

Continuing a Legacy of Excellence:
A Summit on Achieving Diversity in the Judiciary

September 7, 2011

Administrative Office of the Courts
Milton Marks Conference Center

Cosponsored by
The Judicial Council of California and
The State Bar of California

Final Report and Recommendations

June 1, 2012

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Executive Summary and Final Recommendations

In June 2006, the State Bar of California, in collaboration with the Judicial Council's Access and Fairness Advisory Committee, convened a statewide summit on diversity in the judiciary. Five years later, in September 2011, the State Bar and the Judicial Council held a second summit on judicial diversity, *Continuing a Legacy of Excellence: A Summit on Achieving Diversity in the Judiciary*, to assess progress made toward achieving the goal of having a judiciary that reflects the rich diversity of California's population.

The September 7, 2011 summit was held at the Administrative Office of the Courts (AOC), Milton Marks Conference Center in San Francisco at the invitation of the Chief Justice of California, Tani G. Cantil-Sakauye and State Bar President William Hebert (see invitation letter attached as Appendix 1). The invitation explained:

As California's demographics change, it is important that our judiciary reflect the state's growing diversity and that the bench and bar participate in the dialogue that may contribute to achieving greater judicial diversity and increased public trust and confidence in the judicial system.

Therefore, five years after our first summit, the Judicial Council and the State Bar are convening a follow-up summit to:

- *Evaluate achievements since the 2006 summit;*
- *Focus on the current status of judicial diversity in California;*
- *Identify best practices for increasing diversity on the bench;*
- *Develop additional initiatives for achieving greater judicial diversity; and*
- *Create a five-year action plan for further accomplishments.*

In response to this invitation, more than 75 justices, judges, other judicial branch leaders, bar leaders, and law school deans or their designees gathered at the summit. They received a status report on the current level of diversity in California's trial and appellate courts, reviewed accomplishments since the 2006 summit, examined ongoing challenges to achieving a diverse judiciary, and made recommendations on how to further the goal of a more diverse bench.

The recommendations fall into six categories: the judicial appointments and elections process; the leaky pipeline resulting from low numbers of ethnic minorities in law schools; judicial diversity data collection and accessibility; the level and types of outreach and education needed to encourage more persons to enter the legal field and seek appointment to the bench; issues with the online judicial application; and finally, the perceived glass ceiling for women and ethnic minorities when it comes to judicial assignments.

Funding for the summit was provided by the Administration of Justice Fund and voluntary contributions to the State Bar

Some recommendations made by participants are not included in this final report because events following the summit demonstrate that the issues have been adequately addressed and no future action is needed. For example, summit participants recommended that the Governor appoint a Judicial Appointments Secretary. It was not necessary to include such a recommendation in this final report because the Governor has already assigned to one of his senior advisors all of the tasks that past judicial appointments secretaries performed, such as evaluating and recommending candidates for judicial appointment and presenting statewide programs on the Governor's judicial appointments process.

Similarly, summit participants recommended that the AOC, the State Bar, and the Governor compile and report information on applicants, appointees, and sitting judges who choose to self-identify as lesbian, gay, bisexual, or transgender. After the summit, Senate Bill 182 (Corbett) was enacted, amending Government Code section 12011.5(n) to provide that the Governor, the State Bar, and the AOC must collect and release demographic data "relative to ethnicity, race, gender, *gender identity*, and *sexual orientation*." (Emphasis added.) The legislation was effective on January 1, 2012.

Finally, summit participants recommended that the Governor's Office reevaluate the online judicial application process to eliminate barriers faced by persons with disabilities. Since the summit, the Governor's Office (1) reduced to one the number of required fields that need to contain exact information on law school graduation and bar admission dates (the month and day now no longer have to be exact; only the exact year is required), (2) lengthened the allowable time to complete the application to three hours per page before the system times out, and (3) implemented a process that permits applicants with disabilities who request an accommodation to submit their applications in hard copy, rather than online. This extraordinary level of responsiveness by the Governor's Office eliminates the need to include recommendations for future action in these areas.

The final recommendations, listed below, are based upon input from judicial branch leaders, the Governor's Office, State Bar leaders, summit participants, and the summit planning committee.

JUDICIAL APPOINTMENTS AND ELECTIONS

1. Judges and lawyers should reach out to law schools to educate students on how to become a judge, so that law students can begin at that early stage of their careers to lay the groundwork for serving as a judge. Where possible, judges should employ law students in the courtroom and should establish or participate in programs designed to bring high school students into the courts.
2. So that applicants can better appreciate the level of commitment involved in the application process, judges should serve as mentors to coach potential applicants through the details of, and emotional barriers to, completing the application process.
3. Mentor judges should encourage potential applicants to work in their communities and to be involved with local bar associations.
4. Judges should be proactive and identify the most viable candidates for appointment. Once these candidates are identified, judges should not only mentor these individuals through the application process, but should also offer practical advice on how to be a good judge, manage a courtroom, and avoid the pitfalls that many new judges encounter.
5. To lend more credibility to their recommendations, minority and specialty bar associations should establish a formal application and evaluation process that is equivalent to the process used by the metropolitan bars.
6. The Governor should continue to provide his Judicial Selection Advisory Committee (JSAC) members with educational materials on the status of ethnic and gender diversity on the bench as compared to the state's population, and on the ways implicit bias may impact evaluations of applicants for judicial appointment. JSAC members should also be educated on how the judicial assignments process works at the superior court level, so they understand that the presiding judge has sole authority to make judicial assignments (see rule 10.603(c)(1), Cal. Rules of Court). To assist the Governor in educating JSAC members, the AOC and the State Bar Council on Access and Fairness should, to the extent funding permits, provide training in the areas of judicial diversity and implicit bias, if such training is requested by the Governor's Office.

THE LEAKY PIPELINE

1. The legal profession must undertake a concerted effort to educate the public about the value and benefits of a legal education, while at the same time acknowledging the reality that such an education is quite expensive. Part of this education process must include outreach to ethnic minorities to communicate the value to the minority community that being a lawyer brings.
2. Law schools and the legal profession should seek funding to implement innovative studies, such as the recommendations contained in Schultz and Zedeck's effective lawyering study, which developed race-neutral tools for identifying 26 factors that are predictors of attorney competence (see <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>). These

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tools could be used as a supplement to the LSAT (Law School Admissions Test). Note that the same tools are being considered for application in the legal employment area through focus groups and symposia being conducted by the State Bar Council on Access and Fairness.

3. The legal profession should seek private sector funding to provide financial assistance for economically challenged students to take LSAT preparation courses.

4. Law schools should be encouraged to create a culture of inclusion on campus. Law students of color should be exposed to more role models in the judiciary, and law schools should place greater emphasis on community-oriented or public sector employment as desirable career options.

DATA COLLECTION AND ACCESSIBILITY

1. The Governor's Office should be encouraged to provide more transparency in the application and appointment process, so that the success of efforts to increase judicial diversity can be more readily assessed.

2. In reporting annual demographic information, the Governor's Office should continue to do what it historically has done and use the same ethnic and racial categories specified in Government Code section 12011.5(n)(C)(3). (Please note that, after the summit, SB 126 (Davis) was enacted, which amended Government Code section 12011.5 so that it now provides, in subdivision (n)(C)(3), that the State Bar and the Administrative Office of the Courts shall use specified ethnic and racial categories in the annual demographic reports. The legislation does not impose such a mandate on the Governor's Office. The original bill language required the State Bar and the AOC to use the same categories as the Governor already was using, but language referencing the Governor's categories was amended out. Consequently, the ability to track the progress of judicial diversity by comparing apples to apples may yet remain elusive, unless the Governor's Office voluntarily continues to use the specified categories, or unless new legislation addresses this apparent oversight. (A copy of Government Code section 12011.5, as amended, is attached as Appendix 11.)

3. The Governor's Office should appreciate and recognize the contributions of lawyers with disabilities and endeavor to include more of such lawyers among the Governor's appointees. All agencies reporting annual demographic data should set a timetable for implementing a process that allows for the collection of information on applicants, appointees, and sitting judges who choose to disclose that they have a disability.

OUTREACH AND EDUCATION

1. To address the underrepresentation of minorities and communities of color in the judiciary, the bench and bar should, to the extent funding permits, develop outreach programs targeting youth in at-risk and underrepresented communities. In this regard, each court should have its own community outreach program or committee to develop a community-specific program. The AOC's Judicial Diversity Toolkit could be used as the foundation for such outreach programs. The membership of a court's outreach committee should include

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representatives from the education and business communities. In addition, courts should be encouraged to establish programs similar to the First Impressions Program in Los Angeles and other programs that provide youth opportunities to learn how our court system works. Courts should be encouraged to collaborate with California Partnership Law Academies and other organizations such as AmeriCorps and Teach for America in presenting outreach and education programs. Finally, the Judicial Diversity Toolkit should be expanded to include model mock trials that teach young people about the court system (see e.g. the American Bar Association’s mock trial, *The Big Bad Wolf v. The Three Little Pigs*).

2. The Judicial Council, the State Bar, and the Governor’s Office should, to the extent funding permits, hold an annual judicial diversity summit. One focus of the summit should be to encourage lawyers from underrepresented groups to apply for judicial appointment. The summit should include a presentation from the Governor’s Judicial Appointments Secretary, or equivalent staff person, to identify attributes the Governor is seeking in judicial applicants.

3. The Judicial Council, through the Education Division of the AOC, should develop mandatory judicial training on access, fairness, and bias in judicial decision-making that will provide judges a total of three hours of ethics credit every three years. This course will be designed to, among other things, assist justices and judges in addressing perceptions among communities of color that judges engage in biased decision-making.

4. Judges should mentor at-risk or underrepresented youth, law students, and lawyers and encourage them to consider a future on the bench.

THE ONLINE JUDICIAL APPLICATION

1. If there is an erroneous entry on the online application form, the error code should identify the specific error or highlight the problem entry so that the applicant can easily correct the entry. Currently, the applicant must review the entire page to attempt to identify any errors.

THE PERCEIVED GLASS CEILING

1. Presiding judges should educate the bar about how judicial assignments are made, so that there is more transparency about the process and the bar understands that assignments are governed by rule 10.603(c)(1), Cal. Rules of Court.

2. Judges who mentor judicial applicants should ensure the applicant understands that all of the work of the court is significant and important and that the first few years on the bench are devoted to training the new judge on how to manage a courtroom and make fair judicial decisions.

3. The bar should encourage diversity in judicial assignments, so that all court users see a variety of judges in all departments in the court.

4. Data should be collected on the level of diversity in the civil, felony trials, law and motion, and complex litigation assignments.

5. Work must be done to eliminate the perception that women and judges of color willingly avoid challenging assignments. The JNE Commission, the Governor’s Judicial Selection

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Advisory Committees, the local and specialty bar association judicial evaluation committees, and others who may participate in the evaluation of judicial applicants should be informed that the superior court presiding judges have exclusive authority to assign trial court judges to the various departments. (See rule 10.603(c)(1), Cal. Rules of Court.)

6. Courts should consider mandatory rotation of judges in assignments. This will serve to level the playing field in terms of judicial experience. Women and ethnic minority trial court judges who seek elevation have found that their judicial resumés are seen as less impressive than those of their Caucasian and male counterparts because they lack experience in what are deemed to be challenging and intellectually stimulating assignments.

If you would like more information regarding the summit, contact Donna Clay-Conti at donna.clay-conti@jud.ca.gov or Patricia Lee at patricia.lee@calbar.ca.gov.

* * * * *

INTRODUCTION

The purpose of this report is to summarize the findings and recommendations of the judicial branch and state bar leaders who participated in the second summit on judicial diversity in California, *Continuing a Legacy of Excellence: A Summit on Achieving Diversity in the Judiciary*. The summit was held on September 7, 2011, in San Francisco.

BACKGROUND

In 1999, the California Judicial Council amended Goal 1 of the Judicial Branch's strategic plan to provide, among other things, that the judicial branch should reflect the diversity of California. In its current iteration, the strategic plan provides:

Goal I. Access, Fairness, and Diversity

California's courts will treat everyone in a fair and just manner. All persons will have equal access to the courts and court proceedings and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds. *The makeup of California's judicial branch will reflect the diversity of the state's residents.* (Emphasis added.)

(*Justice in Focus: The Strategic Plan for California's Judicial Branch 2006–2012*, p. 26.)

To implement this goal, the Judicial Council adopted policies 6 and 7, which provide as follows:

6. Collaborate with other branches of government and justice system partners to identify, recruit, and retain highly qualified appellate court justices, trial court judges, commissioners, referees, and other members of the judicial branch workforce, who reflect the state's diversity.

7. Collaborate with law schools, the State Bar, local bar associations, and specialty bars to achieve greater diversity in the legal profession.

(See *Justice in Focus, supra*, at p. 28.)

Through its Access and Fairness Advisory Committee and other committees and task forces, the Judicial Council implemented various strategies to improve access to justice and to increase diversity in the judiciary and the judicial branch.

Over the years, the State Bar of California also began to focus more on diversity. In 2005, the State Bar created the Diversity Pipeline Task Force, a broad-based group of stakeholders committed to fostering collaborative activities and efforts along the career pipeline, from pre-school to law school. The mission of the task force was to achieve an increase in the number of diverse lawyers entering into and advancing in the legal profession, including the judiciary. The

work of the task force was performed by various work groups, including the Courts Working Group, which was tasked with fashioning strategies for increasing judicial diversity. In 2006, the task force convened the first summit on judicial diversity (see further discussion below). In 2007, the task force evolved into the State Bar’s Council on Access and Fairness, which advises the State Bar Board of Governors on ways to increase diversity in the profession. In July 2008, the State Bar revised its strategic plan, adopting the following Goal and Strategy:

Goal 2. ADMINISTRATION OF JUSTICE —The State Bar is recognized and respected as a contributing and accountable leader in improving the administration of justice and ensuring the rule of law in our civil society.

Leadership of the Profession: In addition to its core regulatory mission, the State Bar is the “umbrella organization” which represents and leads the legal profession in the State of California. In carrying out this role, the Bar shall at all times be cognizant of the First Amendment rights of its individual member. In a manner and to an extent permitted by law, the Bar shall carry out activities in accordance with the concerns and aims of the profession, as determined by the Board of Governors. More specifically, the Bar shall execute the following strategies:

...

4. Undertake activities to enhance the diversity of the legal profession to eliminate bias in the practice of law, taking care that mandatory dues are expended appropriately.

(See *State Bar of California Long-Range Strategy*, Adopted July 11, 2008, p. 12.)

In June 2006 the first statewide Summit on Diversity in the Judiciary: Continuing a Legacy of Excellence was convened by the State Bar of California and the Judicial Council’s Access and Fairness Advisory Committee, as part of the State Bar’s 2006 Spring Summit on Diversity. At that event, California judicial officers, State Bar representatives, the Governor’s Judicial Appointments Advisor, members of the Legislature, diversity and specialty bar associations, and key stakeholders involved in the judicial appointments process gathered to examine the status of racial and ethnic diversity on the bench primarily, and gender diversity secondarily.

The purpose of the 2006 summit was twofold. The first was to further Goal I of the judicial branch’s strategic plan, Access, Fairness, and Diversity, by collaborating with justice system partners to identify, recruit, and retain highly qualified appellate court justices and trial court judges who reflect the state’s diversity, and by collaborating with law schools, the State Bar, local bar associations, and specialty bars to achieve greater diversity in the legal profession. The second was to implement provisions of the State Bar’s strategic plan, goal 2, strategy 4, by undertaking activities to enhance the diversity of the legal profession and to eliminate bias in the practice of law.

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The 2006 summit inspired several changes in the judicial appointments process and the enactment of legislation requiring the Governor, the State Bar, and the Administrative Office of the Courts annually to collect and release to the public demographic information on the ethnicity and gender of judicial applicants, appointees, and sitting judges and justices. The legislation, Senate Bill 56 (Dunn, 2006), which is codified at Government Code section 12011.5, served to increase the transparency of the appointments process.

Following the summit, the State Bar's Diversity Pipeline Task Force's Courts Working Group issued its report in March 2007, identifying specific challenges and recommendations for addressing the barriers to achieving judicial diversity in California. (See Appendix 5.)

However, since the 2006 summit, issues continued to emerge regarding:

- the formal applicant evaluation process;
- the role of the local selection committees established by local bars and other groups;
- the growing disparity between the state's population that is ethnically and gender diverse and a bench and bar that are less so;
- obtaining comprehensive and consistent demographic data from law schools, the Administrative Office of the Courts, the State Bar, the Commission on Judicial Nominees Evaluation (JNE), the Governor's Office, and the private sector; and
- the need to increase the recruitment and appointments of judicial candidates with disabilities and those from the lesbian, gay, bisexual, and transgender communities.

In recognition of California's changing demographics since 2006, it became increasingly important that our judiciary reflect the state's growing diversity and that the bench and bar participate in a further dialogue aimed at achieving greater judicial diversity and increased public trust and confidence in the judicial system. Therefore, five years after the first summit, the Judicial Council of California and the State Bar of California convened a second summit on September 7, 2011, at the Milton Marks Conference Center of the Ronald M. George State Office Complex to:

- evaluate achievements since the 2006 summit;
- focus on the current status of judicial diversity in California;
- identify best practices for increasing diversity on the bench;
- develop additional initiatives for achieving greater judicial diversity; and
- create a five-year action plan for further accomplishments.

Summary of 2011 Judicial Diversity Summit

At the invitation of Chief Justice Tani G. Cantil-Sakauye and State Bar President William Hebert (see invitation letter attached as Appendix 1), more than 75 justices, judges, other judicial branch leaders, bar leaders, and law school deans or their designees participated in the day-long summit. Before the summit, preconference materials, including demographic data, were sent to the participants so they would be better prepared to discuss the issues. Also, at the summit, each participant was given a CD containing the Judicial Diversity Toolkit developed by the Administrative Office of the Courts and the Judicial Council's Access and Fairness Advisory Committee. (See Appendix 14 for cover page and table of contents for the toolkit, and Appendix 15 for the link to the complete toolkit.)

The program was guided by Judge Brenda Harbin-Forte, Chair of the 2011 Judicial Summit Planning Committee: State Bar President William Hebert: Justice James Lambden, Chair of the Judicial Council's Access and Fairness Advisory Committee: and Judge Erica Yew, Judicial Council member. Morning and afternoon panel discussions featuring distinguished leaders of the bench and bar focused on identifying challenges in achieving a judiciary that reflects the population of California. Participants acknowledged that while some progress has been made, more diverse appointments are needed in order for the bench truly to reflect California's rich diversity. An action plan for continuing work on this important goal was the desired outcome of the summit.

Six breakout sessions, facilitated by judges and bar leaders, focused on areas where additional strategies might achieve greater results:

- Judicial Appointments and Elections
- The Leaky Pipeline
- Data Collection and Accessibility
- Outreach and Education
- The Online Judicial Application Process
- The Perceived Glass Ceiling

The breakout session discussions were recorded and the participants' recommendations are summarized below. Participants then reconvened to review and comment on the recommendations from the breakout sessions, which included increasing outreach to potential candidates for judicial appointment, mentoring of candidates and new judges, educating students about careers on the bench and resources for law school tuition, improving data collection, the importance of the role of a judicial appointments secretary, improving the accessibility of the online judicial appointment application, leadership training for judicial administrators, and increasing transparency in judicial assignments.

Funding for the summit was provided by the Administration of Justice Fund and voluntary contributions to the State Bar

Judicial Diversity Summit Presentations and Discussion Sessions

SETTING THE STAGE – SLIDE SHOW PRESENTATION

Judge Harbin-Forte presented a slide show that, among other things, compared the level of ethnic and gender diversity at the end of 2006 to the level of diversity achieved by the end of 2010, and highlighted accomplishments since the 2006 summit. (See Appendix 3 for the PowerPoint slide show presented at the summit, and Appendix 4 for supplemental slides prepared after the summit.)

Some key data points regarding status of judicial diversity:

- In 2006, Caucasians represented 40.6% of California's population, but according to the SB 56 demographic report issued by the Administrative Office of the Courts(AOC)for that year, they accounted for 70% of the judiciary, while ethnic minorities accounted for much more than half of the population but less than 30% of the judiciary. Currently, according to the AOC's SB 56 demographic report for year-end 2010, the statewide population is approximately 60% ethnic minorities, but less than 25% of the judges are minorities, while Caucasians account for only 40.1% of the population but hold 72.3% of judgeships.. (It should be noted that some judges have declined to disclose their race/ethnicity.) The gaps are especially large for the Hispanic and Asian-American populations. Hispanics represent 38% of the California population, but comprise only 8 percent of the judges. Likewise, Asian Americans make up 13% of all Californians, but only 5.4% of the judges. The numbers for African Americans are not as disparate — California is 6.2% African American (and as low as 5.8% by some counts), and 5.6% of the judges in California are African American. Yet while the trial courts now have more African- American judges than in 2006, there are only five African Americans serving on our Courts of Appeal, according to the same SB 56 report for the year 2010, and currently there is no African American and no Hispanic on the California Supreme Court.
- In 2006, women, at 50.1% of the population, held only 27.1% of judgeships, while men held 72.9%. At the end of 2010, men held more than 69% of judgeships, while women, who are now at 50.3% of California's population, represent only slightly more than 30% of the judiciary. Women do, however, hold a majority of the seats on our Supreme Court, with four women justices sitting, including the Chief Justice.

Accomplishments since the 2006 judicial summit include:

- There has been a slight increase in the percentage of minority and women judges.
- African-American judges and justices are now on an almost even par with their percentage of the total statewide population, by some counts.

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- Sitting judges now hail from more diverse backgrounds.
- Legislation [Gov. Code, §1 2011.5(n)] now mandates annual demographic reports by the Governor, the Administrative Office of the Courts, and the State Bar’s Commission on Judicial Nominees Evaluation (JNE Commission).
- Legislation [Gov. Code, § 12011.5(d)] now mandates that the JNE Commission interpret legal “experience” broadly when evaluating and rating judicial applicants.
- The State Bar’s Council on Access and Fairness was established in 2007 to advise the State Bar Board of Governors on ways to increase diversity in the legal profession and judiciary.
- The AOC, in collaboration with the Judicial Council’s Access and Fairness Advisory Committee, created a Judicial Diversity Toolkit for the Courts.
- JNE commissioners now receive training on implicit bias through the AOC’s Center for Judicial Education and Research (CJER).
- The State Bar’s Council on Access and Fairness has created training and resource materials for JNE Commission members to assist them in carrying out their obligation to interpret legal practice experience broadly.
- The judicial appointment application (formerly the PDQ) was revised to allow the Governor to gather information on a broader spectrum of an applicant’s background.
- The State Bar created tips and a checklist to assist all applicants in completing the online judicial appointment application.
- The State Bar’s Council on Access and Fairness regularly presents an MCLE “Road Show” consisting of PowerPoint slides with demographic information and commentary on the status of judicial diversity.
- Local and minority bar associations in Alameda County, Contra Costa County, Los Angeles, San Francisco, and other counties created judicial mentoring programs.
- Courts have presented programs at courthouse locations on how to become a judge.
- The Governor appointed the first African American and first woman as his Judicial Appointments Secretary in early 2007, after which there was an increase in the appointments of women and ethnic minorities.
- Our Supreme Court now has its first ethnic minority Chief Justice, Justice Tani Cantil-Sakauye, who is an Asian-Pacific Islander woman.
- Our Supreme Court now has a majority of ethnic justices, with four justices of Asian-Pacific Islander descent.
- The August 2011 confirmation panel for the most recent Supreme Court appointee, Justice Goodwin Liu, was all-female for the first time in our state’s history, consisting of Chief Justice Tani Cantil-Sakauye, Presiding Justice Joan Dempsey Klein, and Attorney General Kamala Harris.

Why Value Diversity?

Judges can and do influence each other. They exchange ideas on and off the bench. A judiciary that is comprised of judges from differing backgrounds and experiences leads to an interplay and exchange of divergent viewpoints, which in turn prevents bias, and leads to better, more informed decision making. Diversity of opinion among decision makers encourages debate and reflection, and fosters a deliberative process that leads to an end product that is greater than the sum of its parts.

(Editorial, *American Judicature Society Magazine*, March/April 2010.)

Why Concern Ourselves with Population and Not Bar Membership?

- Lawyers don't own the cases, causes of actions, and claims litigated in our courts — CLIENTS DO.
- CLIENTS come from the general population.
- Lawyers want fair results for CLIENTS.
- There has been an explosion of self-represented litigants who come from the general population.
- "PUBLIC" trust and confidence equates to "general population" trust and confidence in our court system.

ONGOING CHALLENGES – PANEL DISCUSSION

The morning panelists discussed the stated goals of achieving a diverse judiciary and identified challenges facing the bench and bar in achieving these goals.

Moderator: Hon. Erica R. Yew, Superior Court, County of Santa Clara

Panelists:

Sen. Joseph L. Dunn(Ret.), Executive Director and CEO, The State Bar of California

William C. Vickrey, Administrative Director of the Courts, Administrative Office of the Courts

Yolanda Jackson, Esq., Deputy Executive Director and Diversity Director, Bar Association of San Francisco

Maribel Medina, Esq., La Raza Lawyers of California, Chair, Judicial Appointments Committee

Nanci Nishimura, Esq., California Women Lawyers, Second Vice- President

Edwin Prather, Esq., Immediate Past President, Asian Pacific Bar of California

Russ Roeca, Esq., Former Member, State Bar Council on Access and Fairness; Former President, Bar Association of San Francisco

Why are there so few minorities and women on the bench?

- **Salary Level:** It is difficult to recruit from among more successful and established attorneys when judicial salaries are not comparable.
- **Benefits:** The Tier 2 retirement plan is a deterrent because attorneys are reluctant to leave current positions with good benefits to join the bench.
- **Commissioners/Referees:** These positions are less attractive to experienced lawyers; positions are decreasing with budget cuts and conversion of positions to judgeships; there are fewer opportunities to increase diversity at this level because judges in each county hire commissioners and referees, and if judges are not diverse, commissioners and referees hired are less likely to be diverse.

Will the lack of an official Judicial Appointments Secretary impact the number and nature of judicial appointments?

- Whether a Judicial Appointments Secretary is necessary depends on the Governor.
- Challenges existed in all prior administrations.
- If the Governor is not a lawyer, she or he would need a strong Judicial Appointments Secretary. Governor Brown is an exception because he understands all aspects of judicial appointments.
- With no person directly responsible for judicial appointments, individuals and organizations will lobby the Governor directly. Women and racial and ethnic minorities may not enjoy the same access to the Governor as others. With a Judicial Appointments Secretary, individuals and entities will have a specific contact person for judicial appointments. Also, this person can go into the field to serve as a panelist on programs to address judicial appointment issues

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and diversity concerns, as well as to share the Governor's philosophy regarding appointments.

Should the membership of the Governor's Judicial Selection Advisory Committees (JSACs), also known as the "secret committees," remain confidential?

- Because the "secret committees" make critical decisions, the membership and discussion should be open (per Brown Act philosophy). In reality, many of the members are known in some counties. In other counties, there is an "old boys' network" that is perpetuated by the JSACs. Many in the minority legal community and women's attorney organizations do not know the identity of members on the committees and often do not have access to the "inner circles."
- The secret committees are not held to the same legal standard as public entities responsible for judicial evaluations. For example, the JNE Commission must comply with Government Code section 12011.5(d) and construe legal experience broadly in determining whether a candidate is qualified, but the JSAC members have no such responsibility.
- On the other hand, the Governor has sole discretion in making judicial appointments and can rely on a full range of resources and feedback to identify the best candidates to appoint to the bench.
- In addition, the JSAC members may be able to operate more effectively if their identities remain confidential.

What issues do we face regarding the judicial pipeline?

- As we seek to increase women and minority appointments, we must ensure that the "whole person" is evaluated without compromising the quality of appointments.
- Pipeline issues require that we reach youths before they enter high school to educate them about legal careers, including judicial careers and the importance of diversity on the bench.
- Obstacles to an open pipeline include:
 - The lack of education and sense of empowerment;
 - Generational implications (older generations are less inclined to support careers in the law);
 - Economics (judicial salaries and pension benefits);
 - Bar associations that lack sustained focus on education, social engineering, mentoring, bias/stereotyping in the appointments process;
 - Insufficient numbers of judges to serve as role models and mentors through community outreach; and
 - Lack of focused collaboration among the bench, the bar, the Governor, and the JNE Commission.

How can minority and other diversity bars work together to support diverse appointments?

- This is an unprecedented time of cooperation among the various minority bars, and sharing of information among all groups. Minority bars will coalesce around specific candidates, regardless of ethnicity. The key is to ensure that the best minority candidates are confirmed for appointment. While there was disappointment among Hispanic and African-American bar associations that no one from their ethnic group was appointed to the Supreme Court, all will continue to work together.
- The San Francisco Bay Area Minority Bar Coalition is actively working on a process for vetting judicial candidates and engaging in a dialogue to overcome the perception that if one ethnic group “wins,” then another group “loses.” All stakeholders should understand that this is not a zero-sum game.
- The broader discussion should be what to do about a Supreme Court and other courts that do not reflect the diverse population of this state.
- Although there is a majority of Asian-Pacific Islanders (API) justices on the Supreme Court, and no African-American or Hispanic justice, it should be remembered that APIs are underrepresented in all other courts and there are still many issues to be addressed in this respect. It is important that future appointments not be viewed differently due to a feeling that “the API community has already been taken care of.”

How do we ensure diversity when it comes to the lesbian, gay, bisexual and transgender (LGBT) community?

- In deciding whether the Governor should solicit information from an applicant about gender identity and sexual orientation, we need to ensure that a person’s privacy is protected. Disclosure of such information should be voluntary.
- Data should be collected from the online applications for judicial appointment so the Governor can report the number of LGBT applicants.
- Data regarding gender identity and sexual orientation should be collected from sitting judges and reported in the annual demographic report issued by the Administrative Office of the Courts.

(NOTE: After the summit, the Governor signed legislation, Senate Bill 182 (Corbett), which amended Government Code section 12011.5 to require that, in addition to race, ethnicity, and gender, the Governor, the State Bar and the Administrative Office of the Courts (AOC) collect and release demographic data regarding the sexual orientation and gender identity of judicial applicants and sitting judges. A copy of section 12011.5, as amended, is attached as Appendix 11.)

Is there a glass ceiling for women and minorities in judicial assignments?

- It is not clear, as there is no current data on court assignments by gender and race.
- Objective criteria are needed so that assignments can be analyzed and tracked.
- Presiding judges should consider automatic assignment rotations among sitting judges.
- The bench needs to be cognizant of possible unconscious bias in the assignment process.

How do we avoid resting on our laurels and how do we address budget implications?

- At the 2006 summit, issues were raised regarding problems in recruiting public attorneys to the bench due to low judicial salaries and an unattractive retirement system.
- Legislation was introduced to improve the retirement system, but the bill died in the Legislature. To recruit more women, minority, and public interest lawyers, this issue should be revisited.
- There is a concern regarding the slow progress toward a more diverse bench. A stronger voice expressing impatience about the progress is needed. At the current rate of appointments, it will take 21 years to reach population parity as to gender and 31 years to reach population parity as to ethnic diversity.
- A dwindling judicial branch budget impacts the ability to sustain increases in judicial diversity and continue those gains into the future. However, this should not diminish continued efforts to achieve our goal of a diverse judiciary.
- In 2014 it is estimated that 114 judges will retire. There are qualified diverse candidates statewide who can be appointed to the bench. The pipeline must be sustained so these candidates are considered for appointment.

TRAINING PRESENTATION ON IMPLICIT BIAS

Attorney Kimberly Papillon (Senior Education Specialist, Education Division/CJER, AOC) presented a snapshot of the implicit bias training that JNE commissioners undergo. The interactive presentation highlighted the relationship between neuroscience and implicit bias in the candidate evaluation process. One study demonstrated that even when women and men have identical resumés, women applicants are routinely perceived as less qualified and subjected to more scrutiny. This troubling phenomenon has also been documented to occur when the resumés of ethnic candidates are compared with Caucasian candidates possessing identical or substantially the same qualifications.

BREAKOUT SESSIONS, PANEL DISCUSSION, AND OPEN DIALOGUE

Concurrent breakout sessions were held addressing the following topics:

- Judicial Appointments and Elections (facilitated by Judge Allen Webster, Los Angeles)
- The Leaky Pipeline (facilitated by Attorney Ruthe Ashley, CEO of Diversity Matters, Rocklin)
- Data Collection and Accessibility (facilitated by Judge Esteban Hernandez, San Diego)
- Outreach and Education (facilitated by Judge Luis Lavin, Los Angeles)
- Online Judicial Application (facilitated by Judge Marguerite Downing, Los Angeles)
- The Perceived Glass Ceiling (facilitated by Presiding Judge Diana Becton, Contra Costa)

Panelists then provided initial feedback on reports from the breakout sessions, and summit participants engaged in an open dialogue on the issues presented. The panelists were:

Moderator: Justice James Lambden, Court of Appeal, First Appellate District

Panelists:

Justice William J. Murray, Jr., Court of Appeal, Third Appellate District

Justice Maria Rivera, Court of Appeal, First Appellate District

Judge Russell Hom, Superior Court, County of Sacramento

Judge Sharon Majors-Lewis, Superior Court, County of San Diego

Drucilla Ramey, Dean, Golden Gate University School of Law

Andrew Steckler, Esq., Chair, State Bar Commission on Judicial Nominees Evaluation (JNE)

The panel feedback and audience open dialogue proceeded as follows:

JUDICIAL APPOINTMENTS AND ELECTIONS

The discussion in the breakout group focused on the need for expanded outreach about the importance of a diverse judiciary, streamlining the online application process, encouraging minority and other diversity bars to create formal judicial evaluation procedures, and providing mentoring for judicial applicants to include information about the process and the level of commitment needed.

The panel and audience discussion included the following points:

- The JNE Commission considers different levels of diversity, including race, gender, experience, and geography. Moreover, there is enhanced transparency in the evaluation process because the names of JNE commissioners and the JNE rules governing evaluation of candidates are published on the publicly accessible State Bar website.
- The JNE Commission's annual demographic reports show for each ethnic and gender group the percentage of the total group referred by the Governor's Office.

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- The JNE Commission is required to interpret legal “experience” broadly, and must consider qualities and skills for lawyers from a wide variety of practice settings.
 - JNE commissioners voluntarily undergo bias training each year presented by the AOC/CJER. (NOTE: After the summit, the Governor signed legislation, AB 126 (Davis), which amended Government Code section 12011.5 to make bias training mandatory for JNE commissioners. See Appendix 11 for amended version of section 12011.5.)
 - The chair of the JNE Commission committed, on the spot, to implementing two recommendations from summit participants:
 - ◆ In addition to the current implicit bias training presented by the AOC, JNE commissioners will undergo diversity training that includes demographic information and statistics on the status of judicial diversity, presented by the State Bar’s Council on Access and Fairness (COAF);
 - ◆ JNE will expand the “Bias” section of the Confidential Comment Form. The form currently has a “yes” or “no” response to the question of whether the applicant exhibits bias. The form will be changed to ask whether the candidate:
 - Expresses cultural sensitivity: yes__ no__
 - Expresses commitment to equal access to justice: yes__ no__
- (NOTE: The recommendations from the Judicial Council’s Commission on Impartial Courts align with the recommendations here for JNE to investigate a candidate’s exposure to communities of color and experience with persons from diverse backgrounds and report that information to the Governor’s Office.)*
- Consideration should also be given to ensuring that the Confidential Comment Form includes questions designed to elicit information to assist the JNE Commission in carrying out its statutory mandate to interpret experience broadly.

THE LEAKY PIPELINE

Participants in the breakout session identified several issues affecting the pipeline into the judiciary, including the impact of the high cost of a legal education on law school applications, the need for more outreach focused on the value of a legal education, the barriers to law school admission for minority students, the impact of the U.S. News and World Report’s rankings on law school admissions policies, the need to consider additional options to the LSAT exam (such as the “effective lawyering” tools developed by Prof. Marjorie Shultz and Dr. Sheldon Zedeck), and the impact of Prop. 209 on the ability of law schools to recruit and enroll minority students.

The breakout group indicated that the concerns of a “leaky pipeline” fell into two categories: (1) law school admissions and (2) expense and time of law school. The following comments were made during the panel and audience discussion:

Law school admissions

- With the current trend of reduced law school admission of minority students, concerns emerge regarding signs of re-segregation of the profession and ultimately the judiciary.
- Prop. 209 has a significant impact on admission of diverse students into law schools. Since the passage of Prop. 209, almost all ethnic minority groups (except for certain Asian groups) have experienced a dramatic decrease in law school admissions.
- It should be noted that Asian American “success” is misleading because when you look at the legal profession, the numbers still show a lack of API law firm partners and judges.
- The combination of alumni preferences and Prop. 209 works against diversity in admissions.
- Scholarships and academic support programs for Caucasian students and the impact of U.S. News and World Report rankings result in admissions criteria benefitting Caucasian students.
- Law school achievement is not correlated to the actual successful practice of law, and this lack of correlation works against minorities who have attributes that can transform them into successful practitioners. Schools should apply innovative criteria, such as those recommended in the Shultz/Zedeck study identifying factors for “effective lawyering.” Funding should be obtained to implement studies like the Shultz/Zedeck study and to provide formal assistance to ethnic minorities for LSAT preparation.

Expense and time of law school

- High student loans and unattractive repayment policies act as deterrents to pursuing a legal career. A law degree, however, is a valuable and versatile degree, and there are various loan repayment options, loan forgiveness programs, and scholarships available.
- The reality regarding opportunities in the legal profession is not as bad as reported; jobs are still there and the legal profession is recovering more quickly than other professions.
- As a consequence of Prop. 209 limitations on the ability of public law schools affirmatively to recruit ethnic minorities and women, private law schools are admitting more minorities and women.
- As discussed in the Shultz/Zedeck study, law schools are reluctant to expand the curriculum to provide practical education. Law schools see themselves as training legal minds and focusing on the analytical process; they view practical training as the role of a “trade school,” not a law school.
- Despite resistance from law schools, the legal community should pressure them to emphasize practice skills training in addition to training in legal concepts and analytical skills.

DATA COLLECTION AND ACCESSIBILITY

Discussion in this breakout focused on the need for consistent demographic reporting under Government Code section 12011.5 and the role for an official Judicial Appointments Secretary. Specifically, participants commented that the data should allow an apples-to-apples comparison by requiring all reporting entities to use the same ethnic and racial categories. To collect data regarding disabilities, sexual orientation, and gender identity: and to provide both raw numbers and percentages on the mandated demographic reports. The group also emphasized the need for the Governor to appoint an official Judicial Appointments Secretary.

The panelists and summit participants offered the following comments and suggestions:

- Continue to compile prior and current data to assess the progress of judicial diversity.
- Until the passage of SB 56 in 2006, which mandated reporting of demographic data from the Governor, the AOC, and the State Bar's JNE Commission, there was no official data available.
- SB 182 and AB 126 (the latter of which was pending on the date of the summit and was subsequently signed by the Governor) require collection and reporting of LGBT data and require two hours of mandatory bias training for JNE commissioners annually .
- Gather demographic information on who is applying for appointment, who is sent to JNE, how JNE rates the applicants, and who is appointed to determine if there is a pipeline issue.
- Accurate, open data will help to dispel myths. For example, the State Bar's JNE Commission demographic reports show sufficient numbers of diverse applicants in the pool who have been rated qualified but were NOT appointed.
- There is no data for applicants, ratings and appointments for attorneys with disabilities.
- The Governor's reports provide percentage figures for appointments, but not raw numbers. The reporting of raw numbers allows accurate comparisons of appointment data with the data provided by the AOC and the State Bar's JNE Commission.
- The Governor should designate a formal Judicial Appointments Secretary to assist the Governor in keeping track of and reporting raw numbers for applicants and appointees.
- Implicit in the goal for judicial diversity is for judicial demographics to reflect California's population. It is presumed that anyone who brings morals and integrity to the bench will be fair, but that standard will not increase diversity. The focus here is on increasing appointments to the bench from underrepresented groups.

OUTREACH AND EDUCATION

This breakout group discussed the need for increased community outreach by the bench and bar regarding the importance of judicial diversity, keeping the issues in the forefront by holding an annual judicial summit, providing ongoing bias training for judges, maintaining an ongoing

relationship with the Governor’s Office about judicial diversity issues, and having the courts participate in education pipeline programs in elementary, middle, and high schools.

The panelists and audience offered the following comments and observations:

- The courts and stakeholders should create local community outreach committees that focus primarily on youth from disadvantaged communities. The pipeline starts with youth. Judges should visit elementary schools to explain what judges do and encourage students to stay in school and get an education.
- Create a “contract for success” with students from disadvantaged and underrepresented communities. For example, members of the Wiley Manuel Bar Association in Sacramento visit schools and educate students on pathways to the legal profession.
- California Partnership Law Academies, established through the California Department of Education, can be a primary model. All attorneys and judges can volunteer to participate in classroom discussions, allow students to job shadow, conduct courtroom visits for students, and engage in other similar and creative activities.
- Judges must be culturally competent regarding the communities they serve.
- Fairness and cultural competency training should be tied to judicial liability insurance requirements.

THE ONLINE JUDICIAL APPLICATION

Difficulties with the online application were the focus of this breakout. Issues included timing out during completion of the online application: the inability to save the online application and return to it at a later time, to return to a prior completed section of the application after moving on to a new section, or to complete sections in a random order; and the need for the questions to be streamlined, for the number of mandatory information fields to be reduced, and for questions that ask for specific dates to be modified.

The panelists and audience commented as follows:

- The online application was implemented to facilitate the application process, by a former Judicial Appointments Secretary, Judge Sharon Majors-Lewis, .
- The Governor’s Office is aware of the difficulties in completing the online application and is attempting to address the issues within the limitations posed by the state’s computer server capacity.
- An ongoing dialogue should be maintained with the Governor’s Office regarding the format, substance, and process related to the online application.

THE PERCEIVED GLASS CEILING

The breakout session highlighted an issue related to judicial assignments. Some women and judges of color have expressed concern that they are often assigned to departments that are perceived as “less desirable,” such as traffic, family, and juvenile, and are often kept in such assignments for longer periods of time than their majority counterparts. Participants expressed concern that the lack of opportunity to gain experience in the “more desirable” assignments might impact recruitment and retention of women and judges of color. In addition, prior governors have found it difficult to recruit senior partners from large firms and senior prosecutors because those potential candidates felt that traffic, family, and juvenile assignments were not worthy of their talents and expertise. Discussion also focused on the lack of transparency regarding judicial assignments, and the need for courts to share information on how assignments are made, the need to collect data on judicial assignments, and the need for the bench and bar to work together on the assignment process. Finally, some participants stated that women and judges of color must be provided an equal opportunity to increase the weight of their judicial resumés so that, when seeking elevation, they can tout the variety and difficulty of their trial court assignments.

The panel and summit participants commented as follows:

- More data should be collected to determine how judicial assignments impact recruitment to the bench.
- More data and increased transparency regarding judicial assignments are needed to determine if the glass ceiling perception is valid.
- There is a need to educate potential judicial applicants and new appointees about the importance of “less desirable” assignments in the larger context of the entire court system. New judges need to understand that these assignments facilitate mastery of important judicial skills such as managing the calendar, learning how to deal with litigants from diverse communities, and learning how to handle cases involving economically challenged litigants.

FINAL RECOMMENDATIONS

The final recommendations track the topics discussed in the six breakout groups: the judicial appointments and elections process; the leaky pipeline resulting from low numbers of ethnic minorities in law schools; judicial diversity data collection and accessibility; the level and types of outreach and education needed to encourage more persons to enter the legal field and seek appointment to the bench; issues with the online judicial application; and finally, the perceived glass ceiling for women and ethnic minorities when it comes to judicial assignments.

Some recommendations made by participants are not included in this final report because events following the summit demonstrate that the issues have been adequately addressed and no future action is needed. For example, summit participants recommended that the Governor appoint a Judicial Appointments Secretary. It was not necessary to include such a recommendation in this final report because the Governor has already assigned to one of his senior advisors all of the tasks that past judicial appointments secretaries performed, such as evaluating and recommending candidates for judicial appointment and presenting statewide programs on the Governor's judicial appointments process.

Similarly, summit participants recommended that the AOC, the State Bar, and the Governor compile and report information on applicants, appointees, and sitting judges who choose to self-identify as lesbian, gay, bisexual, or transgender. After the summit, Senate Bill 182 (Corbett) was enacted, amending Government Code section 12011.5(n) to provide that the Governor, the State Bar, and the AOC must collect and release demographic data "relative to ethnicity, race, gender, *gender identity, and sexual orientation.*" (Emphasis added.) The legislation was effective on January 1, 2012.

Finally, summit participants recommended that the Governor's Office reevaluate the online judicial application process to eliminate barriers faced by persons with disabilities. Since the summit, the Governor's Office (1) reduced to one the number of required fields that need to contain exact information on law school graduation and bar admission dates (the month and day now no longer have to be exact; only the exact year is required), (2) lengthened the allowable time to complete the application to three hours per page before the system times out, and (3) implemented a process that permits applicants with disabilities who request an accommodation to submit their applications in hard copy, rather than online. This extraordinary level of responsiveness by the Governor's Office eliminates the need to include recommendations for future action in these areas.

The final recommendations, listed below, are based upon input from judicial branch leaders, the Governor's Office, State Bar leaders, summit participants, and the summit planning committee.

JUDICIAL APPOINTMENTS AND ELECTIONS

1. Judges and lawyers should reach out to law schools to educate students on how to become a judge, so that law students can begin at that early stage of their careers to lay the groundwork for serving as a judge. Where possible, judges should employ law students in the courtroom and should establish or participate in programs designed to bring high school students into the courts.
2. So that applicants can better appreciate the level of commitment involved in the application process, judges should serve as mentors to coach potential applicants through the details of, and emotional barriers to, completing the application process.
3. Mentor judges should encourage potential applicants to work in their communities and to be involved with local bar associations.
4. Judges should be proactive and identify the most viable candidates for appointment. Once these candidates are identified, judges should not only mentor these individuals through the application process, but should also offer practical advice on how to be a good judge, manage a courtroom, and avoid the pitfalls that many new judges encounter.
5. To lend more credibility to their recommendations, minority and specialty bar associations should establish a formal application and evaluation process that is equivalent to the process used by the metropolitan bars.
6. The Governor should continue to provide his Judicial Selection Advisory Committee (JSAC) members with educational materials on the status of ethnic and gender diversity on the bench as compared to the state's population, and on the ways implicit bias may impact evaluations of applicants for judicial appointment. JSAC members should also be educated on how the judicial assignments process works at the superior court level, so they understand that the presiding judge has sole authority to make judicial assignments (see rule 10.603(c)(1), Cal. Rules of Court). To assist the Governor in educating JSAC members, the AOC and the State Bar Council on Access and Fairness should, to the extent funding permits, provide training in the areas of judicial diversity and implicit bias, if such training is requested by the Governor's Office.

THE LEAKY PIPELINE

1. The legal profession must undertake a concerted effort to educate the public about the value and benefits of a legal education, while at the same time acknowledging the reality that such an education is quite expensive. Part of this education process must include outreach to ethnic minorities to communicate the value to the minority community that being a lawyer brings.
2. Law schools and the legal profession should seek funding to implement innovative studies, such as the recommendations contained in Schultz and Zedeck's effective lawyering study, which developed race-neutral tools for identifying 26 factors that are predictors of attorney competence (see <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>). These

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tools could be used as a supplement to the LSAT (Law School Admissions Test). Note that the same tools are being considered for application in the legal employment area through focus groups and symposia being conducted by the State Bar Council on Access and Fairness.

3. The legal profession should seek private sector funding to provide financial assistance for economically challenged students to take LSAT preparation courses.

4. Law schools should be encouraged to create a culture of inclusion on campus. Law students of color should be exposed to more role models in the judiciary, and law schools should place greater emphasis on community-oriented or public sector employment as desirable career options.

DATA COLLECTION AND ACCESSIBILITY

1. The Governor's Office should be encouraged to provide more transparency in the application and appointment process, so that the success of efforts to increase judicial diversity can be more readily assessed.

2. In reporting annual demographic information, the Governor's Office should continue to do what it historically has done and use the same ethnic and racial categories specified in Government Code section 12011.5(n)(C)(3). (Please note that, after the summit, SB 126 (Davis) was enacted, which amended Government Code section 12011.5 so that it now provides, in subdivision (n)(C)(3), that the State Bar and the Administrative Office of the Courts shall use specified ethnic and racial categories in the annual demographic reports. The legislation does not impose such a mandate on the Governor's Office. The original bill language required the State Bar and the AOC to use the same categories as the Governor already was using, but language referencing the Governor's categories was amended out. Consequently, the ability to track the progress of judicial diversity by comparing apples to apples may yet remain elusive, unless the Governor's Office voluntarily continues to use the specified categories, or unless new legislation addresses this apparent oversight. (A copy of Government Code section 12011.5, as amended, is attached as Appendix 11.)

3. The Governor's Office should appreciate and recognize the contributions of lawyers with disabilities and endeavor to include more of such lawyers among the Governor's appointees. All agencies reporting annual demographic data should set a timetable for implementing a process that allows for the collection of information on applicants, appointees, and sitting judges who choose to disclose that they have a disability.

OUTREACH AND EDUCATION

1. To address the underrepresentation of minorities and communities of color in the judiciary, the bench and bar should, to the extent funding permits, develop outreach programs targeting youth in at-risk and underrepresented communities. In this regard, each court should have its own community outreach program or committee to develop a community-specific program. The AOC's Judicial Diversity Toolkit could be used as the foundation for such outreach programs. The membership of a court's outreach committee should include

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representatives from the education and business communities. In addition, courts should be encouraged to establish programs similar to the First Impressions Program in Los Angeles and other programs that provide youth opportunities to learn how our court system works. Courts should be encouraged to collaborate with California Partnership Law Academies and other organizations such as AmeriCorps and Teach for America in presenting outreach and education programs. Finally, the Judicial Diversity Toolkit should be expanded to include model mock trials that teach young people about the court system (see e.g. the American Bar Association’s mock trial, *The Big Bad Wolf v. The Three Little Pigs*).

2. The Judicial Council, the State Bar, and the Governor’s Office should, to the extent funding permits, hold an annual judicial diversity summit. One focus of the summit should be to encourage lawyers from underrepresented groups to apply for judicial appointment. The summit should include a presentation from the Governor’s Judicial Appointments Secretary, or equivalent staff person, to identify attributes the Governor is seeking in judicial applicants.

3. The Judicial Council, through the Education Division of the AOC, should develop mandatory judicial training on access, fairness, and bias in judicial decision-making that will provide judges a total of three hours of ethics credit every three years. This course will be designed to, among other things, assist justices and judges in addressing perceptions among communities of color that judges engage in biased decision-making.

4. Judges should mentor at-risk or underrepresented youth, law students, and lawyers and encourage them to consider a future on the bench.

THE ONLINE JUDICIAL APPLICATION

1. If there is an erroneous entry on the online application form, the error code should identify the specific error or highlight the problem entry so that the applicant can easily correct the entry. Currently, the applicant must review the entire page to attempt to identify any errors.

THE PERCEIVED GLASS CEILING

1. Presiding judges should educate the bar about how judicial assignments are made, so that there is more transparency about the process and the bar understands that assignments are governed by rule 10.603(c)(1), Cal. Rules of Court.

2. Judges who mentor judicial applicants should ensure the applicant understands that all of the work of the court is significant and important and that the first few years on the bench are devoted to training the new judge on how to manage a courtroom and make fair judicial decisions.

3. The bar should encourage diversity in judicial assignments, so that all court users see a variety of judges in all departments in the court.

4. Data should be collected on the level of diversity in the civil, felony trials, law and motion, and complex litigation assignments.

5. Work must be done to eliminate the perception that women and judges of color willingly avoid challenging assignments. The JNE Commission, the Governor’s Judicial Selection

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Advisory Committees, the local and specialty bar association judicial evaluation committees, and others who may participate in the evaluation of judicial applicants should be informed that the superior court presiding judges have exclusive authority to assign trial court judges to the various departments. (See rule 10.603(c)(1), Cal. Rules of Court.)

6. Courts should consider mandatory rotation of judges in assignments. This will serve to level the playing field in terms of judicial experience. Women and ethnic minority trial court judges who seek elevation have found that their judicial resumé's are seen as less impressive than those of their Caucasian and male counterparts because they lack experience in what are deemed to be challenging and intellectually stimulating assignments.

ACTION PLAN

A review of the pie charts and bar graph PowerPoint slides provided as Appendix 4 reveals that much work remains to be done if California is to achieve the goal of having a judiciary that reflects the state's richly diverse population. Although a seemingly daunting task, the impressive list of accomplishments since the 2006 summit should provide a level of confidence that we can attain our goal.

Key to any level of future success will be a formal commitment from the judicial branch and the State Bar to continue their historic collaborative efforts to increase diversity in the legal profession and the judiciary. To facilitate this ongoing endeavor, a joint informal collaborative working group will be established consisting of members of the State Bar's Council on Access and Fairness and the Judicial Council's Access and Fairness Advisory Committee. The informal working group will invite participation from the Governor's advisor on judicial appointments, legislative staffers as designated by members of the Legislature: representatives from the Administrative Office of the Courts' Office of Governmental Affairs: the presidents or chairs of the African-American, Asian-Pacific Islander, and Hispanic judges associations; ethnic and specialty bar association representatives: and other key stakeholders. The informal working group will prioritize the recommendations contained in this report and set goals and timetables for completion.

Anyone desiring additional information regarding the summit or the work of the joint informal collaborative working group may contact Donna Clay-Conti at donna.clay-conti@jud.ca.gov or Patricia Lee at patricia.lee@calbar.ca.gov.

Respectfully submitted,

Brenda Harbin-Forte

Hon. Brenda F. Harbin-Forte, Chair
2011 Judicial Summit Planning Committee

APPENDICES

- APPENDIX 1: Invitation to the 2011 Judicial Summit
- APPENDIX 2: 2011 Judicial Summit Agenda

PowerPoint Slides:

- APPENDIX 3: PowerPoint slides presented at the 2011 summit
- APPENDIX 4: Supplemental PowerPoint slides

Reports:

- APPENDIX 5: State Bar's Diversity Pipeline Task Force, Courts Working Group's Final Report and Recommendations (February 2007)
- APPENDIX 6: Summary: 2006 Judicial Diversity Summit
- APPENDIX 7: Link to Judicial Council of California 2005 Report, *Trust and Confidence in the California Courts, Phases I and II*
(http://www.courts.ca.gov/documents/4_37pubtrust1.pdf;
http://www.courts.ca.gov/documents/PTC_phase_II_web.pdf)

Year End 2010 SB 56 Demographic Reports¹:

- APPENDIX 8: Governor's Judicial Applicant Data Report
- APPENDIX 9: State Bar of California, Commission on Judicial Nominees Evaluation (JNE Commission) Statewide Demographic Report
- APPENDIX 10: Judicial Council of California/Administrative Office of the Courts' Report, Demographic Data Provided by Justices and Judges Relative to Gender and Race/Ethnicity

Legislation:

- APPENDIX 11: Government Code section 12011.5 (as amended, effective 1/1/2012)

Resource Materials:

- APPENDIX 12: State Bar's Council on Access & Fairness Tips/Checklist for Completing Online Application
- APPENDIX 13: State Bar's Council on Access and Fairness Report re JNE Commission Resource Materials [applying Govt. Code 12011.5(d)]
- APPENDIX 14: AOC's Judicial Diversity Toolkit, *Pathways to Achieving Judicial Diversity in the California Courts*, Cover Page and Table of Contents
- APPENDIX 15: Link to complete copy of AOC's Judicial Diversity Toolkit
G:\LGL_SVCS\CHILDREN.CTR\ACC&FAIR\Diversity\Judicial Diversity Toolkit\Draft Toolkit\Final Version\Judicial Diversity Toolkit.pdf

¹ Since the conclusion of the summit, the 2011 SB56 demographic reports were released. The links to those reports are at: <http://gov.ca.gov/news.php?id=17437>; <http://www.courts.ca.gov/documents/2011DemographicReport.pdf>; and http://www.calbar.ca.gov/Portals/0/documents/JNE/2012-02_JNE_FinalTotalCandidatesSubmittedforEvaluation_r.pdf.

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