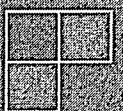


North Dakota Supreme Court Commission to Study Racial and Ethnic Bias in the Courts

Updated Study Summary

This Summary contains an outline of recent Commission to Study Racial and Ethnic Bias in the Courts activities and information in anticipation of the 2012 Final Report. Information contained in this document reflects continuing discussions, not final or official findings and recommendations.



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OUTLINE

Studying Racial and Ethnic Bias in Courts

1. Many state and national studies have shown that members of the public perceive that racial bias exists in state courts, with minorities tending to perceive bias more strongly.
2. Bias tends to be subtle, yet pervasive. Implicit bias appears to play large role, but evidence exists that courts can take steps to mitigate the effects of implicit bias.
3. Implicit bias has been described as an inclination or preference for one race or group over another that develops from persistent cultural stereotypes that may be learned in youth and continue into adulthood, especially cases where the inclination remains unexamined and unaddressed. Having absorbed certain cultural stereotypes, individuals lack conscious awareness of their bias and do not have a conscious intention to engage in biased behavior.
4. A primary source of evidence for implicit bias is the Implicit Associations Test (IAT), an examination measuring positive and negative associations with pictures of white and non-white faces.
5. The Commission followed previous states by combining statistical analysis with individual testimony regarding experiences in the court system, approaching the problem from multiple angles to generate an overview despite difficulties inherent in studying bias.

Committees

Meetings Committee

1. The Meetings Committee concentrated on planning and executing public listening sessions designed to allow public testimony regarding racial and ethnic bias in the courts.
2. Listening sessions were held at all the Tribal Colleges and in Fargo, Bismarck, Minot, Williston, and Grand Forks.
3. The Committee also ran focus groups for attorneys in Bismarck and Fargo, and for New American Community Leaders in Fargo.

Research Committee

1. The Research Committee provided guidance for the Commission's activities relating to data collection and analysis.
2. The Committee developed and implemented a number of surveys, including: a Minority Perceptions Survey; jury panel and pool surveys; attorney and employee surveys; and a court user survey. These surveys gathered perceptions and demographic information from various groups in the state.

Criminal Justice Committee

1. The Criminal Justice Committee has concentrated on gathering available statistics from the Department of Corrections ('NDDOCR') and other state data on representation in juvenile courts, as well as arrests data from the Unified Crime Reports data

Civil Justice Committee

1. The subject of minority use of the civil courts is particularly difficult to reach in studies because of limited contact between courts and parties. The Civil Committee discussed issues such as disproportionate use of self-representation, unbundling of legal services, differences in civil court outcomes depending on race. Members also discussed poverty issues related to court use and race.
2. The Civil Committee has focused on studying disproportionate minority use of Legal Services of North Dakota, including applications, geographic trends, and related factors.

Commission Study Areas

Access to Courts

1. The subject "access to courts" refers to disparities between minority and majority ability to participate in all areas of the court system. Within this subject, the Commission concentrated on examining juries and interpreter services for limited-English speakers.
2. Disproportion in juries can be caused by direct bias or indirectly through policies that appear neutral. Regardless of the cause, if the results systematically exclude groups of people, the process both excludes individuals of their right to jury service and the defendant of the right to a jury of peers.
3. The two-part North Dakota Jury Survey did not return a sufficient sample for firm statistical findings in the panels or in the pools. Commission discussions have focused on problems surrounding a recommendation for expansion of the study. This would place a race question on the jury questionnaire for a sufficient period of time to gather adequate information on all counties and would allow provide data for composition challenges and for a determination of whether to expand jury source lists.
4. Testimony indicated that juries in some counties do not adequately represent minorities. Discussion has focused on whether this evidence can support a recommendation to expand jury source lists.
5. Data shows some very broad correlations between non-response to juror questionnaires and certain North Dakota counties. Data appeared to show a correlation between counties with high percentages of non-response for all years examined and Reservation counties. This could indicate difficulties in reaching Native American populations.
6. Discussions have focused on whether to recommend more uniform court follow-up for juror non-response. Members have questioned whether the apparent non-response correlation is too broad to support recommendations beyond further study.
7. The Commission also looked at undeliverable summonses, but did not find any patterns. National studies show that minorities are more likely to move (and, therefore, generate undeliverable summonses), but data is insufficient to show whether this pattern holds in North Dakota.
8. The Commission has discussed recommending more frequent refreshing of the jury master lists, which would generate fewer undeliverable summonses, and could also improve non-returns.
9. After examination of North Dakota jury qualifications, the Commission determined that they are sufficiently broad to prevent disparate effects.
10. The Commission has discussed recommendations related to improving juror pay because minorities account for a higher proportion of individuals at or near the poverty level. A higher pay would act as an additional incentive for completing service. Other recommendations under consideration include helping with child and elder care.
11. Problems with language interpreters tend to be related to availability of interpreters with adequate skill and understanding of court proceedings. Varying language needs throughout the state complicate this problem.
12. North Dakota has a policy in place for limited-English speakers. The courts also make some resources available in this area. Evidence suggests that courts do not always follow existing policy to ensure adequate interpreter services. Testimony also suggests that some law firms and court-related agencies may not be properly equipped to handle limited-English speakers.
13. Commission discussions have focused on making resources developed in Cass County available throughout the state. A list of commonly-used, effective interpreters could be developed and made available statewide.
14. The Commission also discussed adapting a training seminar offered in Cass County for use statewide and expanding attorney and employee education regarding interpreters.

Criminal and Juvenile Justice

1. North Dakota is somewhat rare in that its largest minority population consists of Native Americans. This means that there not much of a basis of comparison between national trends and those in North Dakota, since few studies concentrate on issues specific to Native Americans.
2. Preliminary Unified Crime Reports ('UCR') Arrest Data shows that minorities are over represented in arrests compared to their proportion in North Dakota's general population. Public testimony has shown a perception of disproportionate police stops and arrest rates for minorities.
3. Preliminary NDDOCR data shows a general over representation of incarceration rates for minority groups, with Asians being the only group under represented. Public testimony has voiced a similar perception.
4. A comparison of UCR Arrest Data and NDDOCR data on incarceration shows that the proportions of African and Native Americans increase between arrests and incarceration. Data on Hispanic/Latino(a) individuals was not recorded in the initial UCR data, so no comparison could be made. Those identifying as 'Asian' constituted a tiny proportion of arrests and no NDDOCR inmates self-identified as Asian.
5. The Commission discussed disparate treatment of Native Americans with regard to bonds. The consensus has been to try to standardize the bond schedules to the extent possible.
6. Testimony suggested that minorities receive harsher sentences than whites for the same or comparable crimes. What few North Dakota studies exist in this area indicate that sentencing varies by court district, but did not indicate a correlation with race. This area calls for additional study.
7. Adult drug courts appear to under represent minorities. Though numbers are low and limit the usefulness of statistical conclusions, a smaller proportion of minority participants appears to graduate from these programs than whites.
8. The Commission looked at NDDOCR programs relating to recidivism. Parole and probation revocations appear proportionate for all races, but Native Americans account for a greater proportion of absconding violations. Such revocations usually involve absconding to Reservations. N.D. appears to lack culturally-based adult programs, but participation in existing programs appears proportional.
9. Studies suggest that directing the most serious, high-risk offenders into drug courts leads to greater effectiveness as long as the program is sufficiently intensive (this appears true for adults and juveniles).
10. Most activity for minority groups in the juvenile system comes from Burleigh, Cass, and Grand Forks counties. Burleigh is the only county to have completed a study of Native American Youth, the largest minority juvenile group in the state. A similar study is in progress for Cass County.
11. Native youth continue to be over-represented in the areas of arrests and secured detention.
12. Minority youth comprise a significant proportion of individuals in juvenile drug courts. Assessments have not pointed to significant issues regarding race, bias, and juvenile drug courts.
13. North Dakota already runs programs directed at minority youth (such as the Youth Cultural Achievement Program), that are similar to recommended programs discussed by other states.
14. The Commission has discussed establishing a New American liaison program similar to the Native American liaison program in Burleigh County and in the Fargo-Moorhead area.

Civil Justice

1. The total number of civil filings has increased 16% since 2000, but no statistical data exists on minority use. Some testimony suggests significant and generally proportional minority use, but this testimony is limited.
2. Census data indicates that minorities comprise a larger proportion of individuals at or near the poverty level. Because of this characteristic, the Commission concentrated on studying efforts designed to provide aid to low-income individuals.

3. Experiential evidence suggests that Native American and New American expectations of state courts often reference tribal or foreign courts. This can lead to inaccurate perceptions of how state court processes work or perceptions of unfair treatment.
4. The rate of minority use of Legal Services of North Dakota ('LSND') shows a substantially disproportionate minority use of these services. The majority of applications come from five counties where LSND offices are physically located.
5. The Civil Justice Committee studied unbundling of legal services as a way to expand more affordable legal services. Discussions have covered the need to provide education for attorneys and the creation of resources to assist in facilitating unbundling.
6. The Committee received few statements regarding minorities and self-representation and could not make a determination regarding rates of self-representation compared to whites. The area requires further study.

Attorneys and Court Personnel

1. Two separate surveys attempted to find the demographic composition of the state bar. The second survey also asked perception questions. Both surveys indicated that 97% of responding attorneys were white. Both surveys returned such low numbers of minority responses that no reliable comparison between minority and majority perceptions could be made.
2. Responding minorities indicated that they worked within all professional categories included on the SBAND survey. There was not a single area in which minority attorneys appeared more likely to work.
3. Attorney perceptions of courts appeared to be generally positive with regard to behavior and treatment. Large numbers of respondents answered "no basis for knowledge" for most questions.
4. Large proportions of attorneys recognized a lack of diversity in their place of employment and throughout the court system. Perceptions of adequate minority representation on juries divided almost evenly among 'adequate,' 'inadequate,' and 'no basis for knowledge.'
5. The University of North Dakota School of Law ('UND Law') appears to graduate minority students in numbers proportional to the state population. Many minority UND Law graduates appear to choose not to join the North Dakota Bar.
6. The Court Administrator's office provided employee demographic data. Data shows every employment category as at least 98% white. Recent court application data, collecting voluntary demographic information, indicates over 800 applications for 13 openings available from March to August 2011. This number included a relatively large proportion of minority applications (7% from African Americans, 2% Hispanic/Latino(a)s). The national recession and North Dakota's recent oil boom most likely account for these numbers. Applications from Native Americans, however, were still under represented at 2%.
7. Testimony has pointed to the need for diversity in courtrooms, especially with regards to court employees. Implicit bias studies indicate that diversity helps individuals counter any existing bias.
8. Court employee perceptions tended to align with those of attorneys in that they were primarily positive, returned large proportions indicating "no basis for knowledge," and recognized minority under representation as employees.

The Target Date for completion of the Commission's Final Report is March, 2012.

Please Contact Andrew Frank at afrank@ndcourt.gov with any questions about the report or the Commission's work.