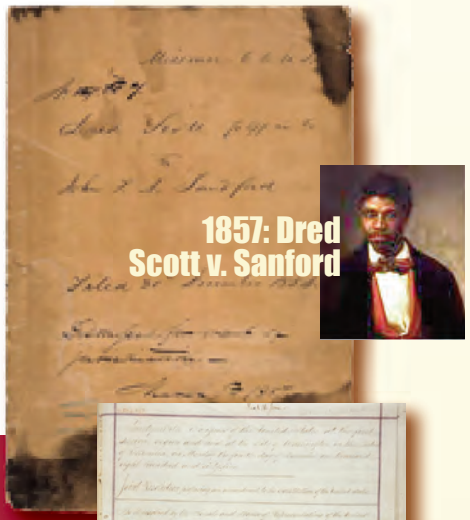
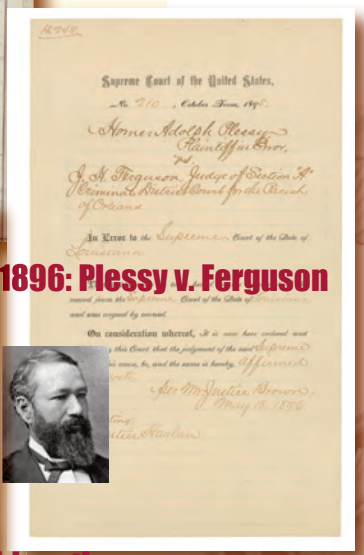


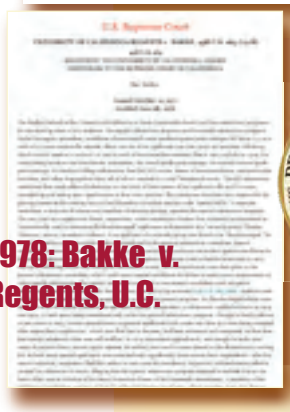
1857: Dred Scott v. Sanford

1868: 14th Amendment



1896: Plessy v. Ferguson

1954: Brown v. Board of Education



1978: Bakke v. Regents, U.C.

Nov. 4, 2008:

Barack H. Obama
President of the United States

FINDINGS FROM THE Race, Law AND THE Courts CONFERENCE

April 2011

TABLE OF CONTENTS:

HON. ROSE H. SCONIERS
CHAIR

RACE, LAW AND THE COURTS CONFERENCE

On June 16, 2010, the Franklin H. Williams Judicial Commission on Minorities hosted the conference entitled, "Race, Law and the Courts: Framing the Discussion for a Post Racial America" at New York Law School. The conference was a huge success as participants dialogued about important issues of race and the law. The conference examined whether we were living in a post racial America and the relevance of race in the legal system.

New York State Chief Judge Jonathan Lippman iterated the important role that the courts play in ensuring the fair and equal treatment of all people. While addressing the over 400 attendees he stated, "We in the courts have an obligation to take a leadership role in our respective jurisdictions in addressing racial and ethnic fairness and bias issues."

The keynote speaker, Donna Brazile, inspired the audience with tales of her journey from a young girl born in New Orleans, Louisiana to her current position as a leading Democratic Strategist and CNN correspondent. She noted that at the core of her success was her desire to help others and her commitment to civil involvement. While Ms. Brazile did not believe we were living in a post racial America, she opined that "the seeds have been deeply planted, but they have yet to blossom. Nonetheless we are fortunate to live in the United States of America because we live off the harvest of those who planted the seeds long before us. And now it is our job to protect them until fruition. We must allow a post racial America to blossom."

The morning panel was moderated by Juan Gonzalez, Columnist for the New York Daily News, and included nationally renowned speakers Angelo Falcón, President, National Institute for Latino Policy, Cesar A. Perales, President, LatinoJustice PRLDEF (Puerto Rican Legal Defense and Education Fund), Professor W.H. (Joe) Knight, Seattle University School of Law, Stan Mark, Esq., Senior Staff Attorney, Asian American Legal Defense and Education Fund and Professor Amy Wax, University of Pennsylvania Law School. The panelists concurred that while we have come far, we must not lose sight of how far we have yet to go. The varied reactions to the issues discussed made clear how deep and emotional issues of race are for us as a society. Nevertheless, an open and honest debate about race is crucial to building a better union.

The afternoon workshops discussed the following topics: Wrongful Convictions and Remedies, Law School Admission and Bar Passage Rate, New York State Juvenile Justice, Police Strategies and Minority Communities and Diversity in the Judiciary. The afternoon session was intended to provide tools and resources that we can use towards our journey to a "post racial America" where race and racism are no longer relevant. But as long as inequality persists, we must remain vigilant to finding solutions and challenging each other to be open to differing opinions. It is our hope that the imprint of the conference will be the shedding of complacency and a renewed vigor towards ensuring fair and just treatment in every aspect of society and life. This report outlines the panel and workshop discussions and their resulting recommendations.

Commission members, NY LEO students and conference attendees

NEW YORK CHIEF JUDGE AND NEW YORK LAW SCHOOL DEAN ADDRESS CONFERENCE

Chief Judge Jonathan Lippman

Looking to our June 16 conference on race, law and the courts as a great opportunity to reflect on both our nation's achievements in the racial arena as well on what remains to be done in turning the ideal of a post-racial America into reality, New York Chief Judge Jonathan Lippman and New York Law School Dean Richard Matasar addressed the audience of judges, non-judicial court employees, legal professionals, law students and others to do just that.

Chief Judge Jonathan Lippman noted that "We have come so far in righting the wrongs of the past and making sure that all of our citizens are treated fairly and equally—with much of that progress coming thanks to our legal and judicial systems—but there is much more work to be done." Chief Judge Lippman informed the group of his recent appointment of a permanent Justice Task Force, charged with reviewing documented cases to isolate the systemic factors leading to wrongful convictions.

Chaired by Court of Appeals Associate Judge Theodore Jones Jr., a featured speaker at the conference, and Westchester County District Attorney Janet DiFiore, the Justice Task Force is made up of prosecutors, defense attorneys, judges, legislators, public officials, police officials, scientists and others.

Since DNA was first used over 20 years ago to exonerate an innocent person, there have been more than 250 documented DNA exonerations—25 of them in New York alone—in addition to scores of other exonerations based on traditional non-DNA evidence, said the Chief Judge, emphasizing that , "Every wrongful conviction is not only a terrible tragedy, but also a valuable opportunity to find the answers to some very tough questions: what misled police and prosecutors; what caused juries and courts to find an innocent person guilty beyond a reasonable doubt; and why is it that 60 percent of the wrongfully convicted have been African-American?"

Dean Richard A. Matasar
New York Law School

Dean Matasar spoke to participants about witnessing the lifting of certain racial barriers in his own lifetime. "I attended segregated schools for the first part of my growing up, in grade school, and one day they were desegregated," said the Chicago native, also noting, "I've welcomed colleagues to my law firm and to the schools where I've been a faculty member and a dean, who would not have been faculty members in a prior generation."

The New York Law School dean said the conference would tackle "the question of how we're going to continue to diversify our bar and create a better justice system for the citizens of New York. "This conference, this dialogue, is an important marking point for us, for this society, for us as a state," he told the audience.

Hon. Rose H. Sconiers; Hon. Theodore T. Jones

Hon. Rose H. Sconiers, Hon. Doris Ling-Cohan, Joyce Y. Hartsfield, Esq. and law student interns

TRAILBLAZER DONNA BRAZILE DISCUSSES HER HOPES FOR A POST-RACIAL AMERICA

Donna Brazile

"We do not live in a post-racial America, but the seeds to create it have been planted," keynote speaker Donna Brazile, the political strategist and TV commentator, told nearly 400 attendees of our June 16 conference, "Race, Law and the Courts: Framing the Discussion For a Post-Racial America," held at New York Law School in lower Manhattan.

"We knew that one day we would reach this mountain-top moment ... the day that many of us never envisioned growing up in the segregated, deep south," said the Louisianan, alluding to the 2008 election of Barack Obama, whom she called "a unique and historic figure."

Discussing the subsequent emergence of the Tea Party—some of whose members Brazile said are "not quite ready to believe an African-American is in the White House"—she predicted that people will not only be talking about Obama's historic election 100 years from now but also about the political divisiveness that ensued.

Chief Judge Jonathan Lippman, Donna Brazile, Justice Rose H. Sconiers, Justice Doris Ling-Cohan, Chair of the Program Committee for the Franklin H. William Judicial Commission on Minorities

Brazile, who herself made history as the first black to oversee a presidential campaign—Al Gore's in 2000—also shared with audience members some of her childhood experiences in segregated New Orleans, recounting how her mother would warn young Donna before she boarded the local bus to "go straight to the back, don't talk to anyone, don't look at anyone." "Of course, I defied my mother every time," said Brazile. "I told my brothers to go to the back so they would not get in trouble, and I sat right there on the front row." Quoting Frederick Douglass, she added, "Power concedes nothing without a demand. It never did, and it never will."

Believing that the first step to a truly post-racial society is our willingness to openly discuss the problem of racism, Brazile closed her animated keynote talk with these inspirational words: "What our founders envisioned, what President Lincoln and Martin Luther King Jr. fought and died for, perhaps we are ready to achieve this post-racial period. It is going to be a very difficult period to get to, but at this mountain top, where we stand together, we can see the possibilities and dream and fight on. I hope to see you in that post-racial America. I believe it's in sight."

Donna Brazile and members of the Franklin H. Williams Judicial Commission on Minorities

2010 CONFERENCE STARTS OFF ON A LIVELY NOTE

MORNING SESSION

During a spirited morning session at our June 16 conference on race, law and the courts, a distinguished panel, moderated by New York Daily News journalist Juan Gonzalez, warned that while the New York State court system has achieved great strides in terms of diversity, we must not lose sight of the work ahead to ensure an even playing field at all levels of our justice system. The panel's concerns ranged from the diminishing number of African-American and Mexican American applicants admitted to law schools nationwide to the emerging needs of unrepresented litigants from minority communities.

Juan Gonzalez
Moderator

Panelist Cesar A. Perales, president of the advocacy group LatinoJustice PRLDEF, said a diverse judiciary is necessary for the public to believe in a fair system of justice.

"The number of black and Mexican students has been relatively constant or growing, but from 2003 to 2008, 61 percent of black applicants and 46 percent of Mexican-American applicants were denied acceptance at all of the law schools to which they applied. To me, that was the most shocking number I had ever read."

Perales chided both university officials and U.S. News and World Report (which compiles an annual list of the best colleges) for creating a system that relies primarily on LSAT scores to decide who gets into law school. "I think they are using racist criteria because it's culturally biased, and I would argue that if we are ever to achieve a just society—a society in which the vast majority of the people look to our court system as one that they can trust, one they believe that is fair—we've got to have more lawyers and consequently more judges [of color]."

University of Pennsylvania Law School Professor Amy Wax countered that tests do matter to some people and the reason why people don't do well on exams is simply that they don't know the answers. "We can try and argue ourselves into the position that it doesn't matter whether they know the answers to the questions—that it doesn't predict anything, it doesn't predict whether they'll be good lawyers—but I don't believe that, and I know that people who are hiring from law firms don't believe that," said Wax. "Educational skill deficits are a real problem. They do need to be addressed."

Citing the high dropout and out-of-wedlock birth rates among African-Americans, Wax told a stunned audience that blacks must take responsibility for the crime and other woes disproportionately afflicting their communities. While admitting that slavery and years of discrimination have fostered many of these problems, she said African-Americans cannot look to the government or society as a whole to fix them.

Panelists-Professor Amy Wax, Professor W. H. (Joe) Knight, Angelo Falcon, Stan Mark, Esq. and Cesar A. Perales

Seattle University School of Law Professor W.H. "Joe" Knight agreed with Wax on one point, saying communities of color have not held themselves accountable when it comes to educational goals. However, Knight added that communities of color must seize control over discussions of race.

"There are consequences in 2010 to what took place in 1619," Knight said. "There are consequences to a legacy of enslavement, a legacy of racially based identification and classification. There are consequences to generations of people having been prohibited from having the opportunities that other generations of people had."

Knight added that different minority groups cannot afford to think solely about their individual issues but must look to the idea of coalition-building. "Latinos cannot be talking about their issues, or Asians talking about their issues. I believe in metallurgy. Metallurgy allows you to take different metals and combine them to make something stronger," he said. "If we start ... thinking about ... how we can advance our humanity, we can be more respectful. We can be greater as a nation, and we just might be able to create a world that is better for all of us."

Other panelists included Angelo Falcon, president of the National Institute for Latino Policy, a leading think tank, and Stan Mark, senior staff attorney at the Asian American Legal Defense and Education Fund.

WORKSHOPS

DISCUSSION FOCUSES ON WAYS TO PREVENT WRONGFUL CONVICTIONS

In 1982, in Hanover County, Virginia, Marvin Anderson was convicted of two counts of sodomy, rape and abduction and sentenced to 215 years in prison. He served 15 years in prison and spent five years on parole before he was pardoned by Governor James Gilmore.

Anderson said police officers asked him to come down to their precinct to discuss a rape that had occurred over a weekend. Anderson told the officers that he had heard people talking about it in the neighborhood.

Before they all arrived at the county jail, officials stopped at the victim's apartment, Anderson said. When officers later showed the victim photos of suspects, the only photo identification for Anderson was his work identification, which was in color. He had never been in trouble with the law, so there was no black and white mug shot. The rest of the photos shown to the victim were in black and white. Anderson believes that each time the victim was shown photos, the color picture stood out and stuck in her mind. He was convicted of the crimes and remained in prison until 2001, when he was exonerated based on a DNA test.

VINCENT E. DOYLE, III, ESQ.
Moderator

Anderson is just one of the cases in the United States of persons convicted of crimes and later found innocent through DNA. In New York State, 254 people convicted of crimes have been subsequently found innocent through DNA testing. While that number of people wrongly convicted is in line with the national average, panelists at our June 16 "Wrongful Convictions and Remedies" workshop say the number of people wrongly convicted could be reduced by changing the way we handle eyewitness criminal identification procedures and confessions.

"Seventy-five to 80 percent of the wrongful convictions proved by post-conviction DNA testing involved at least one eyewitness misidentification," said Stephen Saloom, policy director of the Innocence Project, a national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and changes to our criminal justice system.

Saloom told the audience that law enforcement must guard against tunnel vision, explaining, "When we start to believe that someone is guilty, our mind tries to reinforce that perception ... If we get a piece of evidence that suggests that that's the person, then what happens a lot ... [we] ... look for the other information that reinforces that finding of guilt as opposed to remaining open to other suspects, to evidence of innocence." Saloom added that because people who work in the criminal justice field see more African Americans come through the system, they are also more apt to believe people of color are probably guilty. Police departments, prosecutors, criminal defense attorneys, jurors and judges must all guard against potential bias, he reiterated.

The moderator of the panel, Vincent E. Doyle III, Esq., a partner at Connors & Vilardo LLP and member of the Advisory Committee on Criminal Law and Procedure to the Chief Administrative Judge of the State of New York, asked Saloom to comment on the phenomenon of wrongful confessions. "This is an area of evidence that is extraordinarily powerful, to have a confession from the defendant is just about the best—unless you have a videotape of the crime," said Doyle, who citing a statewide study, added that in a high number of cases individuals who had confessed to the crime were later proven innocent, usually by DNA.

Saloom said people who are mentally compromised, tired, young or old are more likely to confess to a crime under the strain of an interrogation that can go on for hours. "They get confessions out of people who do it, and also people who didn't do it," said Saloom. "If you are psychologically beaten down you might admit to something you didn't do." Saloom advocates using videotape for the entire process to show whether the confessor had been mistakenly fed details of the case by the police department.

Among the other panelists was Court of Appeals Associate Judge Theodore Jones, co-chair of the court system's newly

appointed Justice Task Force, a permanent entity charged with reviewing documented cases to isolate the systemic factors leading to wrongful convictions. "Before I became a Supreme Court Justice in 1990, I spent 17 years practicing law as a criminal lawyer and defended a number of clients in both state and federal court," said Judge Jones. "And ... there is no greater nightmare in the world than to have the responsibility of representing somebody who you have become convinced is not guilty."

(Panelists) Stephen Saloom, Bonnie Sard, Hon. Theodore T. Jones

The judge noted that some areas of New York State cannot afford the costs of some programs that may help prevent wrongful convictions. "Money constraints sometimes cause prosecutors' offices, and indeed state and local police departments, to have to cut corners, particularly on things like identification procedures," he said, adding that Chief Judge Jonathan Lippman is moving toward a statewide system for funding defender services, "which we hope will provide much more uniform funding."

Recommendations:

Wrongful Convictions and Remedies

1. There needs to be more programs similar to the New York County District Attorney's Office Conviction and Integrity Program to train investigators and prosecutors to avoid tunnel vision when prosecuting a case and to maintain an open mind as to the evidence and other possible suspects.
2. Support legislative proposals that seek to improve identification procedures and interrogation techniques, including requiring the videotaping of custodial interrogation.
3. Prosecutors should be compelled to turn over Brady favorable evidence to defense counsel and to turn it over earlier in the process.

CONFERENCE ATTENDEES PONDER DECREASE IN MINORITY LAW SCHOOL ADMISSIONS

Although the grade point averages and Law School Admission Test (LSAT) scores for minorities have increased, the number of blacks and Mexican Americans attending law school has actually decreased—a particularly disturbing trend given that overall enrollment at accredited law schools in the United States is on the rise.

Professor Stephanie Phillips
Moderator

During a panel discussion on minority law school admissions, Professor Conrad Johnson of Columbia Law School said that the number of seats for first-year law students increased by over 5,300 across the country. "None of them went to African-Americans or Mexican Americans," he said. "If you took the number of people in law schools in 1993 from each group, and you compared it to their proportional representation among the whole body of law students in 2008, you saw a decrease of 7.5 percent for African-Americans and a decrease of 11.7 percent for Mexican Americans. African-Americans and Mexican Americans are getting a smaller piece of a larger pie."

Professor Jenny Rivera, of the City University of New York (CUNY) Law School, added that the number of Puerto Ricans attending CUNY Law School is also on the decline. "There are very high aspirations, but the students simultaneously ... feel that there are tremendous obstacles and many of them wonder whether or not they can achieve their dream," said Rivera, referring to the lack of financial and other critical resources that students of color typically have to contend with.

Professor W.H. "Joe" Knight of the Seattle University School of Law echoed the sentiments of one of the panelists at an earlier session, who said law schools rely too much on grade point averages and LSAT scores to decide who gets into law school.

(Panelists) Professor Conrad Johnson, Professor Jenny Rivera, Professor W. H. (Joe) Knight, Professor Stephanie Phillips- Moderator

Knight said that while the LSAT is designed to measure skills that tell administrators how well you may perform in the first year of law school, the test reveals nothing about applicants' integrity nor does it predict their chances of passing the bar exam. "All it does is tell a law school, with its sorting hat, that you, based on this [particular] score, are likely to be at this [particular] level if you matriculate the next year," he said.

Several audience members who asked how to prepare for the LSAT if you can't afford the expense of test preparation courses were advised by the panel to take online practice LSAT exams via the Law School Admissions Council website, www.lsac.org.

Recommendations:

Law School Admission/ Bar Passage Rate

1. Colleges should implement a system to identify minority students interested in attending law school and provide them with counseling, law school preparation courses and financial aide advice.
2. Attorneys and judges of color should speak to high school students about the advantages of a career in the law so that the students see people of color in positions to which they may aspire.
3. Law Schools should not rely so heavily on grade point average and LSAT scores to decide who gets into law schools but should consider the student as a whole.

DIVERSITY IN THE JUDICIARY

Nadine C. Johnson, Esq.
Moderator

The New York State judiciary needs to be more diverse, said a group of panelists exploring that issue at the "Race, Law and the Courts: Framing a Discussion for a Post Racial America" conference. The panelists added that the means to have a more diverse judiciary involves a larger pool of lawyers of color, diverse judicial screening committees and a transparent monitored process for judicial appointments.

"In 1995 the Metropolitan Black Bar Association [of New York City] had hearings," said Nadine Johnson, Esq., Court Attorney, Kings County Criminal Court. "There were about 1,100 judges in the system. Eighty-five out of 1,100 are African-American judges. Well, today there are about 1,300 judges and 122 are African-American. So in 15 years, we have added 40 more [judges]of African-American descent."

Norman L. Greene, Esq., partner, Shoeman, Updike & Kaufman, LLP, talked about diversity on the appellate bench. "[Y]ou're only going to have one ethnicity of the judge whom you are before in trial bench," said Greene. "But in appellate bench, you have panels ... and if you only have one or two people of diverse perspectives, you can have an influence. Thurgood Marshall on the Supreme Court was able to influence some of the other judges by his presence, his experience and his background."

Greene then described the process for a judge to get to the appellate level. There are four appellate divisions in New York State. Appellate judges here have to be appointed by the governor, who must choose from elected Supreme Court judges.

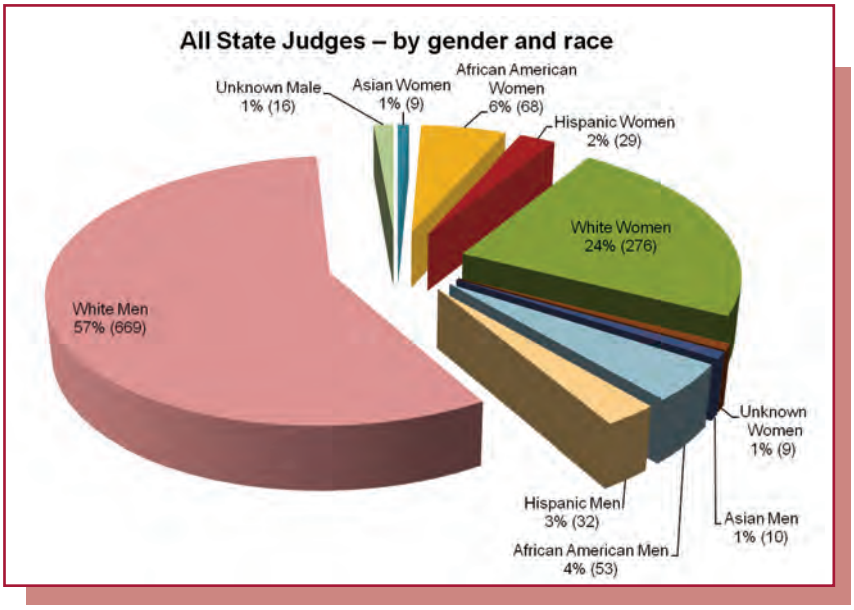
"The governor's hands are tied by the [State] Constitution which came about in 1890," said Greene. "In 1890-95, our society was very different and was certainly not a society that prized diversity. The governor who may be concerned with diversity cannot reach out to prosecutors' offices, public defenders' offices, corporate law departments, private practice [or] law faculties to get diverse people that it warrants."

In addition, Greene said the Court of Appeals has just established new rules that govern how Court of Appeals judges are chosen.

Panelists: Desiree C. Kim, Norman L. Greene, Esq., Mary Marsh Zulack, Arthur W. Greig, Esq.

Greene recommended that judicial vacancies be advertised in places frequented by diverse people. The authorities who select appointees should be diverse themselves and there must be monitoring and enforcement of the requirement, he said.

Meanwhile, Desiree Kim, Executive Director of the [New York City] Mayor's Advisory Committee on the Judiciary, encouraged people to look at diversity in a broader sense. Kim said New York Attorney General Andrew Cuomo recently told a group that sometimes you have to consider a geographically diverse candidate and you cannot always get all the diversity you seek. The mayor of New York City appoints judges to the New York City Criminal and Family Courts, and interim appointments to Civil Court should a Civil Court judge not finish his/her term. The Mayor's Advisory Committee on the Judiciary was established by executive order to recruit, evaluate, and nominate highly-qualified judicial candidates for appointment to these courts.



Kim told the audience that there are 19 members on the committee. The chair, Zachary Carter, is African-American. Statistically, 37 percent of the committee are minorities, 32 percent female.

Mary Marsh Zulack, Director of Clinical Programs, Columbia Law School, discussed the lawyer pipeline, accountability and what she thinks diversity is about."I'm not convinced that it [diversity] is just looking like the population," said Zulack. "I think there is a very strong need for people who have come out of the excluded, the oppressed ... [who] ... then do something in the legal system to change that. Unless you come out of that background you don't look at the law in the same way. You look at it as power, but it's the way it's always been and it's fine."

In terms of the pipeline or number of minorities in law schools, she said the qualifications of Mexican American and African-Americans have increased, but "law school acceptance of these more qualified [people] have decreased."

Recommendations:

Diversity in the Judiciary

1. The community needs to be made aware of the process to become a judge starting with high schools and continuing to colleges, law schools, bar associations, CLE programs, workshops, and through judicial mentoring programs.
2. Judicial Candidates should be groomed as early as possible for a career of judicial service.
3. More appointments of people of color to the Judicial Screening Panels will ensure diversity in the evaluation and nomination process.
4. Legislation should be tailored to increase the number of judges.

ADDRESSING POLICE STRATEGIES IN MINORITY NEIGHBORHOODS

Hon. Richard B. Lowe III
Moderator

In New York City, the largest police presence is in predominantly poor and minority neighborhoods, with approximately 575,000 stop and frisks conducted each year, mostly on individuals of color.

Should stop and frisks be considered effective if they result in just 12 percent of arrests? Do residents of minority neighborhoods feel more protected by the increased police scrutiny or do they feel that they are victims of both the criminals and police bias? These were among the concerns examined by our June 16 "Police Strategies and Minority Communities" panel, which included a community activist, former police officer, current police chief, researcher and sitting judge.

Heather MacDonald, of the Manhattan Institute for Policy Research, said that the charge that New York policing is racially biased is based on a flawed analysis of police data and a misunderstanding of how police officers do their jobs. "This false charge against the police hurts the law-abiding poor most of all," she said.

Donna Lieberman, executive director of the New York Civil Liberties Union, countered that many New York City communities are "over-policed." "We know that blacks are eight times more likely than whites to be stopped. We know that Latinos are four times more likely than whites to be stopped," she said. "Even a company hand-picked by the New York Police Department, the Rand Corp., found that in a city this size, that the random stop and frisks should be between 250,000 and 300,000 [yearly]."

Anthony Miranda, the executive chairman of the National Latino Officers Association, added that officers are "targeting minority communities. It doesn't matter what community you go to, if you look at the stop and frisk reports, even in the predominantly white communities, they still turn out to be predominantly black and Hispanics ... the people who get stopped all the time."

Retired Police Chief H. McCarthy Gibson, of Buffalo, said almost any police department in this country could be accused of racial bias. "Its primary focus is supposed to be to enhance the quality of life for the citizens that it serves, but unfortunately that doesn't necessarily happen," said Chief Gibson. "If you asked the average citizen for their opinion of the police, you're going to get a negative view. That's going to be true no matter ... who you ask. You can ask in a minority community or a majority community. To make matters worse, this negative perspective is even more strongly held in communities where people are poor, undereducated— communities of color. Communities of color tend to view the police as an occupying force who will enforce the law with heavy hands."

Michael A. Hardy, Esq., executive vice president and general counsel of the National Action Network, told the audience that his organization has been trying to level the policing field "so that policing is not viewed as an enemy occupation in communities of color." We strongly believe that policing should be and can be successful when it is done with police policies which demonstrate courtesy, professionalism and respect as opposed to cops practicing racism," he said.

Heather MacDonald, the researcher, told the group that stops are not based on race, but by crime statistics, and that police are merely deployed to areas where the most crimes occur. Both the victims and the perpetrators of most crimes happen to be black, she said, adding that the purpose of stop and frisks was to deter crime. "Go to any police community meeting in Harlem and Bedford Stuyvesant and you'll hear people asking, 'please send more cops, please keep the dealers off the corners, and please crack down on neighborhood disorder,'" she said.

Lieberman, of the New York Civil Liberties Union, argued that no one knows how many convictions come about as a result of the stop and frisks that occur. In addition, she said that the police department collects the names and addresses of everyone they stop on the street, placing this information in an electronic database. When someone's case is dismissed, the court seals the record. However, Lieberman said the names and addresses of those stopped remain in the police database.

The Hon. Richard B. Lowe III, who moderated the panel, questioned whether police officers would respond faster with deadly force in a tense situation involving a black person compared to a tense situation involving a white person.

Heather MacDonald observed that she would like to see "one-tenth of the emotional energy directed on black-on-black killings as are directed on police shootings. If we could bring those disparities down, I think the police problem would go away."

The National Action Network's Hardy added that when communities feel respected, they will respond accordingly. "If we can change America the way we did in November 2008, we can change our communities," he said, referring to the historic election of President Obama. "We can take them back. We can demand the schools, jobs, and the security that recognizes our humanity and our stature in the world."

Panelists: H. McCarthy Gibson, Heather MacDonald, Anthony Miranda, Michael A. Hardy, Esq., Donna Lieberman

Recommendations:

Police Strategies and Minority Communities

1. Judges have a responsibility to report egregious conduct of the violation of a citizen's right where evidence is improperly obtained.
2. Police officers should receive improved training on policing communities of color with courtesy and respect and not just to profile its residents.

Hon. Eduardo Padro
Moderator

IMPROVING NEW YORK'S JUVENILE JUSTICE SYSTEM

Juvenile offenders in New York State—who are much more likely than not to be children of color—are often charged as adults and given no resources upon release. Our June 16 workshop, "New York State Juvenile Justice," examined the current state of New York's juvenile justice system as well as the reforms that need to be implemented in order to reduce the disproportionate number of minority youngsters in the system, improve outcomes for juvenile offenders, their families and communities, and ensure the safety of the public.

New York State Office of Children and Family Services (OCFS) Commissioner Gladys Carrion, who is responsible for the administration of juvenile justice in the state, said officials are now working to move away from a punitive system and toward a therapeutic model that will better aid the juveniles in its care.

Many juveniles involved with OCFS have serious mental health disorders, while 80 percent have substance abuse issues, and 65 percent have learning disabilities. It had been the practice to send juvenile offenders to facilities far from their homes—where they lacked family engagement— and into a punitive environment, said Carrion, adding that too many young people charged with low-level offenses were being placed in the system, at an annual cost of about $240,000 per child.

Noting the high percentage of children of color in foster care or involved in our criminal justice system, New York City Family Court Administrative Judge Edwina Richardson-Mendelson, emphasized, "When we talk about the child welfare system, we're talking about disproportionate minority representation. When we are talking about the juvenile justice system, it's not just disproportionate, it's complete minority representation in that system and we need to recognize that."

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Hon. Michael Corriero, a retired judge who now serves as executive director of Big Brothers & Big Sisters of New York City, said another major issue that needs to be addressed is the age of criminal responsibility, referring to the fact that New York is among three states that still charge youth age 16 and above as adults, regardless of the alleged offense.

Prior to 1978, the cases of all children under 16 years of age, regardless of the severity of the offense with which they were charged, were prosecuted in Family Court, which operates on the premise that children are developmentally different than adults and as such more amenable to rehabilitation and treatment. "This proved to be a mistake," Correiro said, explaining,

"New York should have had a safety valve written into the law that would have permitted the judges of Family Court ... to determine which child should be transferred to the adult court on the basis of the severity of the charges against them or their background and experience with respect to attempted interventions of the juvenile."

Panelists: Commissioner Gladys Carrion, Esq., Hon. Edwina Richardson-Mendelson and Hon. Michael Corriero.

Correiro then related that in 1978 a boy named Willie Bosket murdered two people in the subway before he reached the age of 16. It was an election year, and each of the gubernatorial candidates was trying to appear tough on crime. When people realized that Boskett would only be incarcerated for five years, the public was outraged, according to the former judge. He continued, "So in 1978, we revisited the way in which we dealt with young people and instead of adopting what most states were doing, in an almost overnight session in Albany they enacted the juvenile offender law."

In essence, the new law took the cases of children as young as 13 who were accused of murder, and those of children as young as 14 who were accused of robbery and several other crimes, out of the Family Court's jurisdiction. These youngsters would now be automatically prosecuted in adult courts, receiving harsher sentences and winding up with a felony record.

More and more people in the justice system have since come to realize that adult courts are inappropriate settings for children, with their developmental immaturity often putting them at a distinct disadvantage at various points in the process. There is also mounting evidence that, rather than deterring crime, the imposition of adult punishments actually increases the probability that a young person will re-offend.

"Let's raise the age of criminal responsibility," Corriero told those at the June workshop. This is "a moral issue, a due process issue and a civil rights issue. [For] too long [it] has gone ignored by those policy makers who have the responsibility of representing people in the poorest of our communities, because it is the children of the poorest communities that we're labeling as juvenile offenders."

Recommendations:

Juvenile Justice

1. We need to move our juvenile justice system away from an Adult Punitive Correctional Model towards a Therapeutic Youth Development Model which has a lower recidivism rate. The Youth Therapuetic Development Model focuses on youth development and not merely confinement.
2. Improve the interaction between the police and children of color whereby children of color are treated similarly to children in other communities in that detention is not the only resolution to wrong-doing.
3. There should be better intervention programs available for young people including educational support to help them graduate high school, drug treatment programs for rehabilitation and counseling programs for emotional problems.
4. The New York State legislature needs to re-examine the age that young people are criminalized as adults since New York is currently one of three states where the age is under 18 years old.

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