



Judicial Diversity Yesterday: A Fireside Chat

Wednesday, August 4, 2021
5:00 p.m. – 6:30 p.m.

Speakers:

Catherine Ongiri, Attorney, Judicial Council of California

Tristan Higgins, Attorney, CEO, Metaclusive LLC, California Lawyers Association

Hon. Brenda Harbin-Forte (Ret.), Judge of the Superior Court of California,
County of Alameda

Ruthe Ashley, Executive Director Emeritus California LAW

Patricia Lee, Board Member, California LAW; Chair, ABA Standing Committee on
Public Education

MCLE: none

JBEC: none

Conference Reference Materials

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Program Materials

1. Timeline of Key Judicial Diversity Events
2. Comparative Slides 2006 to 2020
3. Demographic Data Slides (2006 Judicial Diversity Summit Presentation)
4. Courts Working Group Report (2006 Judicial Summit Report)
5. Summary of SB 56 (Gov Code 12011.5)
6. JNE Resource Guide Re: Considering Practice Settings Broadly (Gov Code 12011.5 (d))
7. Links to All Judicial Summit Reports and Recommendations

JUDICIAL DIVERSITY SUMMIT 2021

TIMELINE OF KEY JUDICIAL DIVERSITY EVENTS

DATE	EVENT
2005	Judicial Council releases Public Trust and Confidence in California Courts survey, showing discrepancies in perceived fairness by racial categories and identifying diversity in the courts as a priority for public trust and confidence and the appearance of fairness in the court and justice system.
October/November 2005	State Bar establishes the Diversity Pipeline Task Force, to examine barriers to achieving a diverse legal profession and judiciary, by focusing on the entire pipeline beginning with elementary school and ending with the judiciary. The Courts Working Group is one of the subcommittees established, to examine, among other issues, the levels of diversity in the judiciary and identify barriers to a diverse judiciary.
January 7, 2006	First meeting of the Diversity Pipeline Task Force and its working groups.
June 3, 2006	First Judicial Diversity Summit held in San Jose, themed "Continuing a Legacy of Excellence: A Summit on Diversity in the Judiciary." The summit brings together the State Bar President, Chief Justice George and other court representatives, Governor Schwarzenegger's Judicial Appointments Secretary, the Legislature, ethnic minority and specialty bar associations, and other stakeholders to create an action plan to increase judicial diversity.
August 2006	Legislature passes SB56 (Dunn), codified at Government Code section 12011.5(n), requiring the Judicial Council, the Governor, and the State Bar's JNE Commission (Commission on Judicial Nominees Evaluation) to release annual reports by March 1 of each year, disclosing levels of diversity in the courts, judicial appointments, and judicial evaluations for the prior calendar year, with the first reports to cover the year 2006. This legislation also authorizes 50 new judgeships.
November 17, 2006	State Bar Board of Governors approves creation of a new sub-entity, the Council on Access & Fairness, to serve as a think-tank to advise the State Bar on efforts to increase diversity along the entire pipeline, including the judiciary.
February 2007	Governor Schwarzenegger appoints the first African American and first woman Judicial Appointments Secretary. A notable uptick in diverse judicial appointments follows.
February 15, 2007	Final Report and Recommendations of the Diversity Pipeline Task Force (including the Courts Working Group Final Report and Recommendations) issues.
March 1, 2007	First SB56 demographic reports released by Governor, Judicial Council and State Bar JNE Commission per Govt. Code 12011.5 (n), for year-end 2006 as to the Governor and the State Bar, but up to and including February 2007 for the Judicial Council.

DATE	EVENT
March 2007	State Bar appoints 25 members to its new Council on Access & Fairness (COAF) and refers the recommendations in the Courts Working Group report to COAF for further actions and implementation.
January 2008	Pursuant to AB 159, 50 new judgeships were created, but to date all seats have not been funded.
2008 to 2019	COAF, in collaboration with the Governor's office and JNE Commission, presents judicial appointments workshops and mentoring sessions around the state for attorney applicants.
January 2011	Governor Jerry Brown succeeds Governor Schwarzenegger. During his terms, Governor Schwarzenegger made 626 appointments, with more than 150 (almost 25%) of them being African American, Asian Pacific Islander, Latinx, and with 214 (over 30%) women.
July 2011	COAF creates resource materials to train the JNE Commission on new Government Code section 12011.5(d), requiring the JNE Commission to consider the term "legal experience" broadly, to assist the JNE Commission in evaluating the qualifications of judicial applicants.
2011	The Judicial Council releases "Pathways to Achieving Judicial Diversity in the California Courts: A Toolkit" to assist courts in their efforts to diversify their local benches.
September 7, 2011	Second Judicial Diversity Summit, again themed "Continuing a Legacy of Excellence: A Summit on Diversity in the Judiciary," is held in San Francisco.
January 1, 2012	Amendments to Government Code section 12011.5 take effect. <ul style="list-style-type: none"> • Section 12011.5(d) requires JNE to consider "legal experience" broadly. • Section 12011.5(n) requires the Governor, Judicial Council, and the State Bar to begin collecting demographic data on sexual orientation and gender identity and include those demographics in their year-end 2012 reports
March 2012	State Bar releases COAF's "Tips on Completing Your Application for a Superior Court Appointment" to assist applicants in completing Governor Brown's new online application. The Tips are revised in March 2012 and July 2014 in response to changes in the online application process.

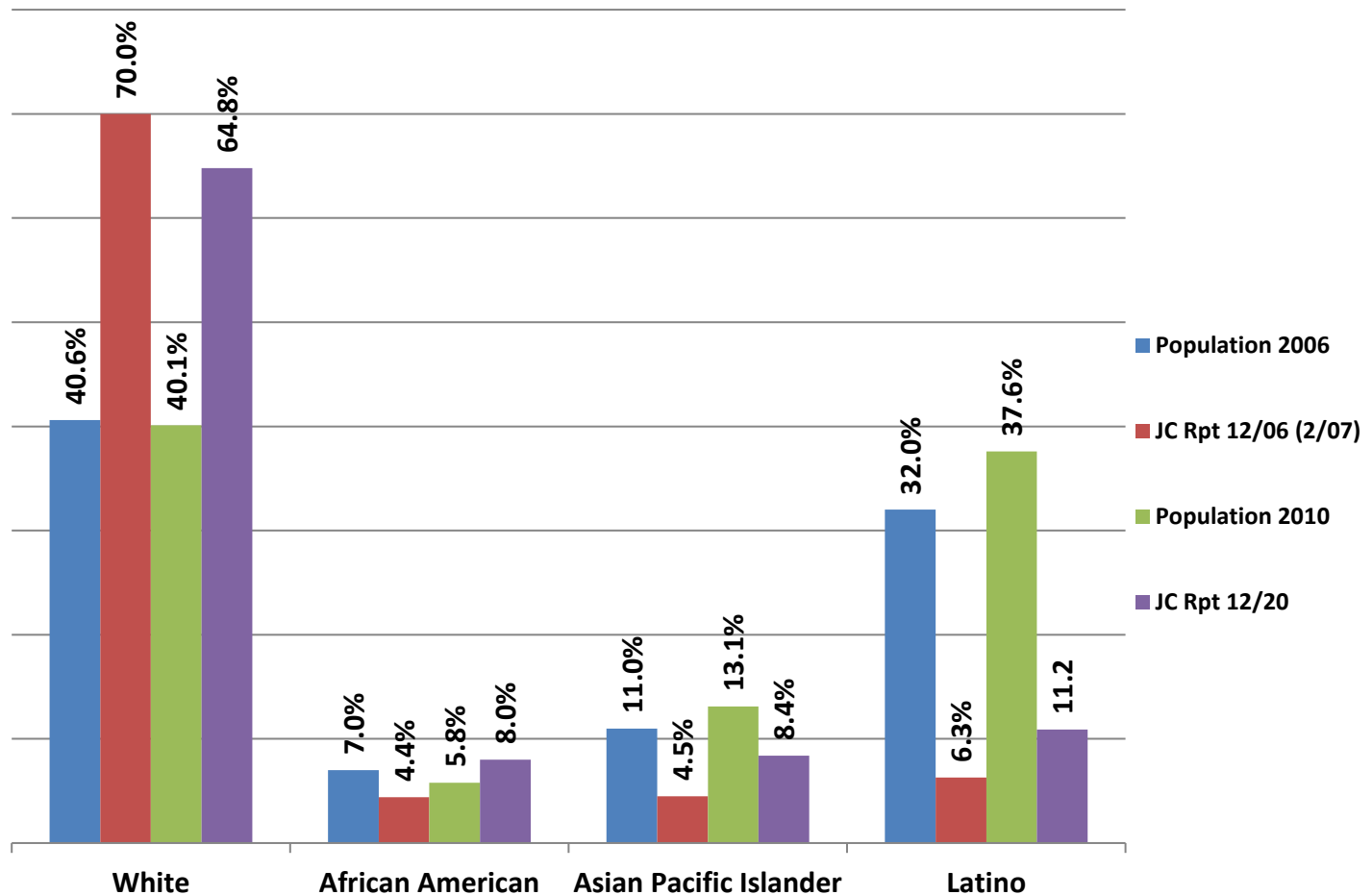
DATE	EVENT
January 1, 2015	<p>Additional amendments and additions to Government Code Section 12011.5 take effect.</p> <ul style="list-style-type: none"> • Section 12011.5 (b) is amended requiring bias training for JNE Commissioners • Section 12011.5 (d) is amended to expand qualifications for consideration by JNE Commission to construe “legal experience” broadly • Section 12011.5 (n) is amended to add collection and reporting of demographic data relative to Disability and Veteran status for year-end 2014 SB56 reports • Section 12011.5 (o) is added encouraging Governor and Judicial Selection Advisory Committees (JSACs) to give particular consideration to candidates from diverse backgrounds and cultures reflecting the demographics of California and groups underrepresented among existing judges and justices.
2015 to 2019	COAF provides annual bias training to JNE Commissioners and training on the status of judicial diversity.
OCTOBER 1, 2016	Third Judicial Diversity Summit, again themed “Continuing a Legacy of Excellence: A Summit on Diversity in the Judiciary,” is held in San Diego.
2017	The State Bar undertakes a significant restructuring to separate the regulatory functions from the trade associational functions. The “sections” split from the bar and become the California Lawyers Association (CLA).
2018	<p>The Legislature enacts Business and Professions Code Section 6001.3, declaring that diversity and inclusion is an integral part of the State Bar’s public protection mission to build, retain, and maintain a diverse legal profession to provide quality and culturally sensitive services to an ever-increasing diverse population.</p> <p>Effective January 1, 2019, the State Bar is to develop and implement a plan to meet stated access, fairness, and diversity in the legal profession goals and to submit biannual Diversity Reports to the Legislature on the plan and its implementation, including a description of activities undertaken to support the plan, their outcomes, and their effectiveness.</p>
January 2019	Governor Gavin Newsom succeeds Governor Jerry Brown. His final annual demographic report reveals that he had appointed the most diverse judiciary in California’s history. Of his 644 appointments, 283 (almost 44%) were women, and 240 (almost 37%) were African American, Asian-Pacific Islander, and Latinx, with notable firsts among women, ethnic minorities, and members of the LGBTQ community.

DATE	EVENT
January 2019	The State Bar Board of Trustees shifts focus away from delivering direct programming or delivery of training on bias and judicial diversity. COAF's size is reduced from 25 volunteers to 10, and COAF's diversity work is limited to the part of the pipeline that addresses law students and attorneys. The State Bar and the Judicial Council agree that the Judicial Council will take the lead role in the judicial diversity area. Additionally, CLA was encouraged to partner with the Judicial Council and the California Judges Association in organizing the 2021 judicial diversity summit, with COAF providing limited assistance in the planning to share its expertise, as needed.
June 26, 2019	Governor Newsom publicly discloses the identities of the members of his eight JSAC committees, representing the Bay Area, Central Coast, Central Valley, Inland Empire, Los Angeles, Northern California, Orange, and San Diego regions.
September 2019	Members of the Judicial Council's Committee on Providing Access and Fairness (PAF) and COAF members complete and roll out a redesign of the 2011 publication <i>Pathways to Achieving Judicial Diversity in the California Courts</i> (Judicial Diversity Toolkit). The redesign resulted in a "digital-first" version of the toolkit as an online resource.
October 2019 to Present	The Judicial Council, in collaboration with the Governor's Office, State Bar, JNE, CLA, California ChangeLawyers, and California Judges Association (CJA) present "Pathways to Judicial Diversity" programs. The Judicial Council also takes over training of JNE Commissioners on bias and judicial diversity.
December 2019	The Judicial Council, in collaboration with COAF, releases a revised version of COAF's "Tips on Completing Your Application for a Superior Court Appointment."
2020	Governor Newsom's JSAC members undergo implicit bias training.
September 14, 21, & 28, 2021	Fourth Judicial Diversity Summit, themed "Stronger Together: Judicial Diversity Summit 2021" will be held virtually as a result of the COVID-19 pandemic, with pre-summit panel discussions beginning in August 2021.

ETHNIC DIVERSITY IN CALIFORNIA COURTS

2006 COMPARED TO 2020 (4 ETHNICS)

1703 Sitting Judges on December 31, 2020



NOTE: In June 2006 the State Bar and the Judicial Council convened the first Summit on Judicial Diversity. 2006 legislation (SB 56) now requires annual demographic reports.

NOTE: 1598 sitting judges on December 31, 2006.

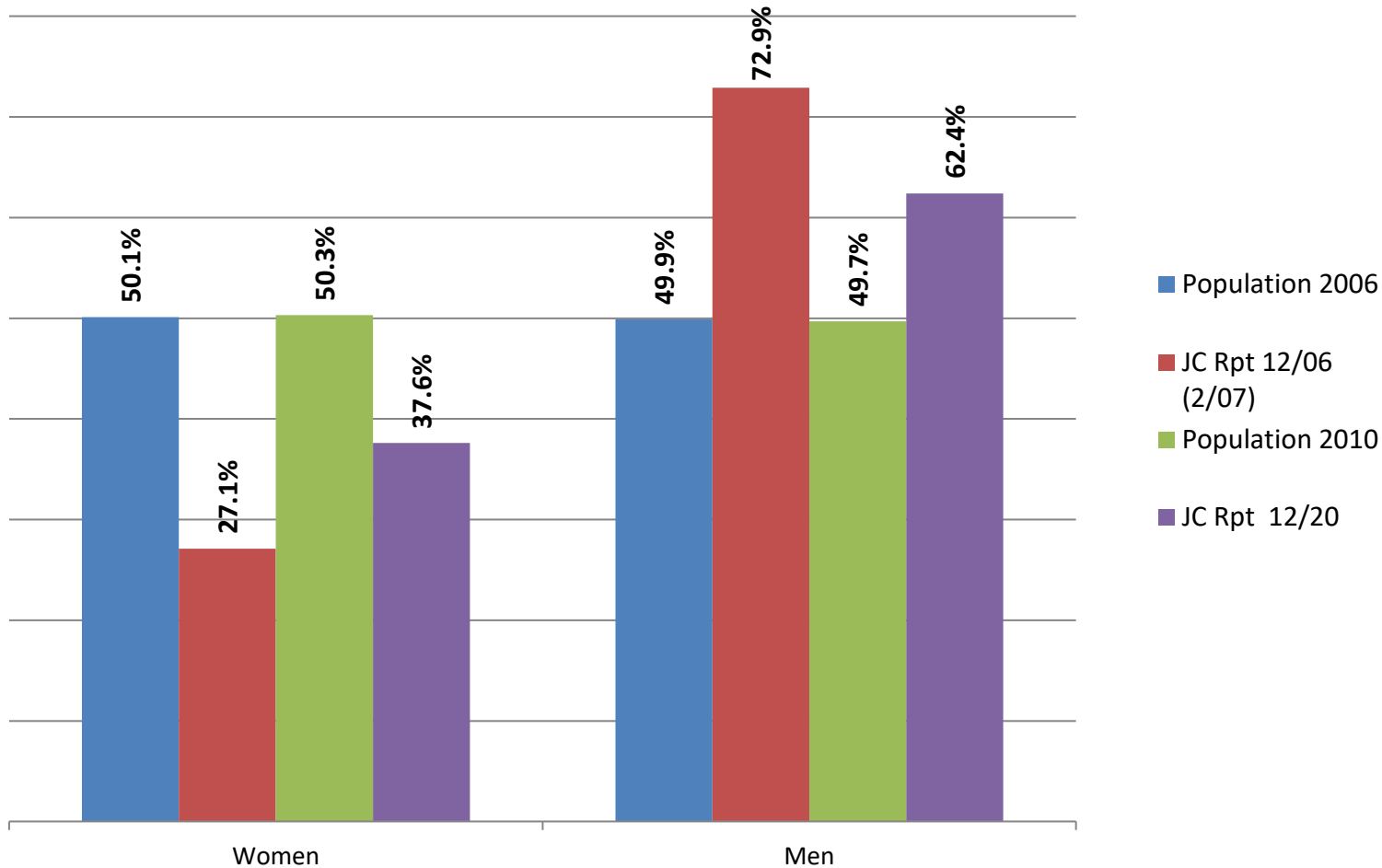
Data sources: California Judicial Council's 2006 and 2020 annual SB56 reports and the 2000 and 2010 Censuses

[2016 Judicial Summit Planning Committee. June 2020]

GENDER DIVERSITY IN CALIFORNIA COURTS

2006 COMPARED TO 2020

1703 Sitting Judges on December 31, 2020



NOTE: In June 2006 the State Bar and the Judicial Council convened the first Summit on Judicial Diversity. 2006 legislation (SB 56) now requires annual demographic reports.

NOTE: 1598 sitting judges on December 31, 2006.

Data sources: California Judicial Council's 2006 and 2019 annual SB56 reports and the 2000 and 2010 Censuses

[2016 Judicial Summit Planning Committee. June 2020]

UNIVERSITY IN CALIFORNIA

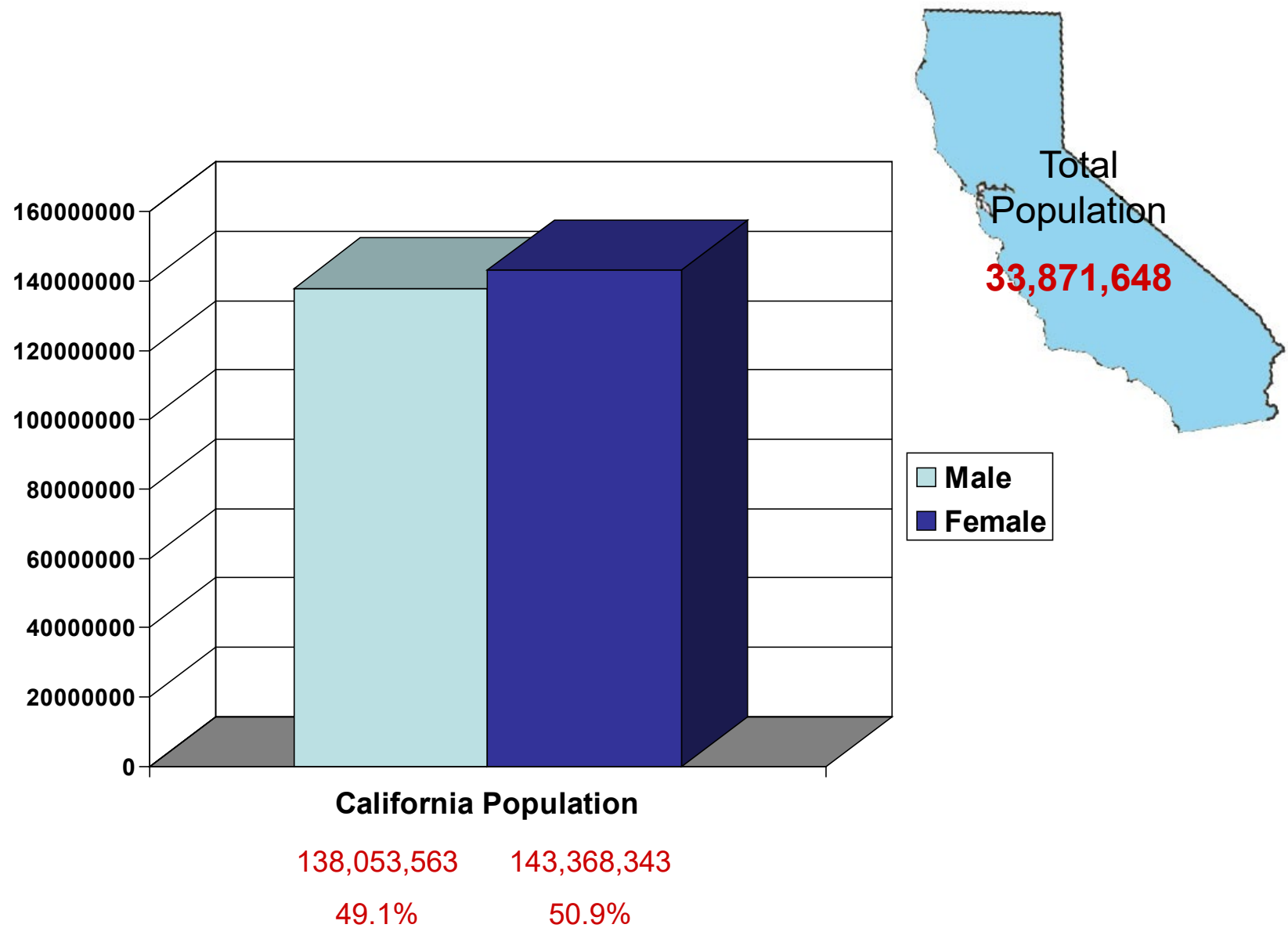


UNIVERSITY IN CALIFORNIA

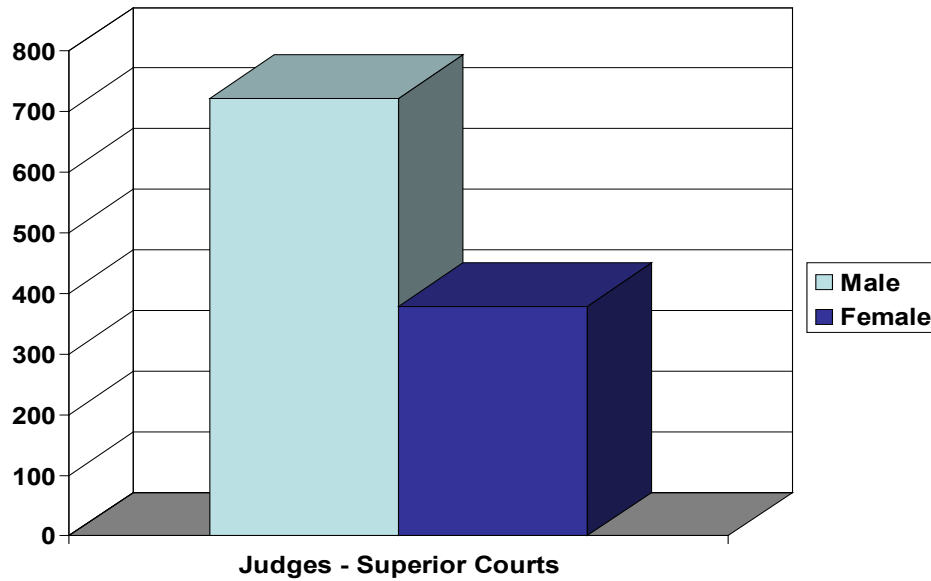
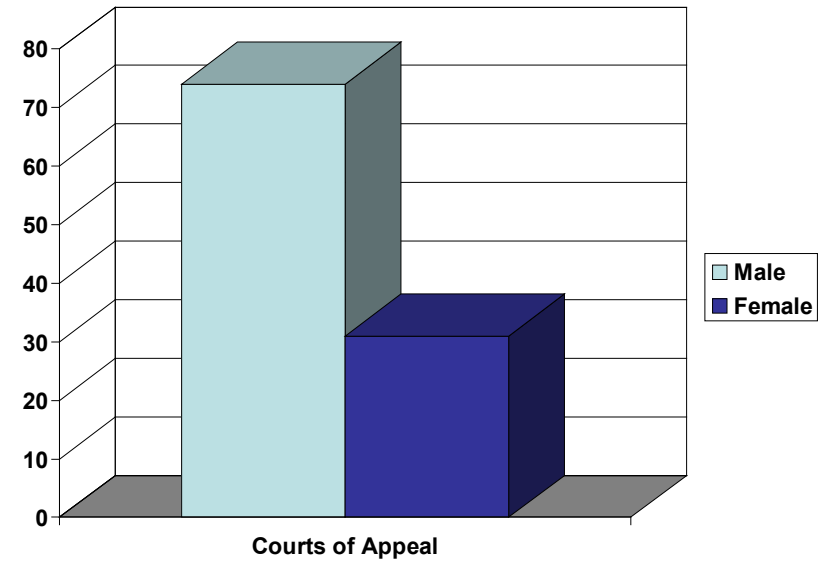
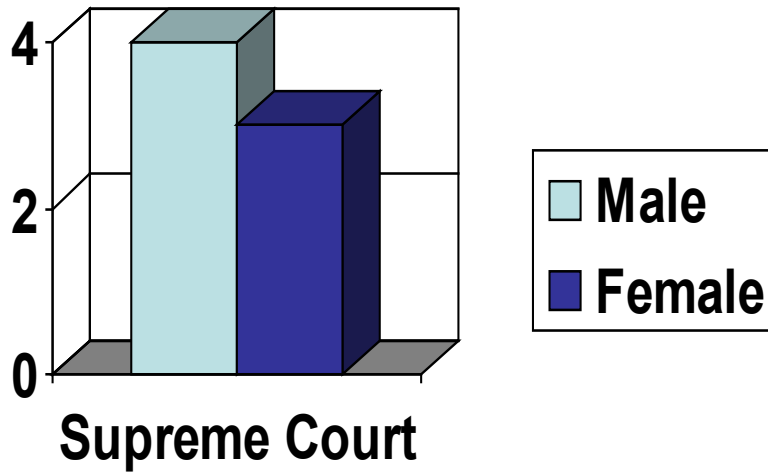
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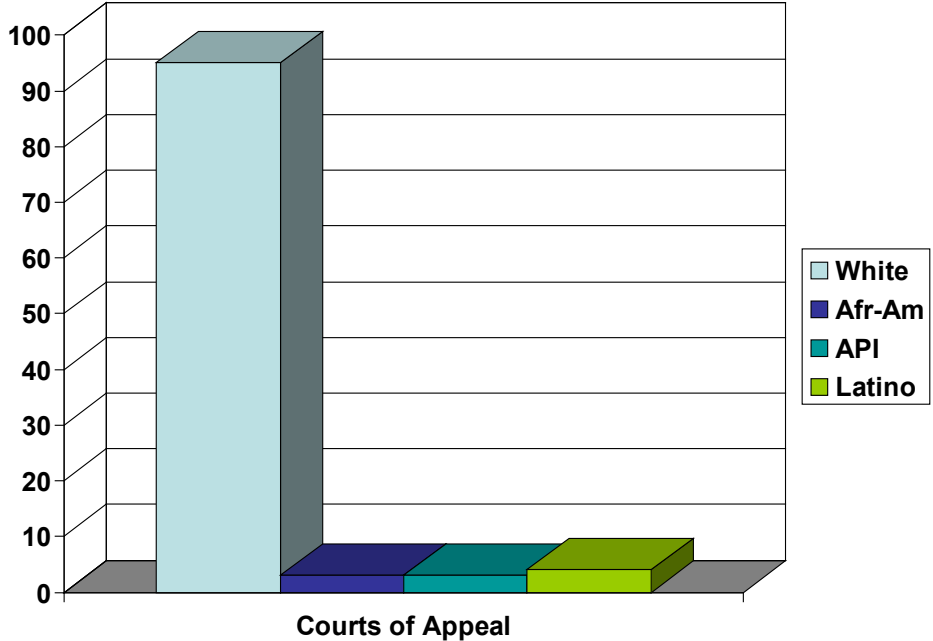
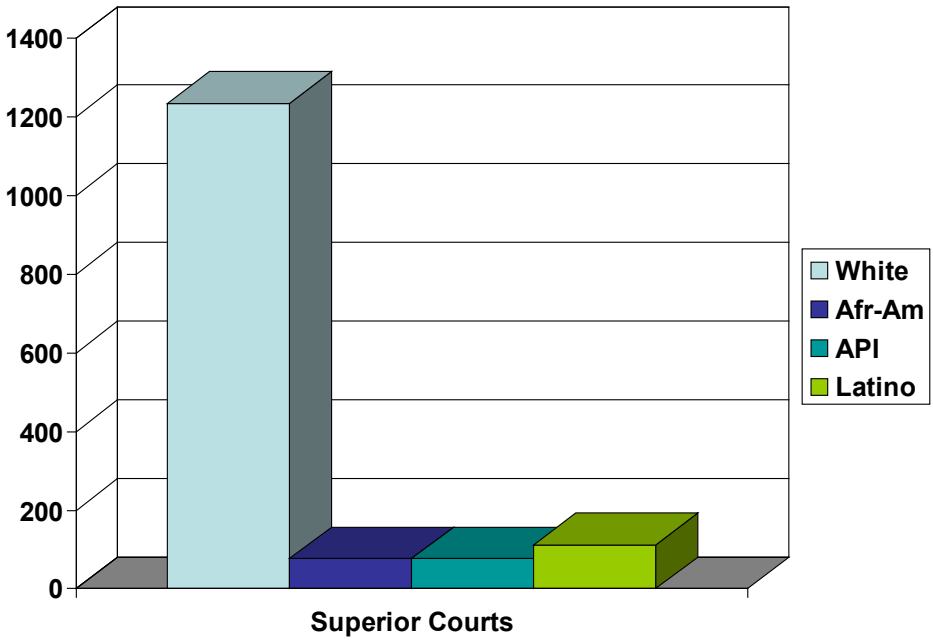
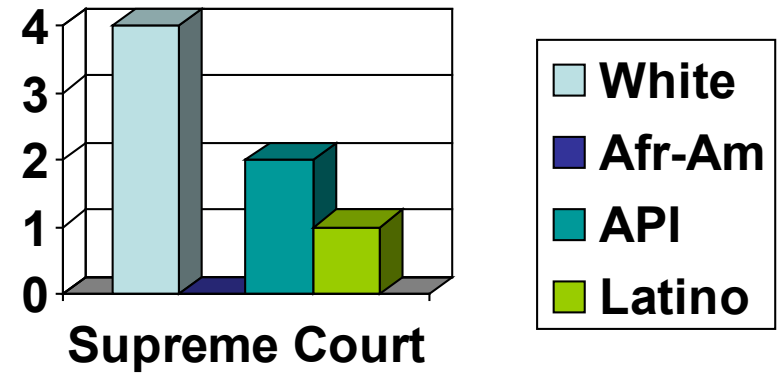
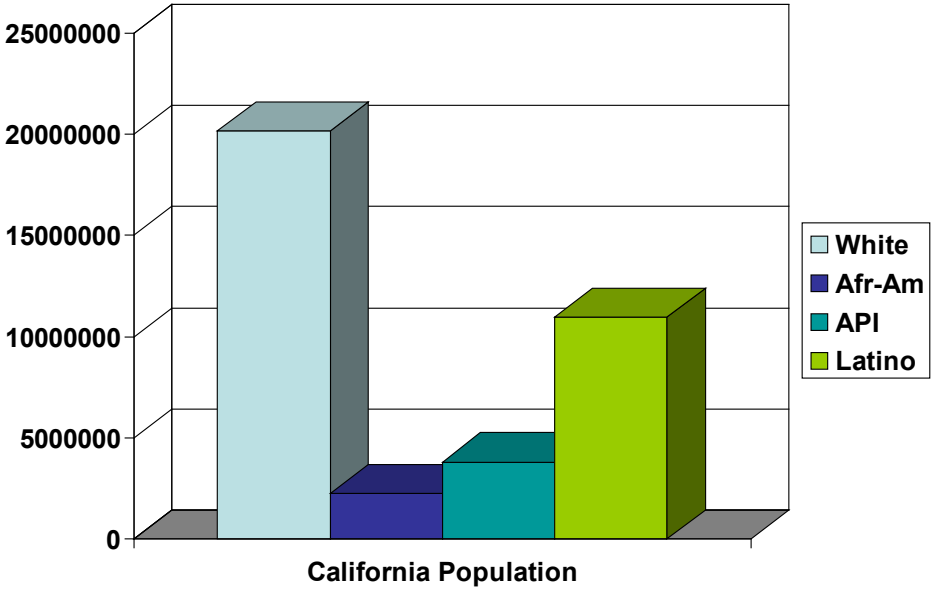
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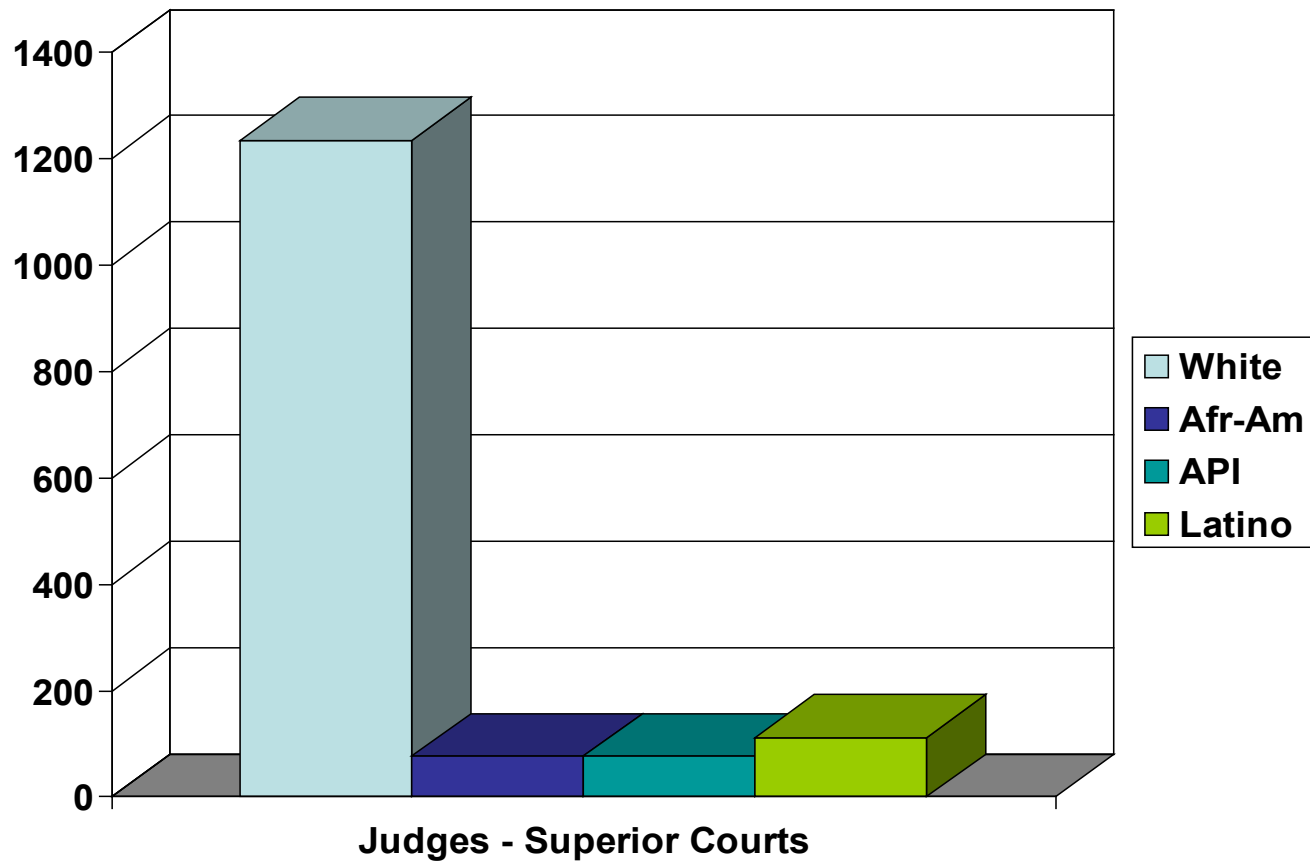
UNIVERSITY IN CALIFORNIA



Source: 2000 U.S. Census Bureau

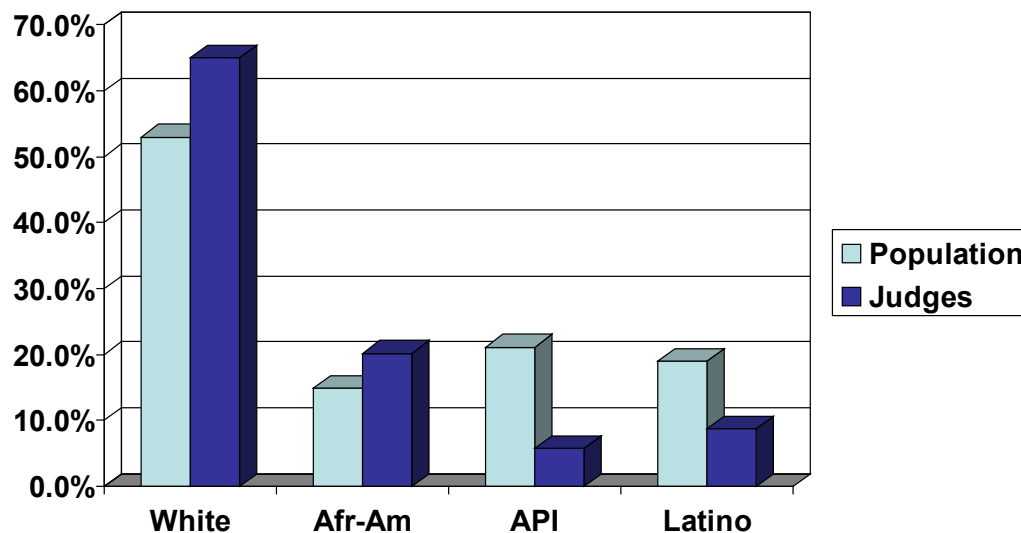




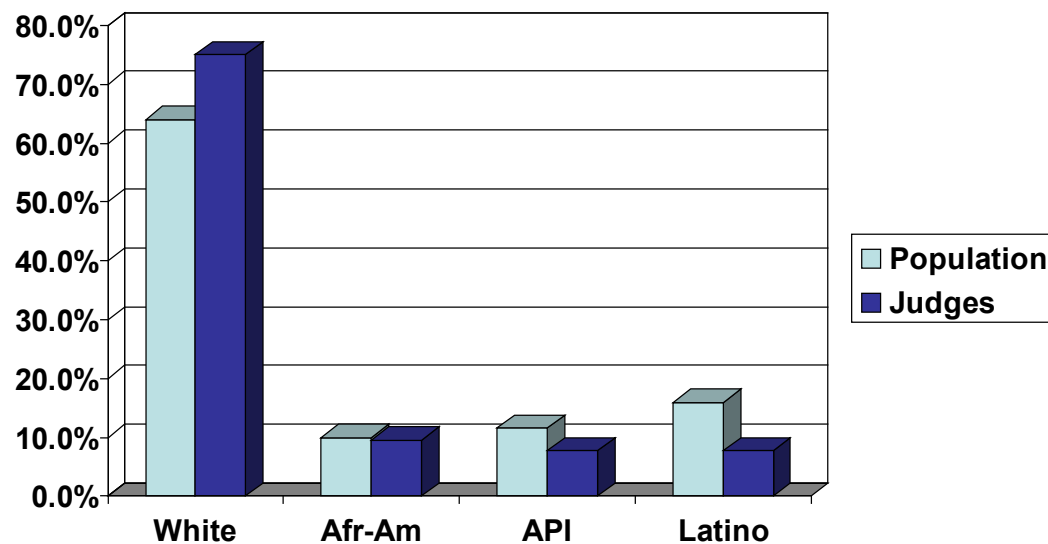


Source: Surveys and membership rosters of various ethnic judges associations.

Alameda County



Sacramento County

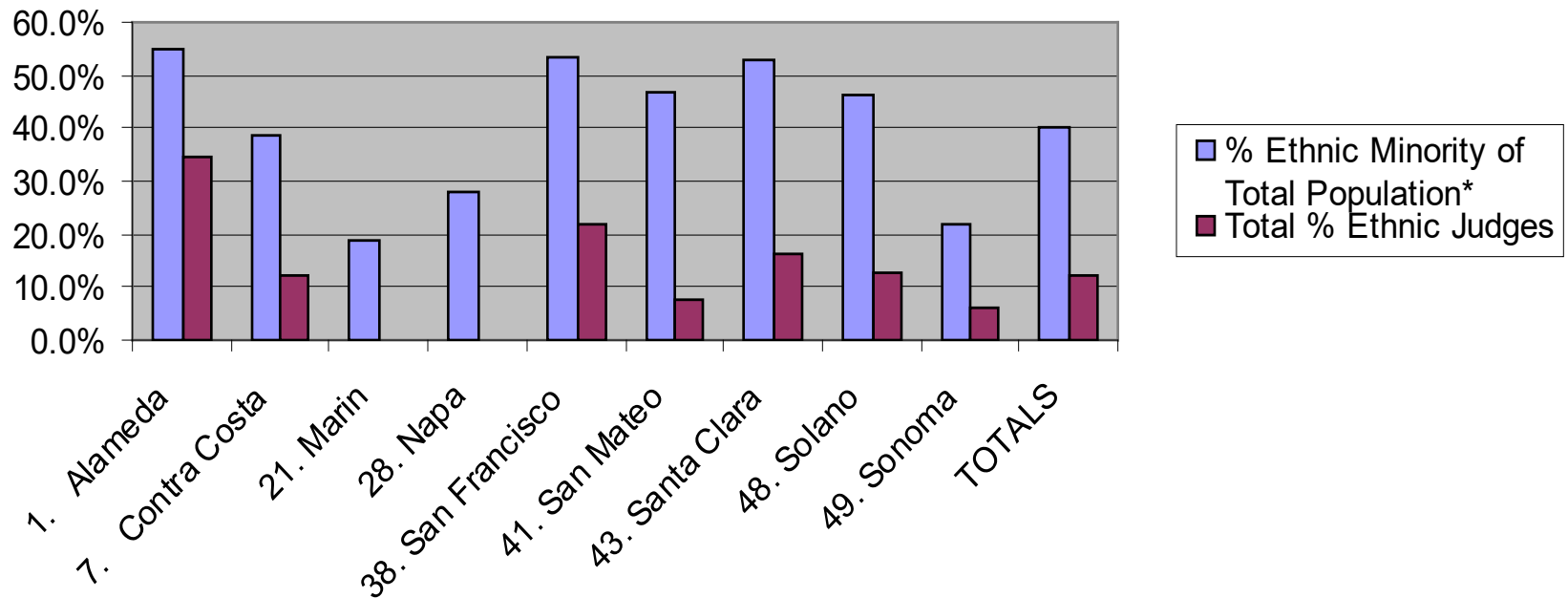


Sources: 2000 United States Census & California Courts: Locations, Justices and Judges (May 2006 ed.; a publication of the Administrative Office of the Courts), as well as, current membership rosters of and surveys conducted by the Judicial Council of the California Association of Black Lawyers, the California Asian American Judges Association, the California Latino Judges Association, and the National Asian Pacific American Bar Association Judicial Council.

Note: According to the Governor's Office, 6 African-Americans, 11 Asian Americans, and 10 Latinos have been appointed, for a total of 27 ethnic minority appointments. However, the Governor's Office has not identified the courts to which the appointments have been made.



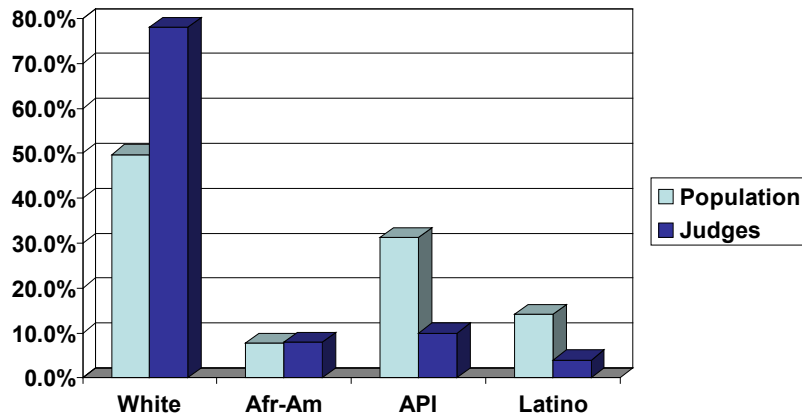
SF Bay Area



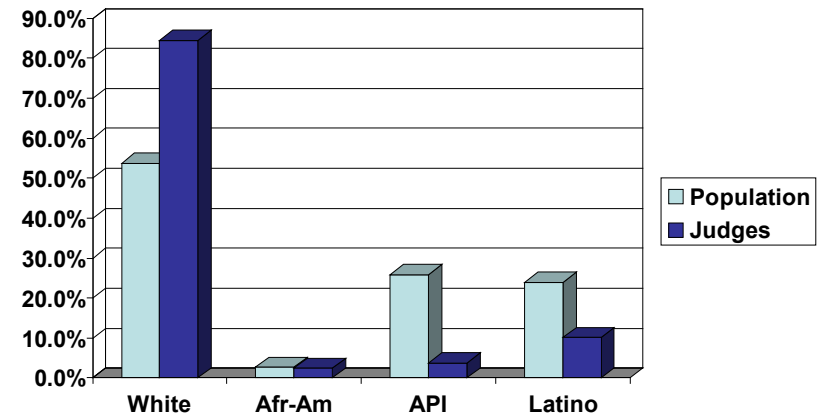
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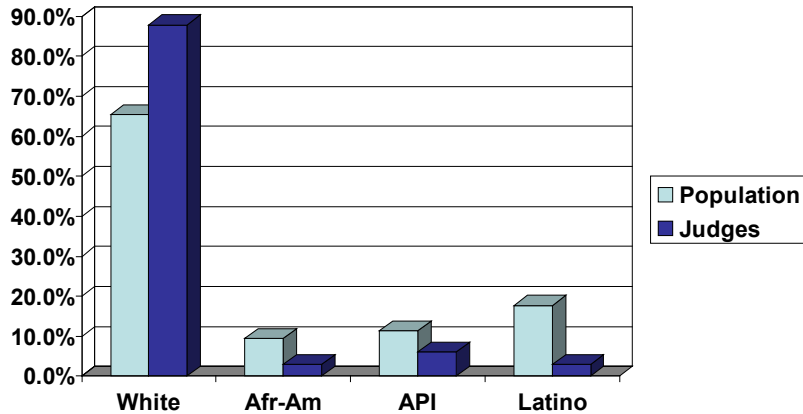
San Francisco County



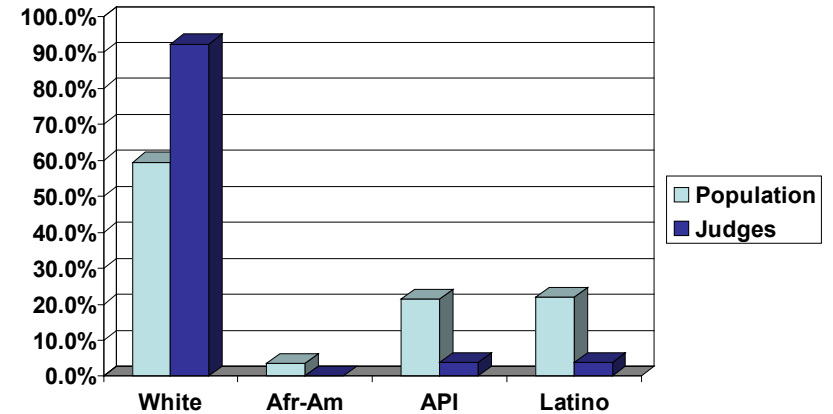
Santa Clara County



Contra Costa County

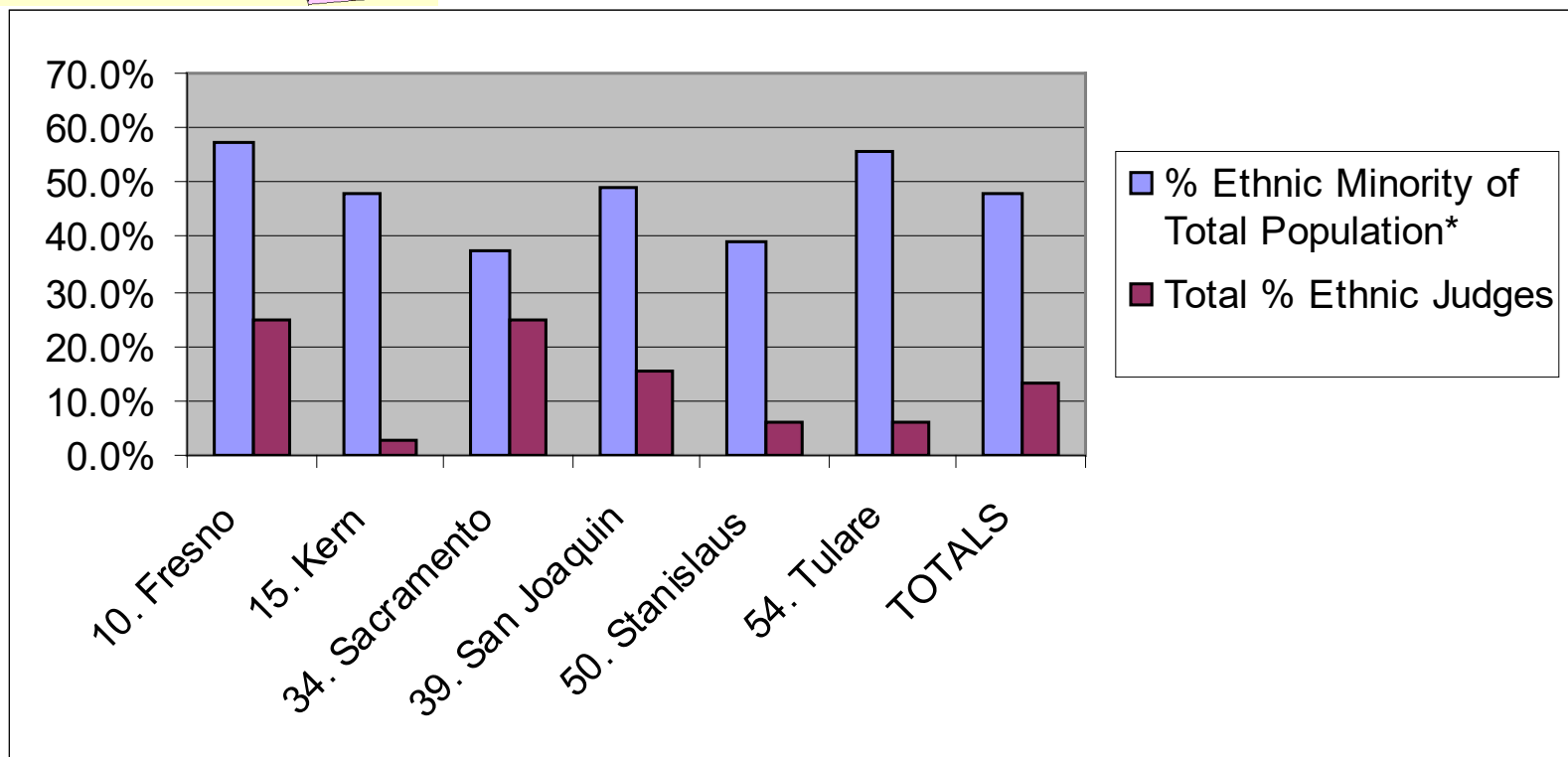


San Mateo County





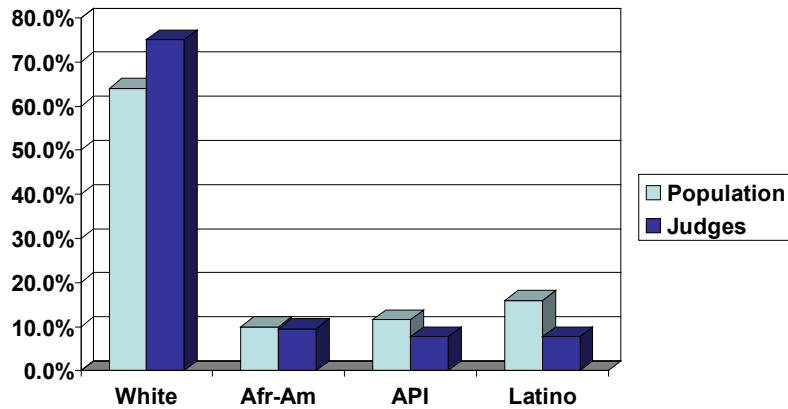
Central Valley



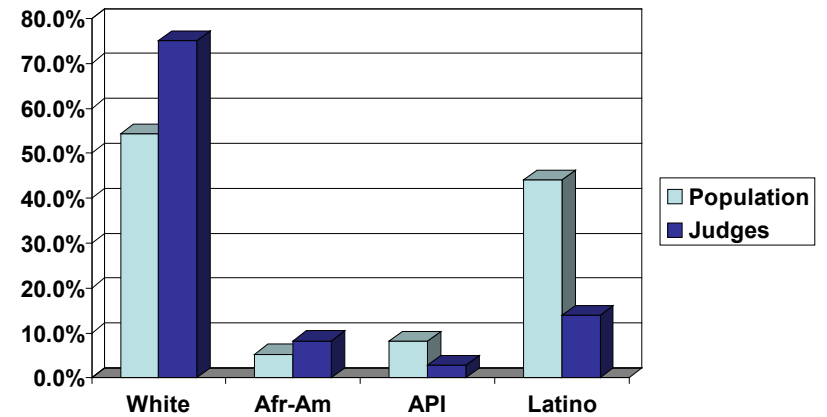
Sources: 2000 United States Census & California Courts: Locations, Justices and Judges (May 2006 ed.; a publication of the Administrative Office of the Courts), as well as, current membership rosters of and surveys conducted by the Judicial Council of the California Association of Black Lawyers, the California Asian American Judges Association, the California Latino Judges Association, and the National Asian Pacific American Bar Association Judicial Council.

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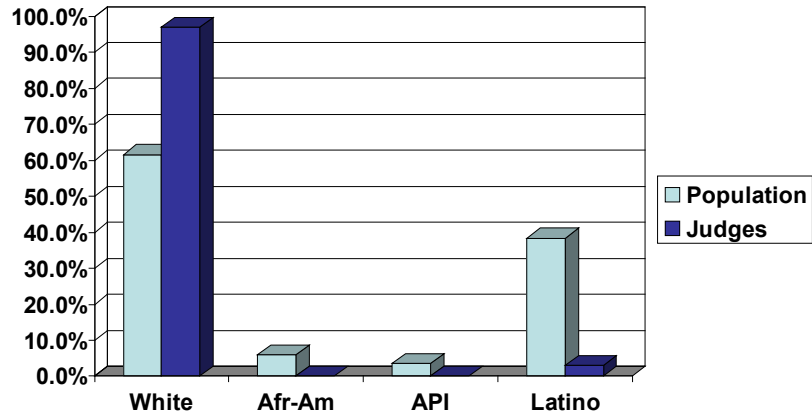
Sacramento County



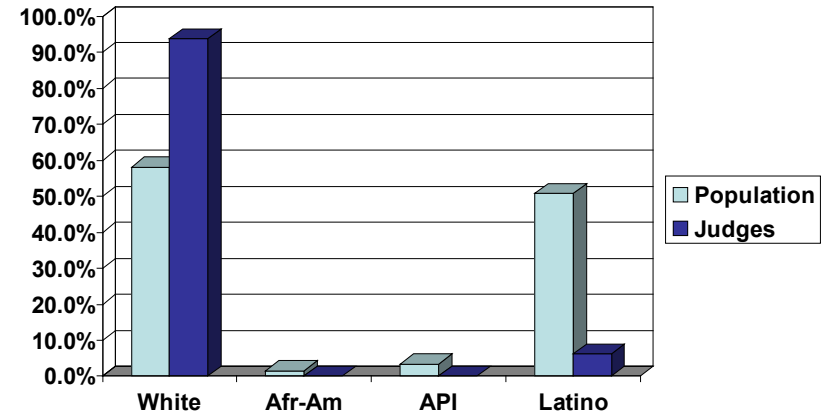
Fresno County



Kern County

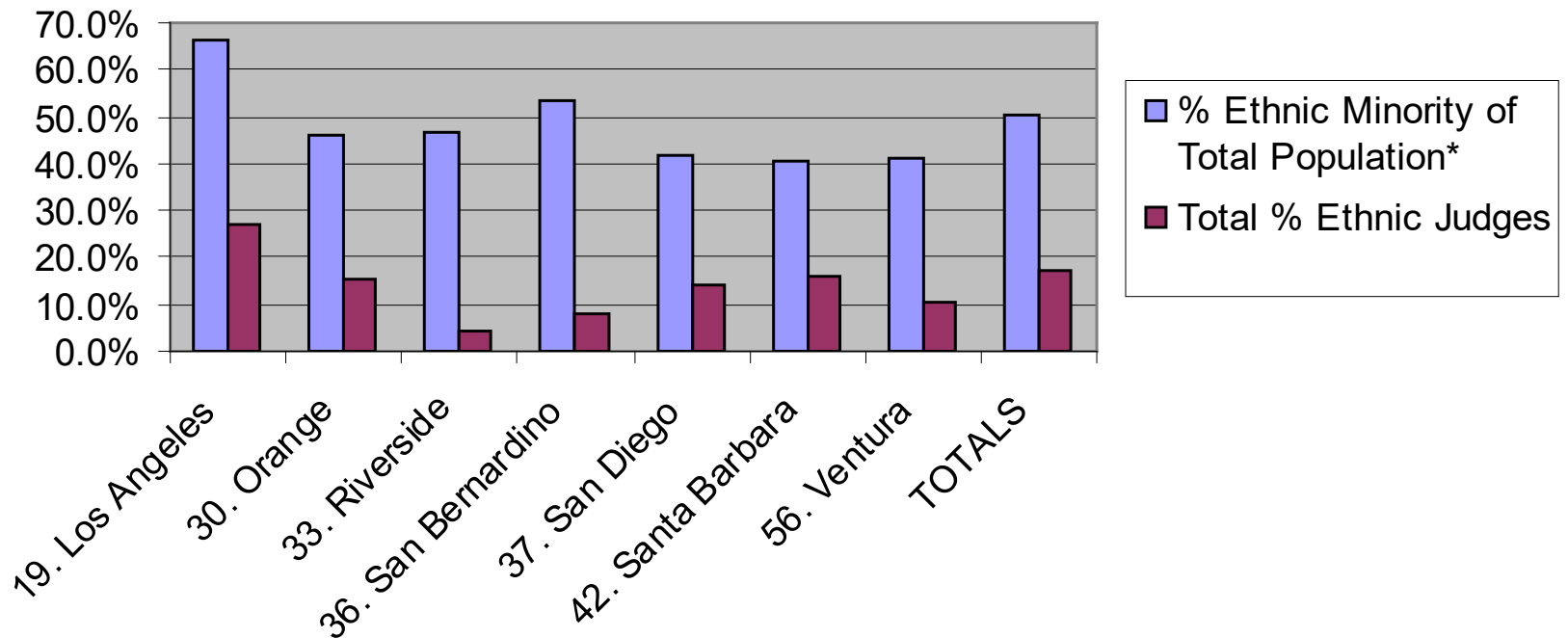


Tulare County





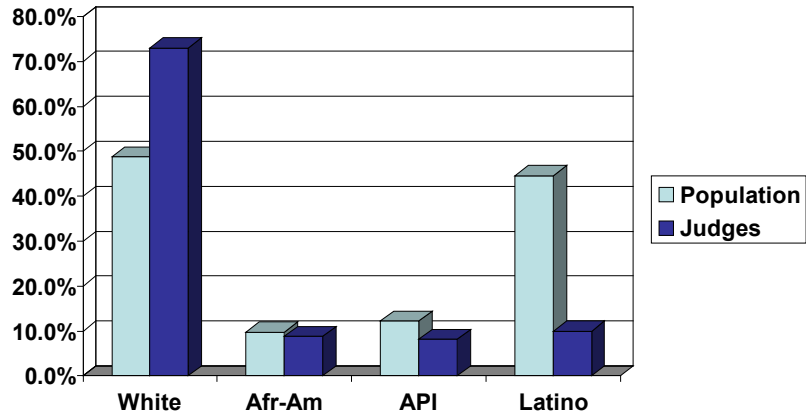
Southern California



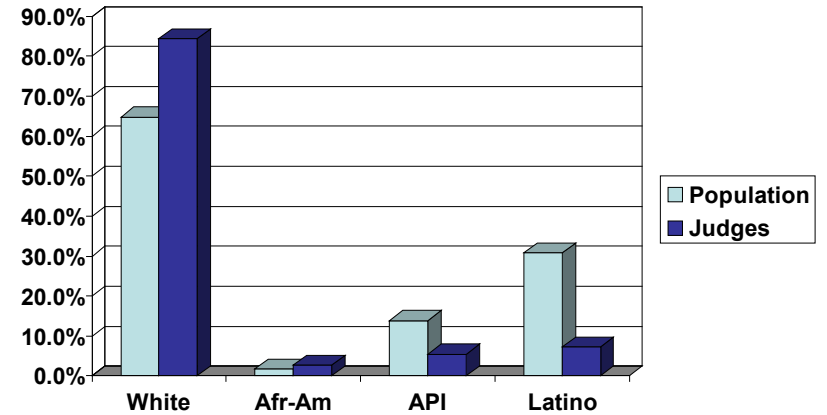
Sources: 2000 United States Census & California Courts: Locations, Justices and Judges (May 2006 ed.; a publication of the Administrative Office of the Courts), as well as, current membership rosters of and surveys conducted by the Judicial Council of the California Association of Black Lawyers, the California Asian American Judges Association, the California Latino Judges Association, and the National Asian Pacific American Bar Association Judicial Council.

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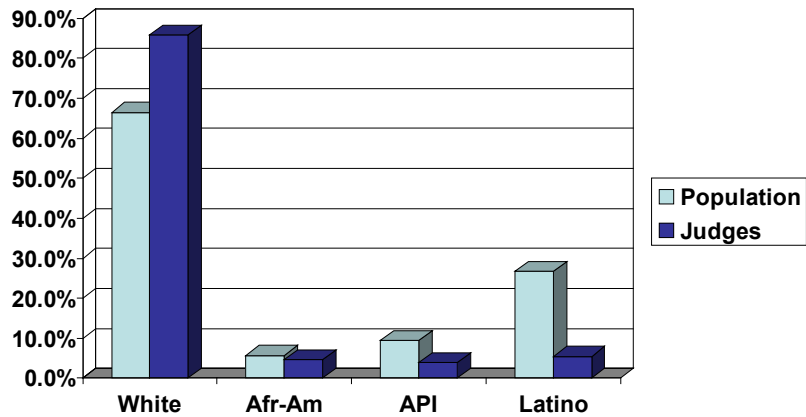
Los Angeles County



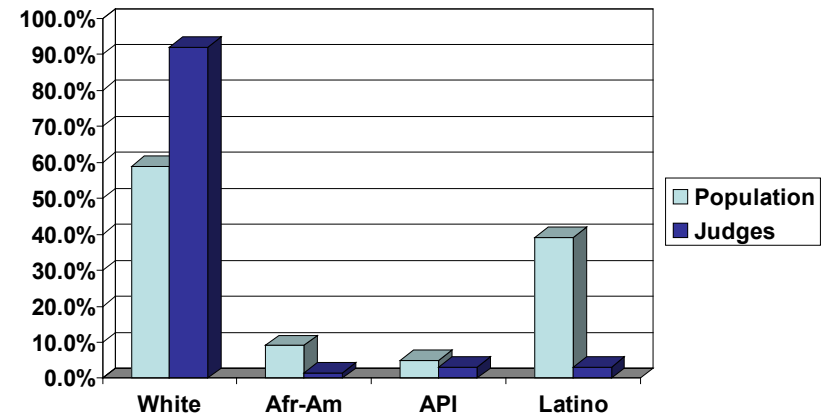
Orange County



San Diego County



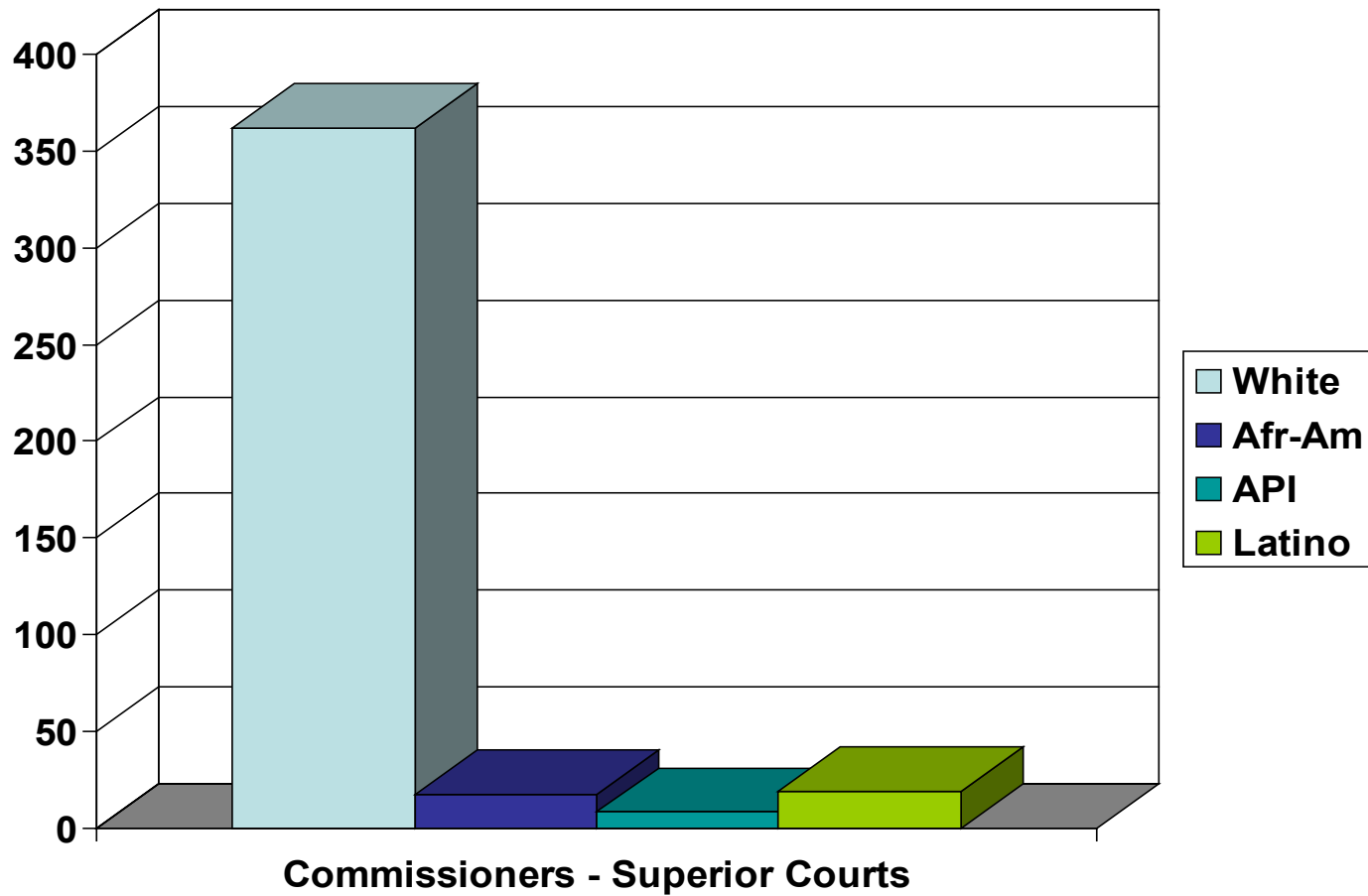
San Bernardino County



ETHNIC DIVERSITY IN THE CALIFORNIA STATE COURT SYSTEM
AS OF MAY 5, 2006

COURT	AFRICAN-AMERICAN WOMEN	AFRICAN AMERICAN MEN	ASIAN P/I WOMEN	ASIAN P/I MEN	LATINA WOMEN	LATINO MEN	TOTAL ETHNIC	TOTAL # OF SEATS	%AGE ETHNIC
Supreme Court	0	0	1	1	0	1	3	7	42.8%
Courts of Appeal	2	1	2	1	2	2	10 *	105	9.5% *
Superior Courts	34	50	25	47	23	84	263 *	1498	17.5% *
Totals	36	51	28	49	25	87	276 *	1610	17.1% *

* Sources: According to the Governor's Office, 6 African-Americans, 11 Asian Americans, and 10 Latinos have been appointed, for a total of 27 ethnic minority appointments. However, the Governor's Office has not identified the courts to which the appointments have been made. The totals contained in this chart are based on California Courts: Locations, Justices and Judges (May 2006 ed.; a publication of the Administrative Office of the Courts), as well as current membership rosters of and surveys conducted by the Judicial Council of the California Association of Black Lawyers, the California Asian American Judges Association, the California Latino Judges Association, and the National Asian Pacific American Bar Association Judicial Council



**DIVERSITY PIPELINE TASK FORCE
COURTS WORKING GROUP
FINAL REPORT AND RECOMMENDATIONS
FEBRUARY 13, 2007**

BACKGROUND

In September 2005, the State Bar created the Diversity Pipeline Task Force, a broad-based group of stakeholders committed to furthering the State Bar's diversity goals.

The Task Force is comprised of representatives from the bench and bar, law firms, corporate counsel, educational institutions and the government/public sector. The pipeline model is intended to serve as a resource model and guide to fostering collaborative activities and efforts along the career pipeline, pre-school to law school, resulting in entry and advancement into the legal profession. Its main goal is to develop student aspirations and to generate and provide support to increase the number of diverse lawyers in the legal profession.

The work of the Task Force was performed by various work groups, with the Courts Working Group being one such entity. The Honorable Brenda Harbin-Forte, a judge of the Alameda County Superior Court, chaired the Courts Working Group. A complete roster of the Courts Working Group is appended hereto as Attachment 1.

As part of its Task Force activity, the Courts Working Group held a Judicial Summit in conjunction with the State Bar Diversity Summit in June 2006. The summit, themed "Continuing a Legacy of Excellence: A Summit On Diversity In The Judiciary", was called for the purpose of convening judges and other key participants, including representatives from the Governor's Office, Legislature, Judicial Council and bar leaders, to discuss the current state of diversity in the judiciary and to develop recommendations to encourage a more diverse bench. A copy of the agenda for the Judicial Summit is appended hereto as Attachment 2.

After considering the comments from the members of the judiciary and other participants at the Judicial Summit, and based on legislative events that occurred thereafter, the Courts Working Group has developed the following recommendations.¹

¹ Many of the original recommendations advanced by the Courts Working Group regarding collection and reporting of demographic information were incorporated into SB 56, the requirements of which are discussed on the following pages.

FINAL RECOMMENDATIONS OF THE COURTS WORKING GROUP

I. DATA COLLECTION AND ACCESSIBILITY

CONCERNS:

California currently has 1,610 authorized judgeships², with one Supreme Court having seven justices, five appellate districts having 105 justices, and 58 Superior Courts with 1,498 judges. In seeking to establish baseline numbers reflective of the degree of diversity in the court system, working group members discovered that there were neither complete nor reliable statistics on the races, ethnicities and genders of the state's judges. The statistics provided by the Administrative Office of the Courts revealed that almost 500 judges, or approximately one-third of the state's judiciary, had declined to provide voluntary information on their race or ethnicity.

In order to establish baseline data on the degree of ethnic diversity among judges and justices, the members of the Courts Working Group compiled their own statistics for presentation at the summit. A copy of the statistical report on ethnic diversity is appended hereto as Attachment 3.

As was the case with obtaining official statistics on the level of ethnic diversity, it was similarly difficult to acquire official baseline data on the level of gender diversity in the courts. The Courts Working Group collected some preliminary numbers on the number of female and male judges, primarily by examining the names of judges, and presented those tentative figures at the Judicial Summit. A copy of the gender statistics is appended hereto as Attachment 4.

In addition to the 1,610 judges and justices, there are approximately 400 commissioners and referees who preside over cases in our courts. These subordinate judicial officers ("SJOs") are selected by the judges on whose courts they serve. The Courts Working Group again found no official statistics on the level of ethnic diversity among these SJOs, so researched and compiled its own statistics, limited to diversity among commissioners, for presentation at the Judicial Summit. A copy of the statistical report reflecting the combined level of diversity among trial court judges and commissioners is appended hereto as Attachment 5.

In addition to a paucity of information on the degree of diversity among sitting judges and commissioners, the Working Group encountered the absence of reliable information on the demographics of the current Governor's appointments to the bench.

² Fifty (50) new trial court judgeships have already been approved by the Legislature. The Judicial Council anticipates that the legislature will approve and fund 100 more trial court judgeships over the next two years. These additional 150 seats will result in a total of 1,760 judgeships. In addition, the Judicial Council hopes to add an unspecified number of appellate judgeships. Thus, in the next five years, there may well be approximately 1,800 judges on the trial and appellate courts in California.

Appended hereto as Attachment 6 is the Courts Working Group's summary of judicial appointments for the period November 2003 to May 5, 2006, which was distributed to attendees at the judicial summit.

The absence of official baseline numbers will make it more difficult to assess the effectiveness of future efforts to diversify the judiciary.

RECOMMENDATIONS

1. The State Bar should assist the Governor's office and the Administrative Office of the Courts in implementation of Senate Bill No. 56 (2005-2006 Reg. Sess., as amended August 29, 2006), now codified at Government Code section 12011.5(n), which requires the following:
 - (a) the Governor to disclose aggregate statewide demographic data provided by all judicial applicants relative to ethnicity and gender,
 - (b) the designated agency of the State Bar responsible for evaluation of judicial candidates to collect and release on an aggregate statewide basis (a) statewide demographic data relative to ethnicity and gender provided by judicial applicants reviewed by the designated State Bar agency, and (b) the statewide summary of the recommendations of the designated agency by ethnicity and gender, and
 - (c) the Administrative Office of the Courts to collect and release the demographic data provided by justices and judges relative to ethnicity and gender, by specific jurisdiction.
2. Working through the Bar Leaders Conference, the State Bar should encourage each county bar to provide an annual report to the State Bar regarding the state of diversity on that county's bench, using uniform reporting categories such as the racial and ethnic classifications used by the Department of Finance in its collection and reporting of demographic information. The State Bar should facilitate data collection by providing a standardized form. The report should be submitted by June 30 of each year, and should detail, as of December 31 of the preceding year, the aggregate race/ethnicity and gender of the judicial officers on that superior court bench. For those locales with no county bar association, the local bar association in an adjoining county should be encouraged and enlisted to gather the demographic data for that county.

3. The ethnic judges' associations (The Judicial Council of the California Association of Black Lawyers, The California Asian American Judges Association, the California Latino Judges Association, and the National Asian Pacific American Bar Association Judicial Council) should continue to work collaboratively to collect and release, on an aggregate statewide basis, demographic data on the diversity of California's state and federal courts. The racial and ethnic categories should correspond to those classifications used by the Department of Finance in its collection and reporting of demographic information. The groups should issue their first reports on June 30, 2007.
4. The Administrative Office of the Courts should be encouraged to collect and release aggregate data on the level of racial, ethnic, gender, and other recognized types of diversity among the commissioners and referees hired by the courts in the 58 counties.
5. The State Bar should seek to facilitate future discussions on pipeline "leakage" by maintaining statistics on the ethnic minority and women law school enrollment of all accredited California law schools and receiving input from minority and women law student associations (e.g., Law Students of African Descent, La Raza Law Students, Asian Law Students, etc.), minority bar associations, and its own advisory committees such as the Council on Access and Fairness.
6. The Governor's Office, the Administrative Office of the Courts, and the State Bar should establish a confidential mechanism for collecting and reporting voluntary information on the aggregate number of judges and SJOs who are lesbian/gay/bisexual/transgendered or who have a disability.

II. OVERCOMING BARRIERS:

CONCERNS:

The demographic data compiled by the working group revealed that in each of the 58 counties in California, the number of Caucasian judges on the bench exceeded the percentage of Caucasian population for the county. In many counties with high ethnic minority populations, and presumably high numbers of court users who were ethnic minorities, there were no judges of color presiding over the myriad matters adjudicated for that diverse population.

The members of the working group agreed that there were certain barriers—real and perceived—to achieving the goal of a truly diverse judiciary. The working group members acknowledge that the process of judicial appointments is an inherently political one, and that the job of appointing judges falls to the executive branch of government. Nonetheless, the working group felt that there were significant opportunities for all three branches of government to work together to improve the appointment process.

The Judicial Branch - its Judicial Council, judges and lawyers - can help develop effective strategies to recruit, screen and retain a more diverse judiciary. The Legislative Branch's system of checks and balances can be used to assure that efforts to achieve a more representative judiciary are realized. The Executive Branch can publicly declare a commitment to diversity in making appointments to the bench, just as it has declared a commitment to diversity in making appointments to boards and commissions. The working group members felt that more transparency at certain critical junctures would increase public trust and confidence and advance the administration of justice.

One perceived barrier to achieving diversity relates to the judicial evaluation process. The various peer review processes required by statute or utilized by the Governor's office for evaluating applicants for judicial appointments (i.e., JNE Commission and county bar judicial evaluation committees) are perceived by some as being unfair to underrepresented groups due to a lack of transparency regarding the processes themselves, and a perceived lack of accountability for evaluative outcomes. Cultural and other biases may adversely affect the ratings given to minority applicants for judicial appointment by the JNE commissioners and the members of county bar judicial evaluation committees. While reliable statistical data is unavailable, there is a belief that a disproportionate percentage of ethnic minorities and women applicants are rated "not qualified" or barely "qualified" while non-ethnic minorities and male applicants with similar qualifications receive higher ratings.

Similarly, the screening committees used by the Governor's office were also seen as barriers, to the extent that neither the names of these judicial gatekeepers, nor the criteria and process they employ to evaluate judicial applicants, are made public. The evaluations performed by these local screening committees often influence the Governor's decisions as to which judicial candidates are forwarded for formal JNE evaluation. Thus arguably, these anonymous local screening committees, applying criteria and following a process unknown to the candidates or the public, can prevent qualified judicial candidates from advancing to the formal JNE screening process.

On a related note, the working group members recognized that many members of underrepresented groups have legal practices that emphasize civil, family, juvenile, probate, mediation, and other areas where jury trials are not common. The application for judicial appointment, and the JNE Commission evaluation form, both seem weighted heavily toward jury trial experience.

Finally, some interested parties raised concerns that even though criminal jury trial experience seemed a preferred quality for applicants seeking appointment to the bench, those applicants who had extensive trial experience gained through representing criminal defendants (e.g., public defenders) were nonetheless perceived as less qualified to hold judicial office. Given the numbers of minorities and women engaged in criminal defense practice, this perception could further restrict the pool of diverse attorneys for appointment to the bench.

RECOMMENDATIONS:

1. The State Bar should continue to conduct outreach to the minority and specialty bar associations to explain the role and procedures of the JNE Commission in the appointments process, to encourage members of minority and specialty bar associations to apply for positions on the JNE Commission, and to educate members of minority and specialty bar associations on the types of professional backgrounds, training, and experiences they should seek out to make them more attractive as judicial applicants.
2. The State Bar should require a minimum of two (2) hours of mandatory training for all JNE commissioners in the areas of fairness and bias in the judicial appointments process.
3. The State Bar should work with the Administrative Offices of the Courts and the Governor's office in implementing Senate Bill No. 56, as stated above.
4. County and state population figures³, not state bar membership, should be used as the standard in the reports under Senate Bill No. 56 by which the pool of desired level of diversity of judicial applicants should be measured.
5. County bar associations that have evaluation contracts with the Governor's office should be encouraged to submit an annual public report on the total number of applicants evaluated and the aggregate ratings given to applicants, relative to ethnicity and gender, modeled after the reports required of JNE by SB 56. These county bar association judicial evaluation committees should also be encouraged to disclose voluntarily the makeup of their membership in terms of racial, ethnic, gender and other recognized types of diversity.
6. The application form for judicial appointment used by the Governor's Office should be amended to add questions specifically designed to describe an applicant's experience in areas of the law that may not involve jury trials or litigation and to solicit information about other qualifying experiences and skill-sets, including cultural sensitivity.
7. The JNE evaluation form should be amended to elicit evaluator comments on an applicant's experience in non-jury trials and about other qualifying experiences and skill-sets, including cultural sensitivity.

³ Collection of accurate data based on race and gender does not violate Proposition 209. "[A] monitoring program designed to collect and report accurate and up-to-date information is justified by the compelling governmental need for such information. So long as such a program does not discriminate against or grant a preference to an individual or group, Proposition 209 is not implicated." (Connerly v. State Personnel Board (2001) 92 Cal.App.4th 16, 46-47.)

8. The Governor's Office is encouraged to articulate publicly its position on the importance of judicial diversity and its philosophy and strategies for achieving a more representative judiciary.
9. The leaders of the Executive, Legislative, and Judicial Branches should continue to work collaboratively to ensure that California's judiciary reflects the rich diversity of the population that it serves.

III. RECRUITMENT

CONCERNS:

Greater outreach and recruitment efforts are needed to increase the number of lawyers from diverse backgrounds who apply for judicial appointment. It is a necessary and proper role of the bar and the judiciary to develop long-range and viable recruitment strategies to achieve a larger applicant pool.

RECOMMENDATIONS

1. To the extent allowed by relevant provisions of the California Constitution (e.g. Proposition 209), the pool of commissioners and referees hired by each superior court should represent the rich diversity of the community served by that court.
2. In an effort to increase the applicant pool, judges should take a pro-active role in recruiting, grooming, and mentoring candidates from diverse backgrounds for judges, commissioners, referees, pro tem judges, and judicial clerks for the trial and appellate courts, helping them design individual strategies calculated to qualify them for eventual judicial appointment.
3. The State Bar should work with courts, in conjunction with local and specialty bar associations, to present educational programs for lawyers, patterned after the "So, You Want To Be A Judge?" programs presented by the California Women Lawyers bar association, to educate attendees on the judicial appointments and elections processes, judicial salary and benefits, and the overall benefits of pursuing a judicial career.
4. Because elections to judgeships can serve as a viable option for increasing diversity on the bench, judges should take a pro-active role in educating lawyers from diverse backgrounds on how to run for open judicial seats.
5. Judges should work with local, minority and other specialty bar associations to identify, recruit and support all qualified candidates for judicial appointment.

6. Mentor judges should provide support and preparation for all levels of the appointments process, in particular early career planning, “how to be a judge” programs, and mock interviews to prepare for meetings with local screening committees and the Governor’s Office.
7. Retiring ethnic minority judges should engage in “succession” planning by grooming ethnic minority lawyers to succeed to that seat.
8. Local, minority and other diversity bars should develop methods to identify and track the progress of ethnic minority and women judicial applicants.

IV. OUTREACH AND EDUCATION

CONCERNS:

Goal 1 of the Judicial Council’s strategic plan, as amended in December 2006, provides:

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.

The working group recognizes that superior courts have ongoing community outreach programs that encourage judges to relate to their local communities. Despite tremendous and varied outreach efforts, however, many members of the public continue to experience an unacceptable level of dissatisfaction with their court experiences.

Public trust and confidence surveys also reveal that the perception still exists that certain ethnic minorities are treated unfairly in the court system. For example, in the most recent report published by the Judicial Council, more than half of all respondents, regardless of race or ethnicity, felt that African-Americans usually receive worse results with respect to case outcomes.⁴ Even more felt that individuals from low-income and non-English speaking communities experience worse case outcomes.

The attendees at the judicial summit and the members of the working group feel that the degree of diversity on the bench may impact the public’s perception of the level of justice received by members of certain communities. Greater diversity may well lead to an increased level of public trust and confidence in the court system.

RECOMMENDATIONS

1. The State Bar should work with the Judicial Council to implement an action plan to carry out Goal 1 of its strategic plan, with specific deadlines and timetables for achieving the goal of ensuring that the judicial branch reflects the h diversity of the state's residents.
2. The State Bar should work with the Judicial Council to include, as a component of each court's community outreach initiatives, strategies for educating the community at large on the importance of diversity on the bench and for educating the public about careers in the legal field. Along these lines, courts should identify and present to diverse community groups judicial role models from non-traditional backgrounds, so as to highlight the rich diversity of the community's bench and career opportunities in the judicial system.
3. The Judicial Council should encourage courts to include, as a component of each court's community outreach initiatives, specific strategies for educating the public about careers in the judiciary. To assist and encourage judges in their community outreach efforts, the Education Division of the Administrative Office of the Courts should consider developing and offering periodic regional workshops for judges and court leadership on appropriate community outreach, and should allow judges to count toward a judge's minimum continuing education expectations any hours a judge is engaged in such "qualified" outreach efforts.
4. In an effort to teach youth how to avoid contact with the criminal justice system, the Judicial Council and the State Bar should be encouraged to work with school districts to develop age-appropriate "street law"- type programs for all grade levels (pre-kindergarten through twelfth) that expose students to the judicial process and the various roles for law enforcement, lawyers and judges in the juvenile and adult criminal justice systems.
5. To encourage youth to consider the judiciary as an option as they make their career plans, the Judicial Council and the State Bar should be encouraged to develop, with the assistance of bar associations, educational programs for high school students, college students, and law students on the judicial appointments and elections processes.
6. Judicial officers should be encouraged to work with community-based organizations (community groups, churches and other religious institutions, service clubs, etc.) in efforts to increase diversity in the courts.
7. The Judicial Council should be encouraged to fund local programs designed to create volunteer opportunities in the courts for high school students, college students, and law students, and to expose them to job opportunities in various levels of court administration.

8. The State Bar should work with the Judicial Council to encourage courts to use the American Bar Association's mock trial programs or other similar programs for elementary school students (i.e., those based on familiar fairy tales) as a means of getting young people interested in legal careers.
9. The Judicial Council and the State Bar should be encouraged to work with junior high and high school career counselors to encourage them to steer students from diverse backgrounds toward law as a viable career option.
10. The State Bar and the Judicial Council should be encouraged to work with college career planning counselors to develop and host pre-LSAT classes and "So, You Want To Be A Lawyer?" workshops, to educate and encourage aspiring lawyers.
11. The Judicial Council and the State Bar should be encouraged to work with local law schools to host an annual program for first year law students to educate students on how to lay the foundation for a future career as a judge.
12. The Judicial Council should encourage the justices of the Supreme Court and the Courts of Appeal to hire a diverse pool of law clerks and staff attorneys, so as to enrich the decision-making process at the appellate level.
13. Courts should work with local law schools to design county programs for law students, such as the ABA Boot Camp, LEOP (Legal Education Opportunity Program), and Legal Aid clinics.
14. The State Bar, together with the Judicial Council and the Administrative Office of the Courts, should encourage and work with law schools to develop a week-long law school orientation course for entering law students to help prepare them to succeed in law school.
15. The State Bar, together with the Judicial Council and the Administrative Office of the Courts, should prepare a readily accessible packet of materials for wide distribution to students providing information on the law as a career, and the various roles lawyers can play in the judicial system, including becoming judges. The packet, which should be made available online and through the mail, should also educate students on career options related to the judicial system, including career choices as court interpreters, police officers, probation officers, court reporters, clerks, bailiffs, etc.
16. To ensure a diverse institutional workforce in both the State Bar and the Administrative Office of the Courts, each organization should implement similar education and outreach efforts to publicize career opportunities within each organization. The State Bar and the Administrative Office of the Courts should strive to ensure that each organization's staff members fairly represent the rich diversity of California's population.

CONCLUSIONS

The Courts Working Group believes that a diverse judiciary is not just an admirable goal, but also a necessary and achievable one. If the recommendations contained in this report are implemented, California's judiciary will be on the path to reflecting the diversity of the population it is designed to serve. An increased level of diversity will result in a greater degree of public trust and confidence in the court system, and all of California's citizens will reap the positive benefits that flow from the perception that equal justice is indeed being dispensed in all the courthouses around this state.

Summary of GOV Code 12011.5 Judicial Appointments provisions:

(Comment: These are the current provisions of Gov Code 12011.5 that address requirements and criteria to be considered by various screening entities. It would appear that language could be proposed to require implicit bias training for the Governor's JSACs, similar to existing language in Gov Code 12011.5 (b) referring to JNE training. Also, note that there are local bar screening committees that have an agreement with the Governor's office to provide similar screening and feedback to the Governor for applicants from the respective local bars. We want to determine if these formal agreements still exist and consider similar implicit bias training, as well as transparency re: committee membership and screening criteria.)

Provision requiring implicit bias training for JNE:

Gov. Code § 12011.5 (b) requires that JNE members receive training in the areas of fairness and bias in the judicial appointments process as part of their new member orientation, with an additional hour of training for JNE members serving more than one term.

Provision expanding criteria to be applied by JNE to consider legal experience broadly in its review and rankings process (as opposed to emphasizing applicants from the District Attorney's Offices or applicants with extensive litigation experience):

Gov Code &12011.5 (d) provides that:

In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability and legal experience.

The State Bar shall consider legal experience broadly, including, but not limited to, litigation and non litigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, Legal work in any of the three branches of government, and Legal work in dispute resolution." (italics added)

Provision requiring the annual collection and public reporting of demographic information from the Governor, Judicial Council and JNE:

Gov. Code § 12011.5 (n) provides for the collection of voluntary data on race, ethnicity, and gender for the public reports filed by the Governor, Judicial Council and JNE.

- LGBT data was included for yearend 2011.
- Disability and Veteran Status were included in reports as of yearend 2014.

Provision encouraging the Governor and JSACs to consider attorneys from diverse backgrounds and cultures:

Gov. Code § 12011.5 (o) provides that:

The Governor and members of the judicial selection advisory committees are encouraged to give particular consideration to candidates from diverse backgrounds and cultures reflecting the demographics of California, including candidates with demographic characteristics underrepresented among existing judges and justices.

Also note Recent Legislation: Mandatory Implicit Bias Training for Court Staff and State Bar Licensees

AB 242 (2019) amending Government Code Section 68088 effective January 1, 2021 requiring court staff interacting with the public to complete 2 hours of implicit bias training through the Judicial Council.

Section 6070.5 to the Business and Professions Code requiring the State Bar to develop mandatory MCLE program covering implicit bias and the promotion of bias-reducing strategies with licensees meeting the requirement each MCLE period ending after January 31, 2023.



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**Resource Materials for the
Application of California Government Code Section 12011.5(d)
in the Review and Evaluation of Applications for Judicial Appointment**

**Prepared by the State Bar of California
Council on Access & Fairness
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INTRODUCTION

The State Bar Board of Trustees JNE Process Review Committee (“Committee”) was formed to review the procedures governing the Commission on Judicial Nominees Evaluation (“JNE”) and to make recommendations for revisions to the process. The Committee discussed the existing criteria for evaluating judicial candidates under California Government Code Section 12011.5 (d). The Committee expressed the need for more specific criteria to define the parameters of the language in Government Code section 12011.5(d) which requires the State Bar to “consider legal experience broadly.” The Committee concluded it would be appropriate for the JNE criteria to be studied in depth by another committee.

The State Bar of California's Council on Access and Fairness (“COAF”) is charged with the task of implementing the State Bar goals and strategies for diversity in the legal profession and elimination of bias in the practice of law. The COAF reviews diversity issues and initiatives along the entire diversity pipeline from early education to college/law school, legal profession and the judiciary. Given its focus on judicial diversity as part of its charge, the COAF, through its Judicial Committee, undertook the task of reviewing Government Code section 12011.5(d) and developing expanded criteria for use by JNE in its ongoing review of judicial applications.

The COAF developed the following commentary elaborating on and providing more specific criteria regarding the expanded definition of “legal experience” in Government Code section 12011.5 (d). The purpose of this commentary is to provide guidance to JNE Commissioners in evaluating a judicial applicant’s work experience in light of the Government Code’s mandate that legal experience be considered broadly, and is intended for use during the ongoing training of the JNE Commissioners.

CALIFORNIA GOVERNMENT CODE §12011.5 PROVIDES, IN PART, THAT:

“(d) In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience. *The State Bar shall consider legal experience broadly, including, but not limited to, litigation and non litigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.*” (Italics added).

COMMENTARY: Further Defining “Legal Experience”

There is widespread consensus that those selected to become judges typically have the same background, *i.e.*, that of a district attorney or other prosecutor. While criminal jury trial experience is very valuable, the practice of selecting members of the judiciary with the same legal experience ignores the richness of diversity and experience in the legal profession and the valuable work that is being done in courts and legal proceedings other than criminal courts.

A great deal of important and difficult work is done in the civil law arena, including litigation, transactional, and administrative matters. With regard to civil proceedings, in addition to the traditional civil litigation courts, civil law practitioners also practice in the family, juvenile dependency, juvenile delinquency, probate, mental health and administrative law courts. While many civil matters may not generate headlines, they nonetheless often set in place a course of action that may have a significant impact on society, the community, or an individual's life. The thoughtful, detailed, specialized, and demanding skills needed for various civil law proceedings are *equally desirable prerequisites* for a judicial candidate as are the skills obtained in the practice of criminal law.

Further, attorneys with experience as judicial officers such as judges pro tem and administrative law judges, as well as those in mediation or dispute resolution, have a track record for which their demeanor, treatment of litigants, work ethic and ability to make decisions can be measured.

Therefore, it is important to recognize that there are varied and valued skill sets developed in different practice areas that suggest suitability for appointment to the bench. These skills should be considered in the review process to ensure that legal experience is viewed in the broad sense envisioned by Government Code section 12011.5(d).

SKILLS FOR SPECIFIC PRACTICE SETTINGS

Civil Litigation:

Attorneys with practice experience in civil litigation matters have often developed:

- Critical legal and analytical skills to develop litigation strategies
- Expertise in drafting court pleadings and other legal documents applying facts to law to advocate for the client's position
- Oral advocacy skills obtained through motion hearing practice, trial experience, or administrative hearings
- Negotiation and other dispute resolution skills
- A broad range of legal expertise

Juvenile, Family, Criminal Defense, Immigration and Probate Practice:

Attorneys with practice experience in juvenile, family, probate, criminal, and immigration have often developed:

- Sensitivity to the cultural, emotional/mental and economic differences of the parties that influence court proceedings and outcomes
- A unique ability to work effectively with individuals in extreme crises
- Professional demeanor and distance, despite the emotional nature of the cases, to remain objective and effective
- Knowledge in areas other than the law, including but not limited to real estate, taxation, pensions, child development, substance abuse, immigration and mental illness

Legal Work for Business or Non-Profit Entities:

Attorneys who have represented business or non-profit entities, including transactional and in-house lawyers, often have well developed skills in:

- Planning and negotiation
- Legal research
- Drafting written agreements, corporate transactional documents, etc.
- Foreseeing potential obstacles and averting them
- Preparing legal memoranda applying facts to law to advise clients, or to advocate the opposing position
- A broad range of legal expertise
- Advocacy in administrative, quasi-judicial proceedings, or in the legislative process

Dispute Resolution, Arbitration and Mediation Practice:

Attorneys with experience in dispute resolution, including arbitrators and mediators, often have experience in:

- Conducting pre-hearing conferences including case management conferences
- Ruling on preliminary motions, including discovery matters
- Conducting hearings, which may include written or oral testimony and cross-examination
- Assessing credibility of witnesses, weighing evidence and ruling on evidentiary issues
- Preparing findings of fact and conclusions of law and issuing oral and written decisions

Administrative Law Judges, Judges Pro Tem, Commissioners, Referees, and Federal Magistrate Judges:

Attorneys with judicial experience as an administrative law judge, a judge pro tem, a superior court commissioner, a superior court referee, or a federal magistrate judge often have experience in:

- Acting as presiding judicial officer assigned to a particular courtroom, managing court calendar and staff
- Processing ex parte matters
- Instructing parties as to their rights and the court process
- Conducting pre-trial conferences, and ruling on pre-trial motions
- Conducting contested hearings, which may include written or oral testimony and cross-examination, receiving documentary evidence, assessing credibility of witnesses, weighing of evidence and ruling on evidentiary issues
- Analyzing and evaluating facts and the law
- Rendering oral and/or written decisions and opinions
- Sentencing or rendering dispositions
- Ensuring due process rights of the parties

Administrative and Legislative Law Practice:

Attorneys who practice administrative law including, *but not limited to*, those with experience with the Legislature and the following administrative/governmental agencies: Workers' Compensation Appeals Board, Social Security Administration, Unemployment Insurance Appeals Board, State Welfare Commission, Occupational Safety and Health Administration, Federal Communications Commission, Securities and Exchange Commission, Social Security Office of Disability Adjudication and Review, California Public Utilities Commission, Office of Administrative Law, Immigration Court, and the Equal Employment Opportunity Commission, often have developed skills such as:

- Expertise in the inner workings of state and federal government, and complicated legal issues with proceedings involving governmental law and regulation
- Knowledge of a broad range of issues such as business and economic regulation, industry restructuring and deregulation, contracting and project development, trade regulation, and legislative consultation and lobbying registration and reporting requirements
- Gathering the necessary, appropriate evidence
- Presenting evidence
- Eliciting testimony from witnesses
- Analyzing and evaluating proposed laws and regulations

Academic Setting – Law Professors and Lecturers:

Attorneys who have experience as professors or lecturers often have highly developed skills such as:

- Ability to motivate and inspire
- Effective public speaking
- Effective listening and mediating
- Strong legal research and analysis capabilities
- Ability to break down complex concepts in a way that makes them understandable
- Persuasive writing, including authoring articles and books
- Expertise in complex areas including ethics
- Proven ability to work with people of diverse cultural and economic backgrounds
- Effective planning and implementation capacity
- Professional demeanor
- Ability to understand trends in the law and the role of precedent, as well as the interaction between the legislative, executive, and judicial branches
- Ability to undertake sustained analysis on discrete legal issues with the goal of achieving the proper result

Legal Aid, Pro Bono, Diversity and Community Activities:

Attorneys with legal aid or pro bono experience or who participate in diversity pipeline programs frequently demonstrate:

- An understanding of the ethical responsibility to improve access to the legal system and to make it more responsive to the needs of the underprivileged and the communities served
- An ability to communicate and work with populations from diverse cultural and socio-economic backgrounds
- An understanding of the need to provide crucial legal services to the traditionally underserved such as the impoverished, defenseless and those in rural communities who cannot afford traditional legal representation
- A recognition that diversity in the profession is important to enhance the administration of justice, as well as being good for the profession, good for business, good for our communities and critical for enhancing the public's confidence in the legal profession and judicial system
- An ability to work collaboratively with individuals and groups to organize, lead, teach, motivate and inspire individuals from underrepresented groups to enter or advance in the legal profession
- Legal skills including drafting pleadings, interviewing, and presenting oral argument; leadership ability; lead counsel experience; consensus and coalition building skills; ability to develop successful client relations; good interpersonal skills; and ability to operate within a bureaucracy

Judicial Summit Reports and Recommendations

2006 Judicial Summit Report and Recommendations (Court's Working Group Report):

Located on the State Bar Website at

<http://board.calbar.ca.gov/Agenda.aspx?id=10192&tid=0&show=100002118&s=true>

2011 Judicial Summit Report and Recommendations

Located on the State Bar website at

<http://board.calbar.ca.gov/Agenda.aspx?id=10609&tid=0&show=100006268>,

or the Judicial Council's website at

<https://www.courts.ca.gov/documents/jc-20121026-item1.pdf>.

2016 Judicial Summit Report and Recommendations

Located on the State Bar Website at

<https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000026383.pdf>