

ELIMINATION OF BIAS

Richard P. Clem Continuing Legal Education www.richardclem.com
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I. Elimination of Bias: The Rules

Minnesota General Rules of Practice for the District Courts

Rule 2.02 Role of Judges

(a) Dignity. The judge shall be dignified, courteous, respectful and considerate of the lawyers, the jury and witnesses. The judge shall wear a robe at all trials and courtroom appearances. The judge shall at all times treat all lawyers, jury members, and witnesses fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual orientation, status with regard to public assistance, disability, or age.

Rule 2.03 Role of Attorneys

(d) Non-Discrimination. Lawyers shall treat all parties, participants, other lawyers, and court personnel fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual orientation, status with regard to public assistance, disability, or age.

Minnesota Rules of Professional Conduct

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status in connection with a lawyer's professional activities;

(h) commit a discriminatory act, prohibited by federal, state, or local statute or ordinance that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including:

- (1) the seriousness of the act,
- (2) whether the lawyer knew that the act was prohibited by statute or ordinance,
- (3) whether the act was part of a pattern of prohibited conduct, and
- (4) whether the act was committed in connection with the lawyer's professional activities

II. Elimination of Bias: An Ongoing Process

In 1993, The Supreme Court's Task Force on Racial Bias in the Courts released its final report. A copy of this 355-page report is available on the Court's website at the following link:

http://www.mncourts.gov/documents/0/Public/Court_Information_Office/Race_Bias_Report_Complete.pdf

Recognizing that the elimination of bias is an ongoing process, the Court also created the Implementation Committee on Multicultural Diversity and Racial Fairness in the Courts, now known as the [Committee for Equality and Justice](#). Most recently, that committee has conducted a series of community dialogue sessions to learn how the communities view racial and ethnic fairness in the Minnesota Court system. Since June 30, 2008, several community dialogue sessions have been conducted throughout the state. Full reports of these Sessions can be found at the Committee's website. Recently, these sessions have been organized by judicial district, and most sessions have included a follow-up session at which court staff reported back on issues raised at the initial meeting.

Each of these sessions had as its purpose: Create a public forum for community members to describe their experiences and discuss ideas for advancing racial equality and fairness in the courts. Here are excerpts from the suggestions made by participants in these sessions:

EDUCATE AND TRAINING EMPLOYEE TO BE MORE COURTEOUS, COMPASSIONATE, UNDERSTANDING, “HUMBLE” AND TOLERANT OF RACIAL AND SOCIETAL DIFFERENCES

Along with hiring staff from diverse communities, staff should be regularly trained in appreciating and dealing with culturally diverse clients. [Eagan]

One [Mille Lacs Ojibwe] Band member, now 59 years of age, indicated that he has been challenged by recurring incidents of stereotyping, discrimination and racist attacks since childhood. He reports that he’s found no compassion or understanding when at government offices in Pine City. He asks that more efforts be made by the State government to protect Band members from racism and violence, that all students be taught true Native American and U.S. history and be given materials about state and tribal government treaties and relations. In turn, he noted that the tribes need to protect their members, teach true Native American history and teach principles and values of being honorable and civil. [Hinckley]

Tribal elder Herb Sam spoke in his introductory remarks of problems that the county law enforcement had in their frequent encounters with a certain Band member. Mr. Sam said that he suggested to the deputies that they change their approach to this man; he taught them how to greet the man in the Ojibwe language, saying “Aaniin Boozhoo.” Later, Mr. Sam again met the deputies. They reported that they’d again encountered the individual, and offered the Ojibwe greeting. The deputies indicated that the change in approach totally defused the situation. What had previously been tense and hostile became friendly and productive. [Hinckley]

Band members in the small groups reported that they felt there was a lack of courtesy extended to them when interacting with court staff; a lack of respect and sensitivity to the needs of older people. There is a need to clarify the person’s understanding, often Band members say they understand although they remain confused. [Hinckley]

Band members reported that they, their family and others such as community members are more likely to be permitted to speak in tribal court proceedings than when involved in state court matters where generally only attorneys speak to the judge. [Hinckley]

A Band member suggested that there should be more efforts to utilize community policing practices so that greater trust and rapport could develop between law enforcement officers and tribal community members. [Hinckley]

Participants voiced concerns with the load of cases on a calendar and perceptions that judges ‘just want to get it over with.’ Participants suggested judges learn more about the programs they refer court users to, stay with the same case over time, and work to be more transparent in the courtroom, particularly explaining options to unrepresented litigants in greater detail. (Minneapolis 2016).

Participants asked what kind of training officers receive regarding cultural diversity and eliminating bias. They also asked about how officers handle situations where they are stopping someone who is non English speaking. Austin 2019.

- There is a lack of understanding of people from other cultures. The court should involve community members from other cultures when making decisions. Community leaders can provide insight in ways not known to the judge or court staff.

LITIGANTS NOT UNDERSTANDING COURT PROCEEDINGS

Groups echoed one another’s comments regarding courtroom demeanor. Comments fell into two broad categories: How participants feel they are treated in court and whether participants understand the court process. [Mpls. Nov. '15]

Participants shared that Family Court was too difficult to understand and navigate, and suggested the court make Family Court orientation and parenting/co-parenting courses available. They noted a need for more resources on how to obtain legal advice in the Family Court building. They also sought more communication between Child Protection and the courts. Participants also shared that parents are often not given any resources to help them find employment and that the emphasis on criminal history in family court cases keeps fathers away from their children. (Minneapolis 2016).

A Band member noted that many defendants in criminal court matters (or juveniles in delinquency matters) don’t really understand the terms set forth on the conditions for pre-trial release or sentencing/juvenile disposition forms. These matters are not clearly explained prior to the hearing, and not covered in detail during the hearing. As a result, Band members are arrested for probation violations for such things as failing to report to the probation office prior to leaving the courthouse following sentencing. [Hinckley]

One small group reported that they believed that there would be better understanding of the terms of probation if the defendant and the judge were looking eye-to-eye when these terms were placed on the record; often they are covered too quickly. [Hinckley]

Band members indicated that there are occasions when they feel that often, when a member is in state district court on criminal matters, they indicate agreement when they really aren’t clear on the terms of the agreement. The judge seems to be unaware of the differences between the verbal acceptance and the defendant’s quizzical facial expression. Another person stated that people need to know what’s up before they leave the courtroom. [Hinckley]

Additionally, there are frequent instances when the Band member defendant would rather accept a plea requiring them to enter an admission of guilt to a criminal charge thereby obtaining a known result than to face the possibly more serious result that might occur following a jury trial. [Hinckley]

EMPLOY PEOPLE OF COLOR

The very first comment offered to the committee members [at one session] was one attendee's observation that all facilitators appeared to be Caucasians. In fact, of the 43 judges in the 10th Judicial District only one is a member of a minority race. There is one non-white law clerk and a few non-white people employed by court administration at either the district office located in Ramsey, Minnesota, or at one of the eight county government centers. [Columbia Heights]

Participants expressed the need for more diversity within the court system and that those who work for the courts should reflect the community that they serve. The courts should attempt to hire individuals from diverse backgrounds. Community members might feel better about their court experience if court staff was more representative of their community. Questions were asked about the level of cultural, diversity and inclusion training received by court staff and judges, as well as by law enforcement. (Bemidji 2016).

Several small group raised the need for more diverse juries that reflect the race of the person standing trial. People advocated for more judges of color in Family Court, increased minority attorney involvement in bar associations, and increased minority participation in a justice system whose employees are perceived as disproportionately white. Also identified was the need for more adult males from diverse backgrounds to advocate for men or boys of color who are navigating the court system. [Mpls. Nov. '15]

In order to promote greater trust and comfort with the justice system, more people of color should be recruited and hired in all offices (courts, law enforcement, prosecution, public defense, probations and corrections). If this were accomplished, individuals coming to court would interact with people they identify with. Trust in the system needs to be developed among juveniles before they become "frequent flyers" and adult offenders. [Eagan]

The participants stated that in order to promote greater trust and comfort with the justice system, more people of color should be recruited and hired in all offices (courts, law enforcement, prosecution, public defense, probation and corrections). Court users want to interact with people with whom they identify. The view of the participants is that when a person of color walks into a courtroom he or she is often the only person of color in the room. This leads to a feeling that the professionals collude together to decide the outcome of the case.

[Dakota County Jail]

Minority persons should be actively recruited for employment within the judicial system. [Columbia Heights]

The judicial system needs to have persons employed within the system to specifically address minority issues. [Columbia Heights]

More diversity in staff, attorneys, guardians ad litem [Chaska]

We need to move in the direction of the system “players” reflecting the courtroom population [Chaska]

People commented that child protection staff needed to better represent the ethnicity of the clients. They advocated the use of culturally appropriate treatment facilities. The experience level and cultural competence of Guardians ad Litem were questioned. The multiple barriers in achieving a secure and stable lifestyle (after factoring in paycheck deductions for child support costs) need to be addressed. [Mpls. Nov. '15]

APPOINT MORE MINORITY JUDGES/ COURT STAFF

The consensus among the participants is that the court system is racially unfair. In addition to hiring a more diverse workforce (as addressed above), the participants felt that more diversity on the bench would also help eliminate bias. The participants perceived the lack of diversity within the court system as an example of the courts unwillingness to address issues of fairness. The hope of the participants is that a more diverse bench, in conjunction with other community leaders, will be able to influence government officials to begin improving the court’s diversity. [Dakota County Jail]

Some expressed concern about the accountability and fairness or perception of fairness of referees who are not elected, but rather appointed. [Mpls. Nov. '15]

There were several participant comments and ideas about how to further promote diversity in Minnesota Courts. Discussion centered on the need for more formal student programs to introduce a diverse group of students to the court system at an earlier age. Willmar 2018.

Participants asked about the cultural diversity makeup of the judges in the Third Judicial District. Austin 2019.

MAKEUP OF JURIES

It was noted by one small group that if only adults registered to vote in Pine County elections and having Minnesota driver’s licenses or state issued identification cards indicating a Pine County address were eligible to serve on Pine County juries, while any person with a felony history was eliminated from consideration for jury service, that it appears that many of the Band’s adults will never be summoned for jury duty. They said that it is difficult to believe that you will be treated fairly when there is no one that looks like you is on the jury. [Hinckley]

Jury Pool

- Lack of diversity in the pool
- Consider other sources for summoning other than registered voters -Understanding the modern -day concept of a “jury of your peers” -Intimidation in the selection process -Lack of representative juries [Mpls. Apr. '15]

. We shared with you that potential jurors are drawn from the list of people with a valid driver's license, valid state ID, or who are registered, voters. This process is governed by a court rule. We could recommend additional sources for drawing our list of jurors to the state for consideration. Do you have suggestions for other sources we should submit for consideration?

- Student IDs
- Phone # lists
- Divide the list of minorities eligible to a separate list to draw from instead of including in large Caucasian database
- Valid passport
- Revise age limit of those that can serve, even if it's a 5-year difference
- Employer responsibility – pay? Time off?
- Filed tax return, social security lists
- Rochester Public Utility bills
- Department of Health for people on state assistance
- County social services/welfare lists (Rochester 2016).

COURT ACCESS

Judges heard from people who thought that cases in the justice system felt too rushed, and then judges also heard from others that their cases took too long. Several attendees advocated strongly for some court hearings to be held in the evenings and weekends, when litigants are not at work. (St. Paul, 2017).

Judges heard a significant amount of concerns about how the courthouse buildings -both the main courthouse/government center and the Juvenile Family Justice Center- are confusing and unwelcoming, particularly for non-English speakers. (St. Paul, 2017).

The Anoka County courthouse is particularly difficult to navigate. There needs to be more or better signage about where to go, what the rules are, etc. (For example, checking in. Unless you are frequently in a courtroom, you do not know that you have to check in with the clerk when you arrive. And even this process can vary from courtroom to courtroom). It's best to be very clear about the process and the expectations – for both English speakers and non-English speakers – to understand what's going to happen and what everyone's role is in that process. Spell out the basics. (Fridley 2017).

Libraries are a great resource for electronic access (computers, scanners, etc.); we should spread the word. And, to that end, perhaps people from the justice system could work with libraries to make sure they know which websites to use, etc. A suggestion was made to extend the Self Help Center hours, and have a 24-hour online help desk. (Fridley 2017).

Many people are not aware prior to appearing in court that some judges do not allow children in the courtroom. Many parents cannot afford daycare and have to bring their children to the courthouse. For others, arranging daycare for multiple court appearances is a significant financial burden. (Fridley 2017).

Participants in Mahnommen were asked, if there is one thing that you could change that would make the court system more accessible and fair, what would it be?

- Standardize rates and fees for attorneys.
- Make available more resources such as Ask an Attorney and other volunteer attorney programs.
- Better advertise the Self Help Centers as well as the Ask an Attorney programs.
- Allow for more flexible court scheduling; possibly give multiple court dates so the defendant/court user has the ability to pick a time allowing them to make work or child care arrangements which might help eliminate so many no-shows and warrants.
- Expand the mediation process or use it more frequently.
- There is a need for a jail in Mahnomen County. Because there is no jail the transportation costs for the county are high and the situation has a negative impact on access to justice. Currently jails in 19 different counties are used to house Mahnomen County inmates.
- The Minnesota Chippewa Tribe Constitution should be amended to specifically address courts. This would improve the perception of fairness.
- The joint DWI court with the White Earth Tribal Court is a positive effort.
- Address the issue of the high number of out of home placements within the community; allow grandparents to raise grandchildren. (Mahnomen, 2017).

Public transportation to court facilities, probation agents and detention facilities was seen as problematic in making it to court hearings, reporting to probation offices and going to and leaving county correctional/ detention facilities. At least with regard to Community Correction offices, providing neighborhood reporting and testing offices could serve to reduce probation revocation hearings for failure to make timely contact with probation agents. [Eagan]

In the metro area, bus and/or light rail transportation is possible, but not always easy. There is no straight bus route to the Anoka Courthouse, and with the various transfers, it can take over an hour to get to the courthouse. In Minneapolis, the availability of bus cards can make bus transportation more affordable.

From the rural areas, the only way to get to the courthouse is by car and many people do not have valid driver's licenses.

Parking can also be difficult and confusing, and better signage was suggested, since there are really two ramps available (and some street parking).

People need to know that hearings may take several hours so they don't get ticketed if they choose the 2-hour municipal ramp or hourly street parking. (Fridley, 2017).

In the metro areas of the District, bus and/or light rail transportation is possible, but not always easy. There is no straight bus route to courthouses, and with route transfers, it can make the travel time over an hour. The cost can make bus transportation not affordable too. Fridley 2018.

A poor public transportation system in Dakota County makes it difficult for people to make it to hearings and meetings at court facilities and probation and detention locations. Another issue that worsens this problem is that forty percent of the Dakota County jail population are not Dakota County residents. Many of the participants shared that they had missed court hearings because they had no way to get to the Dakota County facility.[Dakota County Jail]

Persons in the court should be mindful of the order in which cases are called; many Band members have difficulties with transportation and the uncertainty of how long it will take for a hearing to be completed increases the difficulty. It was noted that Pine County is taking steps to establish a public transit system that would be available to county residents. The Band offers transportation, but the existing needs exceed the availability. [Hinckley]

AFFORDABILITY OF COURTS/”REVOLVING DOOR”

Judges heard concerns about there being too many active warrants in Ramsey County and the need for warrant reduction and forgiveness. (St. Paul, 2017).

It was said that frequently, American Indians are unable to pay fines, or post bail, so they end up in jail. They don't have the chance to present their thoughts to a judge. Fines too end up in collections which negatively affect credit scores, housing, etc. (Bemidji 2016).

- Fees and representation are expensive
- Can't afford attorney, fees, not in poverty and court isn't accessible
- \$500 in fees, if would have known, would not have gone to court
- Turn Yourself in Day, wipe your slate clean if you have numerous fines, etc. [Mpls. Apr. '15]

Participants voiced skepticism about whether poor and self-represented defendants get equal access and outcomes compared to wealthier individuals represented by private counsel. Concern was also expressed about those who do not qualify for the public defender but also cannot afford private counsel. People complained about the high cost of transcripts and fees and fines. They also voiced a need for education about the court process and advocated for court hearings in the community. [Mpls. Nov. '15]

The cost of the justice system is often beyond the means of the minority client. The need to raise revenue to fund justice system programs is all too often falling on defendants and their families in the form of fees, surcharges, assessments and fines. Often defendants get into the repetitive cycle of failing to pay their financial obligations to the system, having a warrant issued or a drivers license suspended, being arrested, losing work time or their jobs and committing additional crimes to make ends meet. [Eagan]

Participants would like to see coaching on how to succeed on probation, as it seems that defendants are often set up to fail. Probation officers should be more like case managers, defendants require structure, need social system support, housing, employment, etc. [Mpls. Nov. '15]

FAMILY, JUVENILE AND MENTAL HEALTH COURTS

Procedural fairness in family law cases: The concept of one family, one judge. (Apple Valley 2017)

Judges heard about the need for more high-quality juvenile programming/alternatives, in particular for girls. (St. Paul, 2017).

Small discussion groups voiced concerns that Family Court decisions could be inappropriately influenced by pleas in Criminal Court, OFPs and chemical dependency. [Mpls. Nov. '15]

Participants suggested a need for parents or parental figures from the community to be present to advocate for kids in Juvenile Court. [Mpls. Nov. '15]

It was suggested that routing appropriate cases to Mental Health Court and accessing appropriate mental health resources is needed. [Mpls. Nov. '15]

STUDY BAIL SENTENCING PRACTICES TO ENSURE NON-DISPARATE IMPACT

This topic was strongly identified as an area within the court system that seems to result in the most obvious form of bias. The participants shared their own numerous experiences which depicted this to be a serious problem in Dakota County. [Dakota County Jail]

One group reported a discussion of how the Band members use a different and more expansive definition of family. They asked if it was possible to think of all of the persons considered by the Band member to be family when making sentencing and bail determinations thereby showing an appreciation of the larger cultural definition. They reported that it is likely that the Band member's flight risk would be diminished when the court is more aware of the actual family support given to a defendant. [Hinckley]

It was also noted that although a Band member may be receiving a per capita payment from the Band, who he or she provides financial support to with these funds and other income cannot be assumed. Having a more expansive definition of family means that many individuals may be relying, at least partially, on that person to make ends meet. [Hinckley]

Some were of the opinion that bail settings seem to favor white defendants and that there is a lack of consistency in setting bail. Some felt that and that bail and / or fines may be excessive in some cases. [Mpls. Nov. '15]

COMMUNITY AND/OR SCHOOL LIAISON OFFICERS

Concerns were expressed about the language barriers that exist between Somali parents and their children, the result of the children having a better understanding and being more fluent in the English language than their parents. Parents indicated they often times feel left out or ignored when their children have interactions with law enforcement and because they do not always understand what is being said, they feel they are unable to adequately advocate for their children.

A community liaison officer would be helpful in an effort to bridge this gap. Similar issues were also expressed regarding the school system. It was suggested that in addition to a school liaison officer, it would be helpful for teachers and schools to be educated on the Somali culture to have a better understanding of Somali students and their backgrounds and perspectives. Concerns were voiced within one small group that there is also inadequate orientation and introductory training for the largely refugee population regarding coming to America. [Rochester]

EDUCATION AND COMMUNITY OUTREACH

Additionally, there were several survey comments discussing the need for additional

community listening sessions. The participants were also informed that court staff around the State is facing numerous retirements and staff changes. The participants were informed about Judicial Career resources and encouraged to apply, or inform others to apply who may be interested. Willmar 2018.

Much of the knowledge of the courts comes from television and the internet, which is often incomplete and inaccurate. Shows such as Law and Order, NCIS and Judge Judy actually create misconceptions about the court system. One attendee stated that, coming from another culture, it was very difficult to understand the system and proceedings. People said it would be helpful to know more, not just about the process, but about what judges do and expect. (Fridley 2017).

Establish a satellite courthouse in the southern part of Anoka (Columbia Heights/Fridley) or use ITV to hear some cases, such as the petty and misdemeanor calendars, at least on first appearances. (Fridley 2017).

All small groups expressed a need for education within the Somali community about the laws and the justice system in general. Concerns were voiced that many in the Somali community lack the education and knowledge about what is legal and what is illegal and feel that with an education about the legal system, they could stop problems before they arise.

It was suggested that one venue in which to provide this training would be the cable TV channel where the Somali community currently airs programs nightly. It would be most beneficial to have a variety of members from the justice community provide this education – law enforcement, public defenders, prosecutors and judges. [Rochester]

Scholarships should be offered to students who want to pursue equal justice. There should be outreach efforts to international student organizations. [Columbia Heights]

The court needs to be re-organized to encourage greater multi-cultural acceptance. The judicial system needs to develop contact people with the various communities. [Columbia Heights]

Social service programs and churches can assist in outreach efforts. [Columbia Heights]

The judicial system needs to do a better job of disseminating information. Traditional media outlets don't work with minority populations. Minority newspapers, church bulletins, outreach to community centers and ethnic organizations would be more effective. [Columbia Heights]

It was noted that there is a lack of understanding about how the court system works. For example, two defendants can be charged with identical crimes and receive greatly differing sentences. There is a lack of knowledge about what factors are considered in such matters as bail determinations and sentencing. The judges from the Pine County area indicated that they follow a bail evaluation prepared by court services staff when making determinations about the pretrial release of a defendant in criminal matters. It was suggested that perhaps a pamphlet could be prepared that gave an overview of these matters. [Hinckley]

IMMIGRATION AND OTHER COLLATERAL CONSEQUENCES

Some of the attendees expressed a desire to have help filling out immigration paperwork and asked if

there is a fee. St. Peter 2019.

Participants expressed concern regarding an inability to get assistance with immigration issues and frustration regarding a slow response to their immigration-related questions. Austin 2019.

Participants were fearful that when coming to court, ICE officials will be waiting to apprehend them. Participants shared concern about police officers notifying ICE of an undocumented individual or working for ICE and arresting people because they are undocumented. Concern was also expressed that when an undocumented individual is in jail, jail personnel are notifying ICE. Austin 2019.

Immigration is a concern for everyone at this time. Things are unpredictable and nobody has answers for what the future holds. A member of the [Karen/Burmese] community gave us some background on herself. She was in refugee camps for 20 years, has five children, her father was a pastor and he was spied on by the military regarding what he preached on. The Burmese military had attacked her small village and many others. She is fearful for her community on what the future holds regarding immigration. Larry Nicol suggested at a future hearing we could try and have an immigration lawyer present. (Worthington, 2017)

Band members indicated that they felt persons in the state court system weren't fully aware of the collateral consequences they incurred because of court proceedings including the loss of housing, jobs, family break ups, loss of eligibility to vote and the loss of licensed driving privileges. It was requested that diversion programs be more readily available in order to permit the opportunity to avoid such consequences, which have a greater impact in an economically challenged community. [Hinckley]

Criminal matters have a cumulative impact on the defendants. One person asked if it were possible to exclude the guilty pleas that had been made because of a defendant's perception that there was no way they would receive fair treatment. She said that convictions resulting from pleas entered because of such a perception should be excluded in the event of a subsequent arrest. That defendant should not face the increased sanctions in bail and release determinations and in sentencing matters when the prior convictions were based on a sense that true justice was not available to him or her. [Hinckley]

There were many comments about the unfairness of the immigration system. While immigration law is governed at the federal level, it has frequent interplay with persons in state court. There is a disconnect between the things that happen in our state courts and the consequences that flow from a federal immigration deportation proceeding. [Columbia Heights]

The legal system needs to do a better job of educating judges, staff, prosecutors, defense and others about matters relating to immigration and deportation. It has an obligation to inform and educate both the public as well as individual defendants on these issues. [Columbia Heights]

Additional training about the impacts of immigration matters could be developed and offered to members of the bench and bar. The judicial system doesn't recognize the problems that are faced constantly by a non-citizen. [Columbia Heights]

It was suggested that the district court judges should write a letter to immigration court judges explaining that their actions affect perceptions in the state court and this dialogue should reach across the federal/state court line of division. [Columbia Heights]

Concern was expressed about the unfairness of returning a person to the country of their birth, from which they may have emigrated many years earlier, or even as a child, simply because of a relatively minor criminal conviction, making what appears to be a very reasonable plea negotiation into an extremely harsh consequence. The criminal justice system should take these extra-judicial sanctions into account when making prosecutorial, defense and judicial determinations. [Columbia Heights]

RACIAL PROFILING

Judges heard attendees' concerns about racial disparities in the criminal justice system and high incarceration rates for people of color. (St. Paul, 2017).

There were questions from the Karen/Burmese community regarding law enforcement, their role in the community, why they stop you and the reasons they stop you. Some of the participants gave their experiences with law enforcement. Probable cause was explained. There have been some concerns regarding profiling, and there were concerns expressed regarding treatment. The experiences of the Karen/Burmese community with government oppression in Burma makes many members of the community fearful of law enforcement. Judge Moore agreed to speak with law enforcement and attempt to get the community and law enforcement together to better address the areas of concern. The EJC team invited community members to think about law enforcement as a career. It was a good discussion and informative for the group as a whole. (Worthington, 2017)

Many comments were received from non-white attendees indicating their belief that police make traffic stops of minority individuals more readily than of white drivers. One person stated that he was faced with the decision to either just pay the fine or lose time from his work in order to contest a ticket for a burned out taillight. He stated that he felt that if he'd been a white driver with a burned out taillight (unaware that it was needing replacement) he would have been let go by the police officer with just a warning.

Another person spoke of loaning a car with a broken taillight to a white female for two years. She was never stopped by law enforcement. He then loaned this vehicle to an African male. That very day the man was pulled over for a traffic stop.

A white male attendee stated that he's had friends (persons of color) who have been stopped in Columbia Heights for no apparent reason. Another person stated that the random checks at the airport are "difficult to stomach." One person expressed the view that it's the entire American system, not just the judicial system.

One man stated that he and friends (all immigrants) were playing soccer at a local public park. The police came and shut down the soccer game stating they had not completed the required field registration and paid the permit fee. No registration or fees were required for the nonimmigrants playing basketball on courts in the same park near the soccer field. Some people raised the issue of whether there is in fact one system of justice. Rather it seems there is street justice versus courtroom justice. It appears that police have their own version of justice as demonstrated by racial profiling matters. Is there any accountability of police? Being charged,

even if the charges are later dismissed, has significant consequences to individuals, families and communities. [Columbia Heights]

Several Band members indicated that they feel that law enforcement initiate traffic stops of vehicles driven by Band members without justifiable driving conduct. They indicated that they felt that law enforcement routinely stopped known vehicles or drivers without good cause. [Hinckley]

Band members stated that they chose to not get license plates for their vehicles issued by the tribal government as having these would target them for traffic stops by law enforcement. [Hinckley]

A Band member reported that another member is stopped repeatedly and questioned about his sobriety – apparently because this man has a staggering walk due to a physical limitation. This is disrespectful. [Hinckley]

One woman provided the details of an incident involving her adult son that occurred about a week before the Community Dialogue Session. She said her son was in a family owned business, working on refinishing the floors, when he was tapped on his shoulder, turned around and faced a Pine County deputy. The deputy indicated he'd received a call that someone was smoking marijuana on the premises. Her son reported that he was smoking a cigar because of the odors caused by the products or work he was doing. He said that he was then asked if he was a member of the Native American gangs – he believed the only possible reason was because he was wearing a headscarf because of the flooring work. Her son felt insulted and targeted, but tried to not demonstrate any such emotion. A call made to the County's dispatch office revealed that there had not been any call made to them reporting any person smoking marijuana at that address. She indicated that this occurrence was an example of the nature of law enforcement activity faced by Band members every single day. The present Pine County sheriff was present at the forum. He stated that this band member should be proud of how her son reacted to law enforcement, and that he hoped people would be comfortable reporting such inappropriate actions by members of his department to him. A Band member indicated there is reluctance to report such matters to the County's law enforcement because of concerns of retaliation. [Hinckley]

LANGUAGE BARRIERS AND CULTURAL UNDERSTANDING

Language can be a barrier at every step, from not understanding a ticket/charge, to not understanding parking rules or court decorum, and not being able to communicate in the courtroom.

Police officers don't have interpreters, so from the start a person who does not speak English often has no idea what's going on, and the language barriers snowball as a case works through the justice process.

Legal language and concepts can be difficult for English speakers, so imagine just how difficult it is for a non-native English speaker or someone who speaks no English.

While some documents are translated, the translations themselves may be unreliable and inaccurate, depending on the source used for translation.

Even in one's own first language, many immigrants are not literate, i.e., they were never taught to read or write. This is especially true for women from some cultures, s, where women are discouraged or prevented from getting an education.

For families with children who are bilingual, children cannot be relied upon to translate documents or proceedings. While the children may understand both languages, they don't always fully understand the native tongue and won't be able to translate big concepts to their parents in their native language.

One solution to some of the language issues would be to have more documents, including educational documents, available in more languages. Attendees suggested multilingual resources explaining the legal process.

Even with interpreters, accents and differences in dialects can present a communication problem.(Fridley, 2017).

There should be cultural interpreters just like language interpreters. Columbia Heights 2018.

One attendee commented that in cross cultural matters there is often a need not only for a language interpreter, but also for a "cultural broker" to provide assistance in the translation of the differing views and beliefs of the parties. For example, in the predominant American culture, it is felt that a person who is speaking the truth looks into the eyes of the listener when speaking. This is contrasted by the views of several minority groups in which the cultural rules state that it is disrespectful to look directly into another person's eyes as sustained eye contact signifies contempt or confrontation. [Columbia Heights]

There is a need for greater recognition about the burden of interpreting. It isn't solely a courtroom need. There is a need from more help at court administration counters; we need greater sensitivity to language barriers. It would help if people were allowed to schedule or request an interpreter at the counter and not just have to rely on family and friends. In response to a question about whether there is bilingual staff it was stated that there is one Spanish speaking person employed in Anoka. [Columbia Heights]

It is necessary to critically review what the judicial system is doing to provide understandable written documents and to provide interpreter services beyond its current scope of courtroom services. [Columbia Heights]

Having interpreters available is important [Chaska]

The courts need to increase its number of bilingual staff. [Columbia Heights]

Materials on the court's websites should be translated. [Columbia Heights]

It would be helpful to have interpreters available for court administrations in blocks of time, such as every Monday from 2-4 p.m. having a Spanish language interpreter available, every Wednesday from 10-12 p.m. having an Arabic interpreter available, etc. [Columbia Heights]

Cultural differences with interpreters [Mpls. Apr. '15]

NATIVE AMERICAN CONCERNS

Attendees described the social conditions faced by many American Indians and how they affect their lives and perhaps their interaction with the justice system. It was noted that there is a high level of poverty on the reservations and within the American Indian community, and as such criminal justice issues are on-going. One participant said, “We deal with a lot of stuff before we even call law enforcement.” There is also a belief that discrimination is prevalent, which causes disparity and a lack of opportunity. This in turn leads to criminality. People with felonies have a very difficult time finding employment and housing. Even if a conviction is dismissed, it is believed that it still has a negative effect on an individual. The perception exists that, historically, laws were designed to hold back American Indians. It was mentioned that foster care seems to be a pipeline to prison. One participant said that about 83% of the children in out of home placement in Beltrami County are American Indian, and that children do not see a positive future for themselves. Discussion occurred regarding historical trauma and the effect that it has had on American Indians. Some expressed the belief that historical trauma plagues the American Indian community and that the population suffers from post-traumatic stress disorder at an exceedingly high level. (Bemidji 2016)

Question 2: Do you feel the courts are fair or unfair towards people? How or why did you gain this perception? Any certain groups of people?

- Social and economic situations cause issues for American Indians. The Courts need to address the underlying causes of poverty and discrimination rather than just incarcerate tribal members.
- There is little recognition of historical trauma and laws that have negatively impacted American Indians.
- Belief that American Indians are not given the same rights as others, and that their identity is considered suspect.
- A lack of respect for American Indians and tribal culture creates disparity.
- Concern about American Indians filling jails; there is disparity with American Indian incarceration rates.
- More restorative justice programs are needed for both adults and minors.
- Juvenile justice programs should be revamped.
- In the American Indian community minor incidents may lead to major charges.
- Law Enforcement should work with juveniles to help rehabilitate them.
- There is sometimes confusion on the reservation about which laws to follow, tribal or state. Clarity is needed so that tribal members know what to expect.
- A Tribal Court community dialogue session might be helpful.
- Drugs are extremely prominent on the reservation and there is a need to focus on keeping youth off of them.
- Juveniles should be kept from incarceration and given community and spiritual support; young people are being criminalized.
- There needs to be a juvenile detention or overnight facility for White Earth and Mahnomen County.

- More Foster Families are needed in the community.

Question 3: Do you feel confident that you will be treated fairly if you were to use the court?

- Victims in the community sometimes believe that the punishment does not fit the crime and that they feel re-victimized at sentencing.
- Victims are often traumatized and reluctant to participate in the process.
- People would feel as though they were treated more fairly if they were offered a restorative justice program.
- The poverty level of the community is high which may impact whether or not a person believes they are treated fairly by the court.
- Request for more community sessions such as this one. People should get to know each other, the issues, and work together to get around the roadblocks.
- Poverty is the driving factor for all of the issues.
- Judges could better understand the status of American Indians and the disparities faced by the community.
- The State Court System must do what it can to learn about American Indian people.
- Courts frequently promote re-unification when it is not always in the best interest of children. (Mahnomen 2017).

Band members requested that court services probation officers and corrections officials consider tribal community service options rather than standard sanctions when conducting pre-sentencing investigations – perhaps a dispositional advisor from within the Band could be utilized.

[Hinckley]

One Band member reported that there is no effort to provide mediation in situations of alleged domestic violence; indicating that the mediation could occur either at the scene or later at the courthouse. She indicated that it appears that there is no attempt made to listen to members of the family; or of the impact such situations have upon the family such as breaking families apart and causing people to lose their employment. She noted that the services of others are available to assist and provide advocacy. [Hinckley]

One small group reported that there is a need for greater use of restorative justice efforts and rehabilitation activities involving the Band's resources. The present system is too punitive.

[Hinckley]