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SHORT PAPERS

SEX AND RACE IN FEDERAL COURT: A COURTROOM SURVEY

Barbara S. Bryant*

BACKGROUND

Over one hundred years ago, the composition of the American legal profession changed in a small but significant way. The year 1869 saw both the first Black graduate of any United States law school¹ and the first woman admitted to any American bar association.² However, until recently, the participation of women and minorities³ in the American legal profession has been of insignificant proportion. Before 1970, less than 3% of American lawyers were women;⁴ about 1% were Black.⁵ While this lack of participation is undoubtedly the result of a number of factors, three areas stand out for their particular influence in shaping the profession's composition: American Bar Association policy, law school participation, and law firm hiring practices. Each of these areas is explored briefly.

The major organization of the legal profession, the Ameri-

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1. *George Lewis Ruffin: The First to Dream*, 22 HARV. L. SCH. BULL. 38, 38 (Feb. 1971).

2. Alexander, *Women as Practitioners of Law in the United States*, 1 NAT'L. B.J. 56, 59 (1941). The first Black woman was admitted to an American bar association in 1872. *Id.*

3. It should be noted that the phrase 'women and minorities' is partially redundant in that the class of women includes both white and minority women.

4. Barnes, *Women and Entrance to the Legal Profession*, 23 J. LEGAL EDUC. 276, 276 (1970); Pike, *The Lawyer Population: Younger, More Women*, Nat'l. L.J., Aug. 24, 1981, at 2, col. 2; White, *Women in the Law*, 65 MICH. L. REV. 1051, 1051 (1967).

5. Toles, *The Toles Statistics*, 22 HARV. L. SCH. BULL. 17, 17 (Feb. 1971); Walker, *Minority Employees in the Law Firm*, 9 L. OFF. ECON. & MGMT. 131, 132 (1968). See Tollett, *Black Lawyers, Their Education, and the Black Community*, 17 HOW. L.J. 326, 336 (1972).

can Bar Association, has played a critical role in determining admission to the bar. An historical perspective of the early twentieth century shows how that organization reflected the prevailing male Anglo-Saxon prejudices of the time.⁶ At a time when southern and eastern European, Irish and Jewish immigrants were coming to this country in increasing numbers, the American protestant elite of the bar were concerned with the rising ethnic integration of their profession. As part of a concerted effort to maintain professional "purity," the ABA initially excluded women and minorities from its ranks.⁷ This exclusionary policy was relaxed slightly in 1918 when the first two women were admitted to ABA membership.⁸ The first regularly-seated woman representative to the ABA House of Delegates was not seated until 1943;⁹ the first woman was not elected to the Board of Governors until 1981.¹⁰ The color line remained intact far into the twentieth century. While three Blacks were inadvertently admitted to the ABA in 1912, the Bar henceforth required applicants to identify themselves by race in order to prevent further dilution of its racial purity.¹¹ In 1939, serious opposition was raised when a Black federal judge applied for ABA membership.¹² In the 1940's, the ABA expelled two Black lawyers who had applied for membership to challenge its discriminatory policy; a third Black applicant who remained silent was admitted.¹³

Following the civil rights movement and the beginning of the Women's Movement, law schools began to adopt admission

6. See J. AUERBACH, *UNEQUAL JUSTICE* 17-73 (1976) [hereinafter J. AUERBACH].

7. *Id.* at 65-66. One result of this exclusion was the formation of minority bar associations. In 1899, women lawyers formed their first professional organization, the Womens' Lawyers Club, which later became the National Association of Women Lawyers. Makielski, *Fifty Years of Women in the Law*, 35 *WOMEN LAW. J.* 5, 5 (Sum. 1949). Black lawyers responded to their exclusion with the formation of the National Bar Association in 1925. Leonard, *The Development of the Black Bar*, 407 *ANNALS* 134 (1973). The exclusion of Blacks from the ABA was one factor prompting the formation of the National Lawyers Guild in 1936. Goodman, *National Lawyers Guild as an All-White Organization*, 30 *GUILD PRAC.* 74, 78 (1973).

8. *Women Lawyers Are Active in the American Bar Association*, 31 *WOMEN LAW. J.* 6, 32 (Sum. 1945).

9. *Id.* In that year, the National Association of Women Lawyers was able to seat a representative because for the first time, 31% of its membership were also members of the ABA. Makielski, *supra* note 7, at 6.

10. *ABA Annual Report 1980-1981*, 66 *A.B.A.J.* 16 (Nov. 1981).

11. J. AUERBACH, *supra* note 6, at 65-66.

12. *Id.* at 216.

13. *Id.*

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policies that resulted in greater access for women and minority law students. In 1972, one of five law schools had student bodies with at least 10% women; by 1975, two-thirds of the law schools had at least 20% women.¹⁴ This increase occurred in spite of the fact that not until 1972 were women admitted to all law schools approved by the ABA.¹⁵ By 1976, 28.4% of entering law students were women.¹⁶ During the 1969-70 academic year, 3.1% of students in ABA-approved law schools were Black;¹⁷ ten years later this figure had risen to approximately 4%.¹⁸ A number of writers have criticized the profession for the degree to which Black law students are steered towards limiting their career choices to areas of traditional services for the poor: criminal defense, family law, personal injury, and landlord-tenant.¹⁹

Law school faculty, an important potential source of role-modeling for women and minority students, still do not adequately reflect the diversity of the profession. In 1975, 7.9% of all law-school faculty were women;²⁰ all but one of the top ten schools were well below this average.²¹ By 1980, women were approximately 11% of law school faculty on tenure track.²² Of these, women comprised 28% of assistant professors, 17% of associate professors and 5% of full professors.²³ The percent of minority faculty has been about 1.5% for the past decade.²⁴ In 1975, 90 out of 150 AALS-approved law schools had no minority teachers.²⁵

14. Fossum, *Women in the Legal Profession: A Progress Report*, 67 A.B.A.J. 578, 580 (1981) [hereinafter Fossum].

15. *Id.* at 579.

16. Weisberg, *Women in Law School Teaching: Problems and Progress*, 30 J. LEGAL EDUC. 226, 226 (1979) [hereinafter Weisberg].

17. Tollett, *supra* note 5, at 338-39.

18. Jordan, *Black Lawyers Cannot be Relegated to a Professional Ghetto*, 7 BARRISTER 47, 47 (Spr. 1980); Smith, *The Invisible Lawyer*, 8 BARRISTER 42, 42 (Fall 1981) [hereinafter Smith].

19. Jordan, *supra* note 18, at 48-49; Edwards, *A New Role for the Black Law Graduate—A Reality or an Illusion?* 69 MICH. L. REV. 1407, 1415-16 (1971) [hereinafter Edwards].

20. Weisberg, *supra* note 16, at 227.

21. *Id.* at 229.

22. Sheridan, *Women in Law: With a Woman On the Supreme Court, Has Anything Changed?* 8 BARRISTER 44, 45 (Sum. 1981).

23. Fossum, *supra* note 14, at 582.

24. Jones, *Employment Discrimination, Minority Faculty and the Predominantly White Law School—Some Observations*, 4 BLACK L.J. 488, 489-90 (1975).

25. *Id.* at 491-93.

One result of the increase in the number of female law students in the 1970's was an increased resistance to discriminatory hiring practices of major law firms.²⁶ In 1970, only 1% of the lawyers in major Wall Street firms were women; by 1980 this figure had risen to 19%.²⁷ Nationally, women comprise 14-15% of the fifty largest firms.²⁸ It can be hoped that this increase will lead to a comparable rise in the number of women partners. Until that time, however, their participation in the ranks of partners remains small. In a 1981 *National Law Journal* survey of the top fifty firms in the country, it was determined that 2.8% of the partners were women, 0.5% were Black, and 0.3% were Hispanic.²⁹ Twenty-one of these firms have no Hispanic lawyers, two have no Black lawyers and twenty-eight have a smaller number of women, Blacks and Hispanics than in the previous year.³⁰ The statistics for women associates at the top firms show some progress—24% in 1981; Hispanics make up only 0.6% of associates, Blacks 2.4%.³¹

While women are making some gains in access to legal firms, there is still a trend for them to be overly represented in certain areas of law, i.e., family law or trusts and estates, and less involved in litigation.³² In one recent Illinois study of law graduates from the top 10% of their class, 7% of the women were working in litigation compared to 19% of the men.³³ While women comprise 7.5% of the estimated 575,000 lawyers in the United States today,³⁴ they make up only 4% of the membership of the 50,000 member American Trial Lawyers Associa-

26. Throughout the 1970s, successful sex discrimination suits were litigated against large corporate law firms who had refused to interview or attempted to discourage female law student applicants. Fossum, *supra* note 14, at 582, citing C. F. EPSTEIN, *WOMEN IN LAW* 184-89 (1981).

27. *Id.*

28. *Id.*

29. Burke & Johnson, *More Women on the Way Up*, Nat'l. L.J., Apr. 20, 1981, at 1, col. 1.

30. *Id.*

31. *Id.* In one San Francisco firm listed in this study, of 156 attorneys, 33 (21%) were women—4 partners, 29 associates—and 1 (0.6%) was Black—associate.

32. C. F. EPSTEIN, *WOMEN IN LAW* 96-111 (1981) [hereinafter EPSTEIN].

33. Simon et al., *Career Patterns Among University of Illinois Women Law Graduates*, 67 *WOMEN LAW. J.* 19, 24 (#4, 1981).

34. Address by Barbara A. Curran, Assoc. Exec. Dir. of the American Bar Foundation, ABA Annual Meeting (Aug. 8, 1981) (reporting preliminary findings of an ABF demographic study of the legal profession in the United States).

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tion.³⁵ A similar pattern of stereotypic career tracking seems to exist for Black law school graduates. In a 1971 study of University of Michigan Law School Black graduating seniors, 50% were going to work in the traditional areas of the Justice Department, Public Defender's or Legal Aid offices; 25% were going to private practice with community or civil rights firms.³⁶ None of the graduates were headed for a job in a corporate firm, a judicial clerkship or a position in antitrust, securities, taxation or labor law.³⁷

In the same study, the relationship between major law firms and law school origin was analyzed. Of seventy-one midwest firms employing at least thirty attorneys, 60% of the associates came from ten law schools. Two schools, Harvard and Michigan, together were the alma mater of almost 30% of all associates.³⁸ The connection between major law firms and enrollment in top law schools is an important one. If top law schools, and all law schools, do not actively encourage minority/female participation, there will be fewer members of these groups applying to large, influential law firms. There will be fewer members of these groups to challenge and shape the values of the profession. While changing law school policies is a significant factor in the creation of a more heterogeneous profession, it certainly is not the only one.³⁹ The policies of bar associations, law schools and law firms are all important factors in speeding up the process of sexual and racial integration of the profession.

THE SURVEY

The appearance of women and minority attorneys in federal court is one indication of whether the profession is overcoming the discrimination of the past. The present survey was under-

35. Granelli, *Trial Bar Still Has Few Women*, Nat'l. L.J., Aug. 3, 1981, at 2, col. 3.

36. Edwards, *supra* note 19, at 1429.

37. Stereotypic career choices may reflect a sexist/racist narrowing of options for women and minorities. They may reflect choices by these group members to practice in fields that most directly impact themselves and other members of their group. They probably reflect both. The point is that law schools must be cognizant of the political and economic factors at work and consciously strive to diminish and reverse the impact of those factors which extend the sexism and racism of American society into legal institutions.

38. Edwards, *supra* note 19, at 1424.

39. For ten suggestions on how the ABA can aid minority lawyers, see Smith, *supra* note 18, at 48-49.

taken to explore these assumptions, with the belief that critical self-examination by the legal profession will be encouraged by statistical documentation of the extent of integration in this heretofore unexamined forum. Considering the statistics and trends discussed above, one would expect that federal court is a forum infrequently used by women and minority attorneys. The nature and scope of federal litigation would support this assumption. Legal issues frequently presented in federal court include business litigation and labor law⁴⁰—both areas in which women and minorities have been underrepresented. Family law, personal injury and criminal cases, where women and minorities would be expected to participate in larger numbers, occur with greater frequency in the state court system.

On the other hand, women are making inroads into the largest law firms (15-20% of associates) and these firms represent a large number of federal court litigants. This statistic suggests that women should be coming into federal court in correspondingly increasing numbers. Furthermore, it has been suggested that federal court practice may provide benefits to women attorneys in the more respectful interactions between lawyers and between lawyers and judges, and because of the higher professional status associated with federal practice and federal court clients.⁴¹

METHODOLOGY

Data for this survey were gathered over a sixteen-week period through direct observation of the sex and race of attorneys appearing before one federal judge in the Northern District of California (San Francisco). The raw data were recorded by one of the two law clerks during each court session. On the few occasions when a law clerk was unavailable, the information was supplied by the courtroom deputy clerk who had been advised of the data-gathering criteria. The sixteen-week period of March

40. These areas combined represented 40.8% (business: 36.4%, labor: 4.4%) of all federal law suits filed in U.S. district courts in the 12-month period ending June 30, 1980. 1980 U.S. DIST. CT. AD. OFF. ANN. REP. Tables 19 & 41. (The figure for business-related litigation was determined by adding the percentages for contracts, real property, antitrust, commerce, patent, securities and tax.) In the Northern District of California, this figure rises to 61.8% (business: 56.5%, labor: 5.3%) *Id.* App. Table C3.

41. EPSTEIN, *supra* note 32, at 117.

through June was selected to avoid a predominance of summer months or a significant holiday period. It was thought that during such times, typical court-appearance patterns might be distorted by seniority vacation schedules. During this four-month period, appearances before Judge Patel in her role as general duty judge⁴² were not included in the sample.

For purposes of this survey, sex and race (White, Black, Hispanic, Asian and Other) were determined by visual observation. Establishing an attorney's sex by this method was never a problem. On a few occasions, the attorney's race was not readily ascertainable. A surname would then be relied upon for classification. On one occasion, an attorney's race could not be determined by either method and he was classified as "Other."

Attorney-Appearances

Although statistics were kept reflecting every attorney appearance during this time, it soon became apparent that repetitive appearances on the same matter would dilute the meaning of the final statistics. An operational definition of "attorney-appearance" was needed. Therefore, when the same attorney appeared several times on the same matter, i.e., a hearing continued for a week, it was counted as one appearance. An attorney appearing in two separate cases on the same calendar was counted as two appearances. The raw data reflected the reason for the appearance, i.e., status conference, type of motion, trial. Final statistics were compiled separately for all pre-trial matters, except that a pre-trial conference followed by trial was consolidated. For example, an attorney appearing for one pre-trial conference and ten days of trial was recorded as one trial appearance. An attorney appearing for a status conference and one month later for a motion on the same case was counted as two appearances. These appearances were counted separately because often the appearances would be made by different attorneys. In criminal matters, only one appearance was recorded for the same attorney appearing for date-setting and pre-trial motions. Statistics were not kept for phone or settlement conferences.

42. General duty consists of hearing urgent matters from another judge's caseload when the assigned judge is unavailable. In the Northern District of California, each judge performs general duty one or two months each year.

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All attorneys who stood facing the bench were included in the raw data. Additionally, attorneys seated at counsel tables were included if they addressed the court or had an appearance entered on the record. These distinctions were deemed necessary to exclude persons who might be legal assistants or other support staff whose functions we were unable to determine.

The major purpose of the study was to determine the extent of female and minority attorney participation in federal court. In addition to recording the sex and race of attorneys, the data gatherers recorded whether a case was civil or criminal and whether the attorney worked for a private firm or for federal, state or local government.

FINDINGS

During the four-month test period, a total of 401 attorney-appearances were recorded. Three hundred twenty-two of these were by non-governmental attorneys. Of the total number of appearances, 12.7% were by women, 87.3% by men. White attorneys accounted for 94.3% of the appearances, Black 3.5%, Hispanic 1.2%, Asian 0.5% and Other 0.5%.⁴³ When government attorneys are excluded, the percent of male attorneys rises to 90.4%, the percent of whites to 96%. The percent of white men becomes 87.3% (from 83.5% when government attorneys are

43.

TABLE 1

TOTAL APPEARANCES (N=401)

	TOTAL		MALE			FEMALE		
	Total	%	Total	Civil	Criminal	Total	Civil	Criminal
<i>White</i>	(378)	94.3%	(335)	(274)	(61)	(43)	(37)	(6)
<i>Black</i>	(14)	3.5%	(8)	(4)	(4)	(6)	(4)	(2)
<i>Hispanic</i>	(5)	1.2%	(3)	(2)	(1)	(2)	(2)	(0)
<i>Asian</i>	(2)	0.5%	(2)	(2)	(0)	(0)	(0)	(0)
<i>Other</i>	(2)	0.5%	(2)	(2)	(0)	(0)	(0)	(0)
	(401)	100.0%	(350)			(51)		
					87.3%			12.7%

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included).⁴⁴

Table 3 considers the sex factor in civil and criminal cases.⁴⁵ When all attorney appearances are taken into account, women attorneys were present 13.1% in civil matters, 10.8% in criminal. Again these figures drop when government attorneys are excluded. On the criminal side, no non-government (defense) attorneys were women.

Considering all attorney appearances, whites made 95.1% of the appearances in civil matters, 90.5% in criminal. While Black attorney appearances account for only 2.4% in civil cases, they rose to 8.1% on the criminal side. However, when government

44. **TABLE 2**
TOTAL APPEARANCES
NON-GOVERNMENT ATTORNEYS (N=322)

	<u>TOTAL</u>		<u>MALE</u>			<u>FEMALE</u>		
	Total	%	Total	Civil	Criminal	Total	Civil	Criminal
<i>White</i>	(309)	96.0%	(281)	(248)	(33)	(28)	(28)	(0)
<i>Black</i>	(5)	1.6%	(4)	(4)	(0)	(1)	(1)	(0)
<i>Hispanic</i>	(5)	1.6%	(3)	(2)	(1)	(2)	(2)	(0)
<i>Asian</i>	(1)	0.3%	(1)	(1)	(0)	(0)	(0)	(0)
<i>Other</i>	(2)	0.6%	(2)	(2)	(0)	(0)	(0)	(0)
	(322)	100.1%	(291)	90.4%		(31)	9.6%	

45. **TABLE 3**
APPEARANCES BY SEX

	<u>TOTAL APPEARANCES</u>		<u>NON-GOVERNMENT APPEARANCES</u>	
	Civil (N=327)	Criminal (N=74)	Civil (N=288)	Criminal (N=34)
<i>Men</i>	(284) 86.9%	(66) 89.2%	(257) 89.2%	(34) 100.0%
<i>Women</i>	(43) 13.1%	(8) 10.8%	(31) 10.8%	(0) —
	(327) 100.0%	(74) 100.0%	(288) 100.0%	(34) 100.0%

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attorneys are excluded from the sample,⁴⁶ no Black attorneys remained. In other words, each Black attorney appearance represented in Table 4 was by a government attorney. (In this case, each appearance was for the prosecution.) No private Black criminal attorneys were present in this court during the sample period. Similarly, there were no Asian or other minority criminal attorneys representing either the defense or the prosecution. With government attorneys excluded, the percent of white attorney appearances in civil matters rose only slightly, from 95.1% to 95.8%. In criminal cases, however, the percent rose sharply from 90.5% to 97.1%.

Based on the figures from Tables 1-4, the following charts demonstrate the total sexual and racial make-up of both civil and criminal attorney appearances during the four-month time period.

46. **TABLE 4**
APPEARANCES BY RACE

	TOTAL APPEARANCES		NON-GOVERNMENT APPEARANCES	
	Civil (N=327)	Criminal (N=74)	Civil (N=288)	Criminal (N=34)
<i>White</i>	(311) 95.1%	(67) 90.5%	(276) 95.8%	(33) 97.1%
<i>Black</i>	(8) 2.4%	(6) 8.1%	(5) 1.7%	(0) —
<i>Hispanic</i>	(4) 1.2%	(1) 1.4%	(4) 1.4%	(1) 2.9%
<i>Asian</i>	(2) 0.6%	(0) —	(1) 0.3%	(0) —
<i>Other</i>	(2) 0.6%	(0) —	(2) 0.7%	(0) —
	(327) 99.9%	(74) 100.0%	(288) 99.9%	(34) 100.0%

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TABLE 5
TOTAL APPEARANCES BY RACE AND SEX

		Total Appearances		Non-Government Appearances	
WHITE	<i>Males</i>	(335)	83.5%	(281)	87.3%
	<i>Females</i>	(43)	10.7%	(28)	8.7%
BLACK	<i>Males</i>	(8)	2.0%	(4)	1.2%
	<i>Females</i>	(6)	1.5%	(1)	0.3%
HISPANIC	<i>Males</i>	(3)	0.7%	(3)	0.9%
	<i>Females</i>	(2)	0.5%	(2)	0.6%
ASIAN	<i>Males</i>	(2)	0.5%	(1)	0.3%
	<i>Females</i>	(0)	---	(0)	---
OTHER	<i>Males</i>	(2)	0.5%	(2)	0.6%
	<i>Females</i>	(0)	---	(0)	---
		(401)	99.9%	(322)	99.9%

TABLE 6
TOTAL APPEARANCES
BY TYPE OF CASE,
RACE AND SEX

		CIVIL		CRIMINAL	
		Total	Non-Gov't	Total	Non-Gov't
		Appearances (N=327)	Appearances (N=288)	Appearances (N=74)	Appearances (N=34)
WHITE	<i>Males</i>	(274) 83.8%	(248) 86.1%	(61) 82.4%	(33) 97.1%
	<i>Females</i>	(37) 11.3%	(28) 9.7%	(6) 8.1%	(0) ---
BLACK	<i>Males</i>	(4) 1.2%	(4) 1.4%	(4) 5.4%	(0) ---
	<i>Females</i>	(4) 1.2%	(1) 0.3%	(2) 2.7%	(0) ---
HISPANIC	<i>Males</i>	(2) 0.6%	(2) 0.7%	(1) 1.4%	(1) 2.9%
	<i>Females</i>	(2) 0.6%	(2) 0.7%	(0) ---	(0) ---
ASIAN	<i>Males</i>	(2) 0.6%	(1) 0.3%	(0) ---	(0) ---
	<i>Females</i>	(0) ---	(0) ---	(0) ---	(0) ---
OTHER	<i>Males</i>	(2) 0.6%	(2) 0.7%	(0) ---	(0) ---
	<i>Females</i>	(0) ---	(0) ---	(0) ---	(0) ---
		(327) 99.9%	(288) 99.9%	(74) 100.0%	(34) 100.0%

Trials

During the four-month sample period, the court conducted five civil and no criminal trials. These five trials involved twenty

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attorneys: nineteen male, one female; nineteen whites, one Black. (The Black attorney was representing a Black plaintiff in a civil rights action against a city police department.) Ninety percent were white males.⁴⁷ One of these was a government attorney.

DISCUSSION

The basic statistic of this survey is that 87.3% of all non-government attorney appearances were by white males. The proportion of attorney appearances for trial is even higher, though based on a much smaller sample. These findings give credence to the proposition that federal court practice is predominantly white and male. However, the findings by themselves do not indicate whether and for what reasons federal practice shows more sex and color bias than does the profession as a whole.⁴⁸

The percent of total attorney appearances by female attorneys in this study (12.7%) is greater than the proportion of women in the profession (7.5%). However when government attorneys are excluded from the sample, the proportion of female attorney appearances (9.6%) is far below the proportion of women beginning to enter the large private law firms (15-20%). Similarly, non-government Black and Hispanic attorneys were each represented in this survey 1.6% of the time. Nationwide, Blacks comprise 2.4% and Hispanics 0.6% of the top law firms.

It is difficult to interpret these statistics without more complete regional data. National profession-wide statistics do not provide good indicators for comparison. Of more relevance would be data indicating the sex and race of attorneys in California or especially in the Northern District. One obvious discrepancy is the high proportion of Hispanics in California com-

47. TABLE 7

TRIAL APPEARANCES

	<u>TOTAL</u>	<u>MALE</u>	<u>FEMALE</u>
<i>White</i>	(19) 95%	(18)	(1)
<i>Black</i>	(1) 5%	(1)	(0)
	(20) 100%	(19) 95%	(1) 5%

48. The statistics also do not indicate whether the female/minority attorneys appearing in court played a significant or minor role in the litigation.

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pared to the national average. While 1.6% Hispanic attorney appearances may be favorably compared to nationwide statistics, they are unlikely to compare so favorably with local Hispanic representation. Unfortunately, few reliable local statistics presently exist.⁴⁹ One study was recently conducted to determine the number of women associates and partners in San Francisco law firms with fifteen or more members. The results indicate that women comprise 15.8% of these firms: 3.5% of the partners and 26.8% of the associates.⁵⁰ These figures are higher than comparable nationwide data. Therefore one would expect to see a larger proportion of women in federal court in the Northern District of California.

One significant finding of the present survey is the role of government in affirmative action. The present statistics validate the assumption that women and minorities have been hired by the government in numbers disproportionate to their placement in private firms. In every category, the proportion of whites and males was greater when government attorneys were excluded from the sample. This was particularly true for criminal cases. Of course these figures do not necessarily indicate the end result of intentional governmental hiring policies. They may in part be explained as the result of a system that discourages women and minorities from assuming the more lucrative, prestigious jobs in private practice.⁵¹ To the extent the number of women and minorities in government has been an intentional result, it is hoped that present governmental administrations will actively seek to continue their hiring record.

CONCLUSION

This survey provides a beginning look at the sex and race of attorneys appearing in federal court in the Northern District of California. While certain trends are noted, it is difficult to interpret these patterns without more information on hiring practices

49. The American Bar Foundation is due to release a study at the end of the year, providing demographics of the legal profession broken down by city and county. However, this study, based on Martindale-Hubbell information, will indicate the sex but not the race of local attorneys.

50. *Queen's Bench First Annual Survey of San Francisco Law Firms*, reported in *Queen's Bench Newsletter*, Aug. 1982. The figures in this study were obtained from the 1982 Martindale-Hubbell Directory.

51. See EPSTEIN, *supra* note 32, at 112-19.

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of local firms. There is a dearth of information generally on who is using federal court. It would be instructive to compare the present statistics with the representation of women and minorities in the state and local bar. It further would be instructive to examine the extent of litigation training given to women and minorities in small and large firms in this district.

Without this information, it may still be said that federal court is a forum entered predominantly by white males. It is hoped that this situation will change dramatically in the next five to ten years to reflect the rapidly growing participation of women, and more slowly increasing participation of minorities, in the legal profession. At the present time, private firms have been out-distanced considerably by the affirmative action of government employers. It is hoped that the efforts of the private bar to search out, hire and train women and minorities will accelerate in the coming years and result in substantial gain the next time such statistics are gathered in federal court.

Women's Law Forum