Perceptions of Justice
A Dialogue on Race, Ethnicity, and the Courts

Summary Report

In the late 1980s, many federal and state courts studied how litigants, jurors, attorneys, judges, and the general public perceived the administration of justice. In particular, the courts were concerned with how litigants’ race or ethnicity affected the actual administration of justice, and the public’s perception of how the courts responded to race and ethnicity. These studies led to many reports and recommendations. In addition, several states created “listening” programs for members of the public to share their experiences with the justice system.

In 2008, the ABA Judicial Division Lawyers Conference created the Perceptions of Justice project. The Lawyers Conference held programs nationwide in Boston, Dallas, Chicago, Washington, D.C., San Francisco, and Atlanta. Each event was uniquely designed to provide education and a forum for open dialogue between judges and members of the community about perceptions of and personal experiences with the justice system. A modified “town hall” format with small group discussions was used for some programs and expert panels with audience participation were employed in others.

This report provides an overview of each Perceptions of Justice (POJ) program and highlights some of the themes that emerged. In Phase II of the project, which will begin in September 2011, the Lawyers Conference will analyze the themes and lessons from the programs and propose strategies for addressing identified concerns. This analysis will be showcased in a panel discussion during the 2012 ABA Midyear Meeting in New Orleans, Louisiana. The Lawyers Conference also will create a “how-to” guide to assist bar associations and other entities that are interested in conducting their own town hall meetings.

Notes

1 The National Center for State Courts maintains a list of State programs and reports as part of its project: Race and Ethnic Fairness in the Courts. Those materials can be accessed at www.ncsconline.org/D_Research/ref/.

2 The project originally was known as the Assumptions of Justice project but the title was subsequently changed to the Perceptions of Justice project.

3 This report includes text and information that previously was published in Judicial Division Record articles from 2008-2011 and in the American Bar Association Judicial Division’s Judges’ Journal (Vol. No. 50, Issue 3, Summer 2011). The statements, views, and opinions expressed by the POJ participants that are quoted, described, or summarized in this Summary Report do not necessarily represent the views, opinions, or official position of any of the following: the American Bar Association, Judicial Division, Lawyers Conference, POJ Committee members, or drafters of this Report.

Contents

<table>
<thead>
<tr>
<th>Location</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston</td>
<td>2</td>
</tr>
<tr>
<td>Dallas</td>
<td>3</td>
</tr>
<tr>
<td>Chicago</td>
<td>4</td>
</tr>
<tr>
<td>Washington, D.C.</td>
<td>6</td>
</tr>
<tr>
<td>San Francisco</td>
<td>8</td>
</tr>
<tr>
<td>Atlanta</td>
<td>10</td>
</tr>
<tr>
<td>Conclusion</td>
<td>12</td>
</tr>
<tr>
<td>Acknowledgments</td>
<td>12</td>
</tr>
</tbody>
</table>
The first POJ event was a Continuing Legal Education program held during the 2009 ABA Midyear Meeting in Boston. The program started the first phase of the Lawyers Conference’s multi-year initiative to bring forth a meaningful dialogue about race, ethnicity, and the courts aimed at improving the administration of justice and advancing community and ABA efforts where change is needed. Entitled “The Assumption of Justice: a Dialogue on Color, Ethnicity and the Courts,” the program was organized around a panel of judges and academics who provided scholarly and experiential background on the topics of race and privilege, color perception, institutionalized racism, and disparities in charging and sentencing minorities in the justice system.

At the program, Dr. Tanya K. Hernández, Professor of Law at the George Washington University Law School, Washington, D.C., addressed “institutional racism” in the context of Title VII workplace discrimination cases. She noted that courts can overlook intragroup bias in Title VII cases where workplace diversity exists, and such bias can be as harmful to equal protection as white bias against black people. More generally, she added, changing U.S. demographics require judges to have more information about discrimination within multiracial settings than is provided by current diversity statistics.

Judge Peter Buchsbaum, a New Jersey Superior Court Judge, described the New Jersey judiciary’s effort to reduce bias, which started twenty-five years ago at the behest of then Chief Justice Robert Wilenz. Judge Buchsbaum helped prepare an Action Plan on Minority Concerns that the New Jersey Supreme Court implemented. He explained that committees in every judicial district create programs on bias and develop relevant statistics on an ongoing basis. He also said that “the court system must be . . . [a] place where Blacks and Latinos are treated fairly.”

Dr. Peggy McIntosh, Associate Director at Wellesley Centers for Women in Boston, MA, described bias as the outgrowth of privilege systems within which we all necessarily live. She said that everyone comes with unearned advantages and unearned disadvantages. To illustrate, she had the audience engage in a four-minute exercise where partners took turns telling each other of their own principal unearned advantage and then their own principal unearned disadvantage.

Judge Sophia Hall, a judge in the Circuit Court of Cook County in Chicago, IL, noted that most codes of judicial conduct now recognize the obligation of judges and court systems to protect litigants from bias within their operations and stated that this requires an active, daily effort to overcome the biases that we all receive from our childhood experiences. She remarked that “the justice system must not only be fair, it must be perceived as fair.”

Joyce Alexander, who became the nation’s first African-American Chief U.S. Magistrate Judge, described the damage that bias does, not only to its victims, but to the law itself and to the credibility of courts within the communities that they serve. She called for more education and emphasized the need for a more diverse bench.
The Dallas POJ program, entitled “Justice for All? Perceptions of Racial and Ethnic Bias in Our Courts,” was a full-day symposium at the SMU Dedman School of Law with a keynote address from former ABA President Dennis Archer. Three panels of distinguished academics, judges, and attorneys addressed three main issues: (1) the presence and impact of bias among judges and juries; (2) whether racial and ethnic bias infects the exercise of discretion by prosecutors; and (3) how language and cultural differences impact experiences and outcomes in litigation. The panels recognized the following:

(1) Some members of racial and ethnic minority groups fear that they do not receive fair trials from predominantly white juries or white judges and believe that prosecutors, especially white prosecutors, will rarely, if ever, exercise their discretion not to prosecute them.

(2) Some people with language or cultural differences fear that those differences will undercut fair treatment in the courts.

(3) These fears frequently cause racial and ethnic minorities to opt out of the justice system as jurors, cooperating witnesses, complainants, and litigants.

Speakers also shared statistics demonstrating that people of color have a disturbingly low level of confidence in our justice system and are convinced that color-blind and fair justice does not exist.

Professor Pat Chew of the University of Pittsburgh School of Law presented research demonstrating that summary judgment rulings in federal race discrimination cases correlate highly with the race of the judge. Summary judgment for the defendant was more than twice as likely when the judge was white than when the judge was of a different race.

Breaking into small groups after the panel discussions, the conferees committed to several goals: more training for judges, staff, and lawyers on cultural competency and diversity; expansion of the number and availability of qualified interpreters, including in civil cases involving fundamental matters like housing, child custody, and guardianship; and convening regular and candid community dialogues to address the concerns of those who lack confidence in our justice system.
The Chicago POJ program was held at the Northwestern University School of Law and featured significant community involvement, including community activists, educators, ministers, and high school debate students.

The program was divided into three sections. First, community participants were asked to answer questions with a moderated discussion following each question and answer. In the second part of the program, breakout sessions focused on proposing improvements for court systems. Finally, a plenary session heard the leading suggestions from each breakout session.

Judge Hyman set the tone for the program with the following statement: "It is my hope that today we bring issues that are under the rug out on top of the table and begin to talk straight with one another about race; specifically, perceptions of race and the courts."

During the moderated discussion, many audience members commented on the role of police in the justice system. Several also shared their experiences appearing before criminal and traffic court judges. One speaker emphasized the need for litigants to "feel they are treated fairly."

One theme that emerged was concern about whether inner-city juries are reluctant to convict criminals because they do not trust the police and whether that conduct reduces public safety. It also was noted that many jurors do not report for jury duty when summoned. Some participants suggested that more education for the public about the legal system might increase juror participation and confidence in the justice system.

During the breakout sessions, participants were asked to brainstorm the following question: "What concrete things can be done about the perceptions and realities of people of color in the American justice system?" Participants offered suggestions along several themes.

Enhanced civic and law-related education in the public schools was cited as an important step in de-mystifying the justice system. Other speakers said that increased education for litigants would help them have realistic expectations of what court processes would be like.

It was suggested that judges, court personnel, and law enforcement officers participate in mandatory sensitivity and diversity training that would increase cultural competencies. Some speakers said that judges also should increase their awareness of their non-
verbal behavior and how they are perceived by litigants.

Others suggested that it would be beneficial to have more persons of color working in courthouses and to increase jury service compliance for persons of color.

Breakout discussions also recognized the need for creating partnerships between judges and community organizations and for regularly bringing together judges, lawyers, and other community members to discuss issues. Some people suggested that judges should be involved in mentoring programs and other community projects.

One breakout group also discussed substantive issues in the justice system, especially the criminal justice system. Several people emphasized the need for more public defenders and, for civil matters, pro bono attorneys to help provide brief assistance to pro se litigants. Others mentioned the need to have lower bonds for pretrial release and more creative sentencing options.

Another breakout group expressed concern about the use of peremptory challenges. Finally, it was suggested that the courts gather statistics to determine whether race, economic status, and other factors affected the outcomes in civil and criminal cases.

### Summary of Suggestions to Promote Change

1. Enhance civics education and law-related education.
2. Require mandatory sensitivity and diversity training for law enforcement, judges, and court personnel.
3. Increase the number of persons of color working in the justice system.
4. Promote more discussions and interaction between judges and members of the community.
5. Provide greater resources to the justice system.
6. Consider substantive law changes to offer more creative and fair sentencing.
WASHINGTON, D.C.

APRIL 20, 2010

TOWN HALL DIALOGUE

Moderators:
• Honorable Allen J. Webster, Jr., Los Angeles County Superior Court, CA
• Professor F. Michael Higginbotham, University of Baltimore School of Law, MD


The fourth POJ program was held in downtown Washington, D.C., at Old Council Chambers, in conjunction with ABA Day in Washington. As in Chicago, the goal of the program was to focus on gathering perceptions and experiences from community members.

Opening the program, Lawyers Conference Chair L. Neal Ellis, Jr., noted that while many legal professionals take for granted that the justice system is fair, impartial, and just, others believe it is skewed based on race or ethnicity. He made clear to the town hall participants the need for their voices to be heard.

The Honorable E. Savannah Little of the D.C. Office of Administrative Hearings welcomed the attendees and then offered a brief story to illustrate the point that “perceptions of justice run both ways.” She said she entered the waiting room of her courtroom and found a litigant “barking” at the court staff about an issue. As the judge stood there for a moment, the litigant continued talking to the staff and ignored the judge. When the judge told the man that she would take care of the issue in the courtroom, the man’s “eyes jumped out” and he asked if she was the judge. She thought, “What about me when I stood there did not represent that I was the judge? Was it because my skin is black? Or because my hair is not straight? Or because I didn’t have on a robe?” Judge Little asked those gathered to consider this story and to contribute their ideas to help promote impartial decision making.

Several local leaders offered opening comments. John Salatti, a Washington, D.C., Advisory Neighborhood Commissioner, provided examples of the questions he receives from constituents who need legal assistance. He said he has been asked, “Are judges comfortable with someone like me?” and “Is justice really blind?” He observed that the fact people ask such questions reflects their skepticism.

Next, the moderators sought comments from the attendees and took time to acknowledge the value of each voice heard and story told.

One woman said that, in her opinion, pro se litigants have “very little chance” of succeeding. She expressed frustration with court staff who discourage people from pursuing litigation.

Another man shared his first-time experience as a criminal defendant in an operating while intoxicated case. He said he felt like that single conviction was dramatically affecting his ability to find a job and that he thinks the criminal justice system should not so severely punish people like him who have no other criminal convictions.

A third person said he was treated roughly when he was arrested and remarked that he was handcuffed with his hands behind his back for eight hours.
Finally, a woman told the story of how she received different answers from different court personnel, and when she told the judge what she had been told, he said he doubted that was what the staff had said. The speaker suggested that court staff should be trained to give consistent answers to litigants.

Judge Webster, acknowledging several accounts of poor treatment in the justice system, said that legal professionals often forget that experiences with the justice system actually begin well before anyone sees a judge. For some, the justice system experience includes the time parking cars in the courthouse parking lot, walking through the courthouse doors, standing in a long line, and then encountering workers who may not be able to provide accurate information or speak their language. Judge Webster also stated that diversity on the bench is good because it creates opportunities for judges to educate their colleagues.

As education was among the possible solutions identified in combating inequalities in the justice system, Professor Higginbotham discussed a “pipeline” problem for the justice system: law schools are becoming less – not more – diverse because of the emphasis on the “LSAT factor” in law school rankings. One participant recommended educating members of the community “in the trenches” about the legal system, as she has observed that civics classes helped soften her adult literacy program students’ once negative perspectives of courts. Judge Webster noted a possible need for “neighborhood law schools” in churches and other community facilities that could educate people about the nature of the courts and other components of the justice system.

Judicial Division Chair Jack L. Brown closed the program by emphasizing the need to continue the critical dialogue, particularly in a challenging economic environment.

**Summary of Suggestions to Promote Change**

1. Recognize that perceptions run all ways: judges, court personnel, attorneys, and litigants all make assumptions about the people they see.
2. Promote training for judges and court personnel that leads to consistent answers on procedure for litigants.
3. Educate members of the community about the legal system to promote more positive views of the system.
4. Increase the number of persons of color serving as attorneys and judges.
5. Consider sentencing that is less punitive.
The fifth POJ program was held in San Francisco at Golden Gate University School of Law. While structured like the Chicago and Washington, D.C., programs, the local planning committee and the moderators made it clear that they intended to focus on solutions that the ABA might promote. To further that goal, the planning committee prepared a detailed report on the event, which is available for viewing on the ABA Lawyers Conference’s website at www.americanbar.org/groups/judicial/conferences/lawyers_conference.html.

Donna Clay-Conti, a staff attorney with the California Judicial Council’s Administrative Office of the Courts, opened the program with a presentation of the findings from the Council’s 2009 survey of public trust and confidence in the judicial system. The survey* probed three aspects of court usage and provided a structure for the discussion that followed. The three aspects were:

1. Fairness: most respondents believed that low-income persons and persons of color had worse outcomes, especially in high-volume courts such as juvenile, family, traffic, and small claims courts.

2. Perception: perceptions of fairness and respectful treatment were worse for high-volume courts and courts that lacked good interpreters. Those respondents whose experience consisted of jury service, however, had better views of the court system. Best perceptions came when judges were seen to be fair, following the rules, and protecting constitutional rights.

3. Communities and courts: participants wanted more diversity on the bench and in juries, more community outreach, and more education.

A public discussion of perceptions of justice followed. Speakers were primarily leaders or activists involved with racial and minority groups. In addition to describing discriminatory behavior, they emphasized: the pervasive nature of prejudice; the lack of adequate diversity on the bench and juries; the decline in minority admissions to law schools and the bar; the importance of “cultural competence” on the bench; and the difficulties that minority attorneys sometimes face in courtrooms.

Joe Meyers, Executive Director of the National Indian Justice Center, said that Native Americans experience unequal treatment in state and federal criminal courts. He noted that negative cultural stereotypes are prevalent in cases involving Native American defendants. He also said that there are significant disparities in sentencing imposed on Native American defendants, with Native Americans receiving higher sentences than those of other races.

(Left, standing) Judge Arthur L. Burnett, Sr. (Inactive Status), one of the original plaintiffs in Brown v. Board of Education, described a project that provides counselors and mentors to eighth graders who want to enter professional careers, with a goal of reducing the number of incarcerated youth.
Chris Arriola, a former president of the Santa Clara Bar Association, commented on the fact that only seven percent of California judges are Hispanic, even though one-third of its residents are Hispanic. He noted that there is a lack of confidence in the judicial system within the Hispanic community. He expressed hope that more Hispanics would become judges.

The attendees discussed a related issue: the unfortunate decrease in the number of persons of color attending law school. It was suggested that efforts must be made to increase that number, such as eliminating the LSAT in favor of other tests that are more race-neutral and provide better indicators of success in law school.

Another speaker noted that experiences of attorneys of color often mirror the bias their clients experience. She told the story of being asked why she was sitting at counsel table when a bailiff assumed she was not a lawyer.

Willa Sheldon, the Chief Executive Officer of the Glide Foundation, commented that many persons of color and other minority groups, such as the transgender community, hold a negative view of the judicial system based on their personal or family experiences in the courts. She said people have told her that they believe no one is listening or truly understanding the difficulty of leading a productive life after incarceration.

Numerous participants stressed their hope and expectation that the ABA will follow up on the suggestions coming out of this program. Toward that end, the participants then went into breakout sessions that addressed fairness, perceptions, and community. The main recommendations from the breakout sessions are summarized in the box below.

### Summary of Suggestions to Promote Change

1. Improve the education system to reduce crimes by youth and give them a path to success.
2. Develop curricula for mandatory, continuous training of judges and court personnel regarding cultural competency and unconscious bias.
3. Create programs to educate community groups about court operations (for example, using curricula, videos, outreach efforts by judges, and community courtrooms).
4. Focus on humanizing and demystifying court processes in the high-volume courts.
5. Recruit and appoint more judges of diverse ethnic and racial backgrounds and expand criteria for judicial competence (for example, give credit for experience beyond serving as prosecutors or litigators).
6. Examine barriers to law school admissions for diverse applicants.
7. Identify and address causes for sentencing disparities.
8. Stop warehousing prisoners and focus on rehabilitation: document costs of imprisonment versus training and rehabilitation; re-establish rehabilitation and re-entry programs; and remove barriers to licensing and careers.
This final POJ program, which was held in Atlanta, primarily focused on seeking input and suggestions from over two hundred members of the community who came to tell their stories. Retired Judge David Horowitz, Chair of the Lawyers Conference, urged the attendees to share their personal experiences and emphasized the need for Atlanta’s collective voice to be heard.

As the program began, Professor Tanya Washington of the Georgia State University College of Law asked attendees to answer, by show of hands, two critical questions: (1) had they ever personally witnessed a court interaction that seemed influenced by the race/ethnicity of the participant(s); and (2) were they ever personally involved in a court interaction that seemed influenced by their race/ethnicity.

Professor Charles Ogletree, one of the moderators, observed that in response to Professor Washington’s questions, not only did “most hands” go up, but his hands and the hands of his fellow moderator, Justice Robert Benham, went up as well. Professor Ogletree said that he does not believe that America is “post-racial” and observed that while there may be an African-American in the White House, there are still one million African-American men in prison.

To start off the discussion, Justice Benham shared several questions that people routinely ask him when he is speaking throughout the state: “Why can’t we send people to jail quicker? Why can’t we send more people to jail? And, why can’t we give them the death penalty quicker?” He said people tell him that “if there is a problem, it’s the lack of swiftness in justice, and when it comes to issues of race, we are living in a post-racial [society], so why should race be a problem forty years after the passage of the Civil Rights Act.”

With input from the moderators, the discussion turned to three broad themes: (1) unfair treatment; (2) access to justice; and (3) pipeline issues (increasing the number of minorities in the legal profession and the judiciary).

Thirty audience members shared experiences with the justice system, including their experiences with law enforcement and in courtrooms. Several expressed serious concern about the number of young black men being incarcerated and about young black children being sent to juvenile court.

Former ABA President Dennis Archer said that the exercise of discretion by police officers,
Summary of Suggestions to Promote Change

1. Improve the education system to reduce crimes by youth and give them a path to success.
2. Increase education about the legal system to help users better understand and participate in the legal process.
3. Consider alternatives to using the juvenile justice system to deal with misbehavior by teens.
4. Promote and support re-entry programs that help people re-enter society after incarceration and remove barriers to their success after incarceration.
5. Provide adequate funding for public defenders and civil legal services.

Prosecutors, and judges dramatically affects which people go to prison.

A state director for an advocacy group that helps low-income persons advocate for themselves drew upon her work experiences when she noted concerns about “residents who have committed a crime, served their time, and can’t get back into society because of their criminal record” and an “expungement process” that “is not usually accessible.” She also voiced concern about low-income persons’ inability to pay fines that could allow them to avoid jail time. Another speaker added that re-entry programs are essential for those returning to the community from prison.

A young Latino woman said that when a crime is committed in her community, victims do not call the police for fear of being deported or experiencing prosecution and persecution. Critically, she said that Latinos often are afraid to go to court and that inadequate translation services negatively impact their experiences when they are brave enough to go.

Several speakers expressed concern about the lack of sufficient funding for free legal assistance in civil and criminal cases. Others commented on the need to improve the education system because doing so will reduce juvenile and adult crime.

The attendees offered concrete solutions to identified problems, such as: having the state legislature provide more funding to support training and ramp up resources to assist overworked public defenders; increasing education about courts to improve court interactions and experiences; and providing increased mediation and law clinics to decrease the workload of attorneys providing services to the poor.
Conclusion and Next Steps

The six Perceptions of Justice programs organized by the ABA Judicial Division Lawyers Conference provided members of the bench, the bar, the academy, and the community with unique opportunities to engage in meaningful discourse on the perceptions of race and ethnicity in the justice system. Participants often expressed the need for greater diversity on the bench and among court personnel, and for more effective community outreach and civic education about the courts and their operations. Trial judges and magistrates highlighted the difficulties and lack of resources they face daily as they seek to provide impartial justice, while acknowledging their desire to better understand, and to be better understood by, the public they serve. Law professors and other academicians asserted the need for sensitivity training for judges, court personnel, and the police to increase awareness and lessen biases that affect all of society, including the legal system. There were calls for systematic change to assist people with re-entry after incarceration, for creative alternatives for prosecution and sentencing for juvenile and minor offenses, and for the implementation of strategies that address not only what happens in the courtroom but also what happens during interactions with the systems that serve and enable the work of the courts (police, probation, social services, prisons, and parole). Finally, there was broad consensus that town hall programs like the POJ programs, which bring together the many participants in the justice system to discuss issues in a constructive forum, have great potential to create more positive perceptions of the justice system.

In Phase II of the Perceptions of Justice project, the Lawyers Conference will explore those issues and propose additional strategies for addressing identified concerns. The first scheduled event is a panel discussion that will be held at the ABA Midyear Meeting in New Orleans, Louisiana, in February 2012. In addition, the Perceptions of Justice Committee has recognized that many participants benefited from the opportunity to speak openly and honestly about their experiences in the justice system. To help other bar associations, courts, and organizations sponsor town hall meetings in their communities, the Lawyers Conference will be creating a “how-to” guide that will be available in late 2012.

The Lawyers Conference invites members of the Judicial Division, the larger ABA, and the public to contribute to the work of this project. For more information, please contact the Judicial Division Lawyers Conference at (312) 588-5450 or visit the Lawyer’s Conference website at www.americanbar.org/groups/judicial/conferences/lawyers_conference.html.

Acknowledgments

The Lawyers Conference thanks the co-sponsors and venues who contributed so generously to this project, including the ABA Coalition for Justice. The efforts of the dedicated POJ Committee members and Judicial Division staffers who organized and participated in each event, and the efforts of the many local community organizers, were instrumental to the project’s success thus far. We are grateful to former Lawyers Conference Chair Judge Michael B. Hyman for proposing the project and to successor Chairs L. Neal Ellis, Jr., and Judge David Horowitz (Retired) for continuing it.

Lawyers Conference Perceptions of Justice Committee, 2010-11
Chair, Shaunda Patterson-Strachan. Members: Rachel DuFault, L. Neal Ellis, Jr., Hon. Michael B. Hyman, William Olivier, Phyllis Pickett, Christina Plum (Reporter), and Keith Roberts.

About the Lawyers Conference
The Lawyers Conference, one of six conferences of the Judicial Division, is composed of both judicial and non-judicial members – lawyers, judges, court managers, legal teachers, writers and publishers, and law students. For 35 years, the Lawyers Conference has provided a forum for attorneys and law students to interact with members of the judiciary and the community. Our mission is to improve the administration of justice, advance confidence in the judiciary, and promote a diverse and adequately funded justice system. The Lawyers Conference is committed to encouraging diversity in our membership, leadership, and programs. Our Conference enjoys its diversity in race, gender, ethnicity, sexual orientation, religion, legal practice areas, and political views. There is a place for you in the Lawyers Conference. Join us and make a difference.