay in graduation. Committee member Charles Z. Smith agreed with the foregoing (p. 56).

score variance.[25]

Race accounted for almost none of the variance in scores. Klein found that all five variables in combination could account for 58% of performance variance. However, that same result was reached by the combination of just LGPA + LSAT + school attended. Thus, neither race nor gender contributed anything to explaining variance. This 0% "unique contribution" of race is demonstrated in other combinations as well. LGPA alone explained 38% of variance; LGPA + race still explained only 38% of variance. Similarly, both the combination of LGPA + LSAT and LGPA + LSAT + race explained 50% of variance. Thus, "what little systematic relationship exists between bar scores and racial ethnic group could be explained fully by differences between groups in their average LGPAs" (p. 11).

Klein noted that minorities tended to be grouped disproportionately in high-average-LSAT schools (i.e., schools at which the average LSAT scores of enrollees is deemed high), suggesting that the effect on race/ethnicity as a predictor of bar exam variance might be unduly affected by practices at a small number of schools. Whereas

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[25]Symbolically, such an aggregation is represented as, e.g., "LGPA + LSAT"; however, this does not involve a mere summing of the percentages of variance attributable to the individual variables in isolation. To use again the example of LGPA + LSAT, respectively, those variables account for 38% and 25% of bar exam score variance. When considered together, LGPA + LSAT account for not 63% of score variance but 50%. Klein explains:

> The total percent of variance explained by a team of predictors, such as LGPA and LSAT, may be less than the sum of their individual contributions to prediction. The reason for this is that there may be some overlap between the predictors in the amount of variation they explain, i.e., the predictors are explaining a certain percentage of the same variations in bar scores. The importance of this consideration is that the statistical procedures used in this study credit all of this shared (or common) variance to the first predictor that enters the equation, i.e. LGPA. (p. 9)

Therefore, that percentage by which another variable increased prediction of exam score variance would be that variable's unique contribution to variance; i.e., an indicator of how this variable, apart from LGPAs, accounted for variance on bar exam scores.

numerical indicators such as LSAT, LGPA, and bar exam total score are, or can be, rendered into uniform scales, one "independent" variable was school attended. Academic standards vary markedly among schools; a student may receive a "C" at one school while earning a "B" at a second school for the same effort while earning an "A" at a third school. To test the effect of such differences, Klein computed the percentile standing of each ethnic group on three measures, i.e., LSAT, LGPA, and bar exam total score, allowing comparisons of how the "average" student from any of the three types of schools, i.e., low-average-LSAT, medium-average-LSAT, and high-average-LSAT schools, compared to the entire applicant pool. The crucial inquiry was whether the White-versus-minority LGPA disparity at a given type of school differed significantly from the bar-exam-total-score disparity at the same type of school.

Table 3. California July 1977 Bar Examinees: Percentile Rankings on LSAT, LGPA, and Bar Exam Total Score

SCHOOL TYPE	White LSAT	White LGPA	White Bar
low-LSAT	47	52	46
medium-LSAT	64	54	64
high LSAT	84	59	71
	Asian LSAT	**Asian LGPA**	**Asian Bar**
low-LSAT	29	22	14
medium-LSAT	43	33	39
high-LSAT	53	22	45
	Hisp. LSAT	**Hisp. LGPA**	**Hisp. Bar**
low-LSAT	21	40	27
medium-LSAT	17	19	29
high-LSAT	31	12	24
	Black LSAT	**Black LGPA**	**Black Bar**
low-LSAT	5	16	18
medium-LSAT	10	9	14
high-LSAT	18	13	19

Source: Klein, 1979

Ignoring for the moment the many aberrations suggested in this table,[26] Klein asserts that "the percentile score differences between Anglo and minority group applicants on LGPA were quite similar to their respective score differences on the total examination" (p. 14). Thus, "even when differences in enrollment patterns . . . were controlled, the parallelism between performance in law school and scores on the bar examination remained" (p. 14). Klein's analysis demonstrates that school attended had little unique contribution to bar exam score variance after combining LGPA and LSAT.[27] Therefore Klein concludes: "[W]hatever caused minority group applicants to get lower grades in law school probably also caused them to get lower scores on the bar examination; i.e., regardless of whether they attended a school with a high, medium, or low average LSAT score" (p. 14).

Thus, Klein established that the 1977 California bar exam did not exacerbate the

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[26]The figures presented here seem to support the widely-held premise that significant proportions of minority students attend law schools not optimally suited to their strengths and abilities. The average White student's ranking on all three measures increased from low- to medium- to high-average-LSAT schools. Such "neat" progressions in all three categories did not hold for any other ethnic group. While both average Asian LSAT percentiles and average Asian total bar exam percentiles also increased from low- to medium- to high-average-LSAT schools, Asian LGPAs at both low- and high-average-LSAT schools were in the 22nd percentile whereas average Asians at the medium-average-LSAT schools had LGPAs in the 33rd percentile. Average Hispanic LSAT percentile was lowest at the medium-average-LSAT schools; average Hispanic LGPA percentiles declined from low-average-LSAT schools to high-LSAT schools, and average Hispanic bar exam total score percentiles were lowest at high-LSAT schools. Finally, LSAT percentiles of average Blacks, like those of Anglos and Asians, increased from low- to medium- to high-LSAT-schools; like Hispanic students, among Blacks the highest average LGPA percentile was registered at low-average-LSAT schools; however, unlike Hispanics, among whom the lowest LGPA percentiles were achieved at high-average-LSAT schools, Blacks at high-average-LSAT schools ranked better in LGPA percentile than their peers at medium-average-LSAT schools. Similarly, Blacks at medium-average-LSAT schools ranked lower on bar exam scores than their peers at either low-average-LSAT or high-average-LSAT schools, but Blacks at high-average-LSAT schools ranked slightly higher on the bar exam than did Blacks at the low-average-LSAT schools.

[27]School attended, considered in isolation, contributed 17% to bar exam variance, a percentage not diminished when LGPA and school attended were considered together (LGPA + school explains 55% of pass rate variance). However, LGPA + LSAT explains 50% of pass rate variance and LGPA + LSAT + School explains only 58% of pass rate variance, reducing the school variable's unique contribution to only 8%).

gap between Whites and minorities, i.e., the exam seemed to measure the same skills measured by examinees' law school grades. However, even though LGPA + LSAT + school attended could explain 58% of pass rate variance, and another 21% was explained by unreliability of predictors, still there remained 30% of bar score variance unexplained. Klein posited several explanations for the unexplained variance, including artificial grade restraints such that LGPA did not reflect true performance levels; relevant personality characteristics of examinees, e.g., how pressure of the examination affected ability to perform; complex interactions among predictors, e.g., whether examinees attended a school whose approach comported with their own habits, skills, interests, etc.; chance events, e.g., the appearance on the exam of subjects with which the examinee was particularly familiar, lenient grading, or psychological state of the examinee at the time of taking the exam; and "applicants may have varied in the type of post-law school preparation they had for the examination and/or in how much they were able to profit from this preparation, such as if applicants differed in ability to "cram" for the test (p. 18, emphasis added).

Klein concluded, among other things, that

> whatever was producing the performance differentials between racial/ethnic groups in law school was probably also at work on the bar examination . . . . [T]he observed differences in average bar scores between groups were probably not a function of certain features of the examination . . . but rather they were due to differences between the groups in the degree to which they possessed the general skills and knowledge that are required to get high grades in law school. Whether these same characteristics are also required for legal practice is an issue that was not addressed by this research (p. 23; emphasis in original).

California again undertook a study of its bar exam in 1987 when the Committee of

Bar Examiners of the State Bar of California formed a Special Subcommittee to Study Passing Rates (Johnson, 1988).[28] The Subcommittee relied primarily on a series of studies conducted between 1977 and 1987 by Klein and Bolus. Those studies found that low minority pass rates were not associated with several other variables which have been hypothesized to account for low pass rates. The findings are as follows:

- Low minority pass rates are not a function of graduation from less selective schools. In California a larger percentage of minority than white students graduated from the most selective California schools (as measured by average LSAT scores of graduates); 23% of Whites, but 44% of Asians, 38% of Hispanics, and 48% of Blacks graduated from the five most selective schools.

- Minority pass rates are not a function of the race of whomever grades the essay portion of the exam. After race-blind reading of essays, minority and white readers showed high agreement as to the grades that should be assigned to both minority and non-minority examinees.

- Time allotment did not affect performance discrepancies. Sub-samples of applicants were given increased time to complete multiple choice and essay questions. Neither readers nor students knew that extra time was given; increased time did not narrow the differences in scores between white and minority students.

- Differences among racial/ethnic groups were just as large on the multiple choice portion as on the essay parts of the exam, and experimentation with an oral version did not reduce these differences.

- Differences among groups were of the same magnitude across all subject areas tested.

- Differences between white and minority students could not be attributed to general test-taking skills. Both minority and white students did equally poorly in an experiment in which they took the bar exam during their first weeks of law school.

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[28]The Subcommittee originally had four objectives: 1)to identify reasons that some students perform better on the bar exam than the performance predicted by admission test scores and law school grades; 2)to determine a passing standard which would both maximize admission and maintain high standards; 3)to develop a minority recruitment and retention plan; and 4)to develop a full analysis of alternative testing procedures (Johnson, 1988). Subsequently, the second objective was severed and delegated to a separate subcommittee.

Klein and Bolus (1987) concluded:

> The minority applicants' lower average LSAT scores and thereby predicted law school grades probably reflect an educational disadvantage that accumulated over the 20+ years prior to admission. This disadvantage is not eliminated during law school as evidenced by the large difference in average law school grades between white and minority students. However, most minority applicants do eventually pass. Thus, they may simply need more time to prepare for the exam than their white classmates. It also appears that special admissions programs are effective in that they bring into law schools many minority students who do not meet their school's normal selection standards, but who nevertheless ultimately become licensed to practice (p. iii).

In short, research shows that the academic abilities leading to success on the bar exam are the same abilities leading to success on the LSAT and on law school exams. The obvious question is whether a state's bar exam, in screening out some graduates, fulfills the exam's purpose. However, that question engenders another fundamental inquiry, i.e., whether bar exams serve a legally defensible purpose.

The other significant finding from the California research is that the "ultimate" pass rates for minorities are markedly higher than first-time pass rates, although ultimate pass rates are still lower for minorities than for whites. These data are presented in Table 4.

Table 4. **California Bar Exam Eventual Passing Rates Per 100 Examinees.** (Numbers in parentheses are percentages)

	Whites	Asians	Latinos	Blacks
Passed First Time [P1]	67	49	37	25
Failed First Time [F1]	33	51	63	75
Repeaters [R]	28	42	55	62
(%=R/F1)	(84)	(82.4)	(87.3)	(82.6)
F1 Attritees [A]	5	9	8	13
(%=A/F1)	(16)	(17.6)	(12.7)	(17.4)
Repeaters Passing [RP]	17	24	29	23
(%=RP/R)	(60.7)	(57.1)	(52.7)	(37.1)
Projected Attritee Passers [PAP]	3	5	4	5
PAP=[A(RP/R)]	[5(.607)]	[9(.571)]	[8(.527)]	[13(.371)]
Projected Passers If All F1s Repeat [PP]	87	78	70	53
PP=P1+RP+PAP				

Source: Klein & Bolus 1987, Table 4.

5.0 The Job Relatedness of the Bar Exam

Among their several allegations, the Boddie petitioners criticized the Board of Law Examiners for not having disseminated an official purpose for the bar exam. The ABA, the National Conference of Bar Examiners, and the AALS have long disseminated a Code of Recommended Standards for Bar Examiners (ABA Section of Legal Education and Admission to the Bar, 1990), which standards suggest the following:

> 16. Purpose of Examination. The bar examination should test the ability of an applicant to identify legal issues in a statement of facts, such as may be encountered in the practice of law, to present a reasoned analysis of the issues and to arrive at a logical solution by the application of fundamental legal principles, in a manner which demonstrates a thorough understanding of these principles. The examination should not be designed primarily to test for

information, memory or experience (p. 73).[29]

A much broader statement has been made to the effect that bar exams are intended to protect the public from incompetent practitioners. Klein et al (1982), while defending the use of bar exams, admit that the exams are limited:

> State bar examinations are not designed to predict who will become a good attorney. Rather, their goal is to identify those applicants to the bar who are not competent to practice, within the considerable limits of any testing device to make such a determination. (p. 3)

Critics tend to assert less utilitarian purposes behind the use of bar exams. Some have argued that the real but covert purpose of bar exams is to limit admissions and to maintain high hourly wages for attorneys (Barrett, 1980), but as already noted, bar examination procedures are immune from attack under antitrust statutes. Barrett further asserts that bar exams are supposed to bar incompetent practitioners but argues that "[n]o studies have shown that the bar examination is effective and . . . there is good reason to believe that it is of little value in weeding out incompetents" (p. 1). This objection presumes that a truly competent practitioner would never encounter any difficulties in practice. Barrett overlooks the crucial distinction between "incompetence" and occasional "incompetent performance"--the latter being the cause of much of the negative imagery associated with the legal profession.

In 1979, a special ABA Task Force on lawyer competency, focussing on the role

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[29]This is not a new standard or statement. Compare the following:

> The bar examination should test the applicant's ability to reason logically, to analyze accurately the problems presented to him, and to demonstrate a thorough knowledge of the fundamental principles of law and their application. The examination should not be designed primarily for the purpose of testing information, memory, or experience. (National Conference of Bar Examiner 1968, p. 126)

of the law schools, defined the distinction between incompetence and incompetent practice:

> Too much of the discussion of the "problem of lawyer incompetence" has failed to distinguish between competence and performance. Inadequate lawyer performance--the failure to meet a satisfactory standard in some task undertaken for a client--is not synonymous with lawyer incompetence. Competency properly refers to an individual's capacity to perform a particular task in an acceptable manner. A lawyer's actual performance may fall short of the appropriate standard for any number of reasons unrelated to competence: inattention, laziness, the press of other work, economic factors, or mistake. Indeed, available evidence suggest that reasons such as these, not a lack of capacity to do a proper job (incompetence in the narrow sense), are the cause of most instances of lawyer failure. (p. 9)

The Task Force viewed the basic elements of lawyer competence as:

- Certain fundamental skills, including the ability to: 1) analyze legal problems; 2) perform legal research; 3) collect and sort facts; 4) write effectively; 5) communicate effectively; 6) interview, counsel and negotiate; 7) organize and manage legal work.

- Knowledge about law & legal institutions: Given the mobility of legally trained individuals, "command of relevant knowledge about law and legal institutions . . . depends more on qualities of intellectual curiosity, character and professional responsibility, and skills of self-learning than it does on the information content of law school courses . . . . [M]uch that otherwise might appear to be 'speculative' or 'theoretical' in a law school curriculum, including courses in comparative law, jurisprudence, and legal history, deserves to be thought of as vital, useful, and practical training." (p. 10)

- Ability and motivation to apply both knowledge and skills to the task.

The Task Force recommended:

> Law schools should seek to achieve greater coherence in their curriculum. Even if it entails the loss of some teacher autonomy, the three-year program should build in a structured way: to present students with problems of successively broader scope and challenge, to enable students to teach themselves, and to utilize skills and knowledge acquired earlier. (p. 17)

The Task Force made a total of 28 recommendations. The more relevant ones are:

3) Law schools should provide instruction in those fundamental skills critical to lawyer competence. In addition to being able to analyze legal problems and do legal research, a competent lawyer must be able effectively to write, communicate orally, gather facts, interview, counsel, and negotiate .... (p. 3)

6) Law schools and law teachers should develop and use more comprehensive methods of measuring law student performance than the typical end-of-the-year examination. Students should be given detailed critiques of their performance. (p. 4)

13) [ABA re-accreditation requires school self-studies.] The self-study requirement should be expanded to include specific consideration of the responsibility of the school to ensure that its graduates meet adequate standards in fundamental lawyer skills. (p. 5)

The ABA task force described above relied heavily on Baird's (1978) study of the relevance of legal training to law school graduates. Baird sampled alumni of the classes of 1955, 1965, and 1970 in six law schools. Baird's respondents identified 26 areas in which they practiced, either as their primary areas or as part of their practice. Except for those practicing admiralty law, at least 40% of respondents deemed their law school training in each area to be "somewhat useful."

Reilly and Powell (1979) studied the evaluation procedures used in large firms and organizations. They sampled 200 corporations (a random sample of 200 of the largest 500 corporations listed in Fortune), 105 law firms employing 30 or more attorneys (according to the 1975 edition of Martindale-Hubbell), federal agencies employing more than 30 attorneys (according to 1975 Martindale-Hubbell or the Federal Government Legal Career Opportunities (1975), Attorney Generals of all 50 states and the City Attorney in each of the 50 largest cities (as reported by the 1972 census). From these they found:

> Apparently, with a few exceptions, few firms look for specific coursework; many of these firms have their own training programs designed to familiarize the new lawyer with the areas emphasized by the firm. One drawback is that in some instances, it is possible that the criterion of "computability" may lead to discrimination based on race, sex, and socioeconomic class, as pointed out by Smigel (1969) in his description of Wall Street lawyers. (p. 132)

> [V]arious surveys point to some common factors that are important in legal practice and by implication would be important to assess in evaluations of the competency of lawyers. These include knowledge of substantive law, skills in general writing and legal writing, legal research, the ability to present overviews or results orally, the ability to investigate and deal with facts, counseling clients, and negotiating, interviewing and advocacy skills. (p. 149)

Powell and Carlson (1978) surveyed solo and small firm practitioners (1978). They premised:

> It is possible that some of the criteria used in the present system of measuring qualifications for entry into the legal profession are less relevant to competent practice than is supposed. It is also possible that criteria other than those used are important to competent practice and should be incorporated into the present system, provided they can be adequately defined and measured on a sound and fair basis. (p.88)

They sampled 502 solo or less-than-eight-lawyer firms selected from the 1976 Martindale-Hubbell and sought equal representation across nine geographic regions. The survey found considerable agreement:

> All of the large organization evaluation factors were felt to be at least "probably appropriate" by more than two-thirds of the respondents for evaluating the performance of a person in a practice like theirs. Overall, the results suggest that there is a set of skills and characteristics that a majority of the sample considers important to competent practice, with relatively few variations based on practice setting, region, type of practice, date of admission to the bar, and firm size. (p. 96)

Based on skills deemed "extremely important" by respondents, a general profile of the lawyer is

> one who gets the facts (76%), analyzes the problem by putting factual and legal issues together (60%), conducts th[o]rough legal research (49%), and devises resourceful and practical solutions (47%). (p. 98)

Zemans and Rosenblum (1980) surveyed practitioners in Chicago. Answering the criticism that legal education is unrelated to actual practice, these authors reported:

> One response to the criticism is that law school provides, indeed should provide, that which is important to the profession but which cannot be readily gained elsewhere. Thus the schools concentrate on the theoretical at the expense of the more practical. (p. 2)

Like the studies described above, these authors provide a "laundry list" of skills deemed important by their respondents.

The authors noted:

> The four skills seen as important by the largest proportion of legal practitioners are not peculiar to the legal profession. Although lawyers may need to master these skills to be effective attorneys, they are equally appropriate to other occupations. It is not until the items ranked five, six, and seven, that skills and knowledge peculiar to the legal profession appear. (pp. 6-7)

6.0 Conclusions

Most inquiries into the Black-versus-White pass rate disparities on state bar examinations have concluded that such disparities primarily explained by differences in previous academic experiences. The existence of cultural bias has, however, neither been established nor completely dismissed. The extent to which the content and administration of the New York State bar examination differentiates between those who are and who are not competent to practice law also remains to be established.

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