

TO THE BOARD OF BAR COMMISSIONERS
OF THE STATE BAR OF NEW MEXICO

REPORT

**THE STATUS OF
MINORITY ATTORNEYS
IN NEW MEXICO – AN UPDATE**

1990 – 1999

THE STATE BAR OF NEW MEXICO
TASK FORCE ON MINORITIES
IN THE LEGAL PROFESSION II

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DEDICATION

BY

JUSTICE PATRICIO M. SERNA

This Report – The Status of Minority Attorneys in New Mexico – An Update 1990-1999 is dedicated to the Honorable Steve Herrera, chief judge of the First Judicial District, who died tragically in an automobile accident in August of 1998, and to Carlos F. Vigil, an attorney who was gunned down on his way to District Court in Santa Fe in August, 1999 by a yet-unknown assailant.

Judge Steve Herrera was a compassionate human being whose accomplishments were a testament to a work ethic that he learned while living in Northern New Mexico. He often talked of his humble beginnings, a grandfather who was a sheepherder, a father who was a carpenter, and a mother who taught him the value of family. This humble, yet strong beginning became his foundation and he built upon this with a solid education which he believed was the essential element to personal success. Judge Herrera was an important member of the original Task Force on Minorities. As a young attorney in the 1970s he changed the course of the New Mexico Bar Examination history, which up to that time was one of exclusion, rather than inclusion, of Hispanic and other minorities. He was a true advocate of positive change as lead counsel for the petitioners in *Melendez v. Burciaga* (NMSC No. 12449, April 1979), the only original evidentiary proceeding ever held before the New Mexico Supreme Court. As a result of Judge Herrera's efforts, the disparity in bar passage rates between minority and non-minority applicants was significantly reduced over the ensuing years. Judge Herrera was former president of the First Judicial District Bar Association and was a founding director and first president of the New Mexico Hispanic Bar Association and a former member of the Board of Bar Commissioners. In 1990, the State Bar of New Mexico awarded him the Outstanding Judicial Service Award and in 1998 he was posthumously awarded the Seth D. Montgomery Distinguished Judicial Service Award.

Carlos F. Vigil, a native of Española, New Mexico was a true advocate for the poor, the downtrodden and the less fortunate. He was admired by judges and fellow attorneys and was a kindhearted, gentle, easygoing, compassionate lawyer who often took on difficult cases, charging only what his clients could afford, and once even rendered legal services in exchange for a goat. This pursuer of justice for the poor who so loved and cherished his beloved town of Española and all of northern New Mexico will be greatly missed. At this year's State Bar Convention, Carlos Vigil will be posthumously awarded the 1999 Annual Courageous Advocacy Award.

There have been, over the years, significant contributions to the legal profession and the judiciary by highly respected minorities and women. Among these are: Santiago E. Campos, former chief judge, now senior district judge for the U.S. District Court, District of New Mexico; Juan G. Burciaga, former chief judge of the U.S. District Court, District of New Mexico; Justice Eugene D. Lujan, who in 1951 was the first Hispanic Supreme Court justice of New Mexico; Justice Dan Sosa, Jr. who twice served as chief justice, first in 1979-81 and then in 1989-91; Justice Mary Walters was the first woman justice on our Supreme Court in 1984 and served as chief judge of the Court of Appeals in 1982-83; at present there are three Hispanics on our Supreme Court, Senior Justice Joseph Baca (former chief justice 1994-96); Justice Petra J. Maes, first Hispanic woman justice (December 1998); and myself (December 1996); Chief Justice Pamela B. Minzner became New Mexico's first woman chief justice in 1999, and served as chief judge of the Courts of Appeals in 1993-94; Judge Lynn Pickard became chief judge of the Court of Appeals in 1999; and, Court of Appeals Judge Christina Armijo became the first Hispanic woman on the Court of Appeals in 1996; First Judicial District Judge Carol J. Vigil, in 1999, became the first Native American district judge in New Mexico; District Judge Tommy Jewell in 1991, and Angela Jewell in 1996, of the Second Judicial District, are the first African American district judges in New Mexico; Amanda Ashford became the first woman president of the State Bar of New Mexico in 1990-91; Arturo Jaramillo the first Hispanic president in 1993-94; Sarah Singleton was the second woman president in 1995-96; Ray Hamilton became the first African American bar commissioner in 1994-99; and Arturo Ortega who passed away in January 1999, was a highly respected Hispanic attorney who contributed significantly to the legal profession.

While minorities and women have made lasting contributions to the legal profession and the judiciary, both remain disproportionately represented among the growing membership of the State Bar and in the state's largest law firms. The recommendations in this Report are principally about opportunities; about promoting them and encouraging their use to diversify our profession for the benefit of the people we serve. Judge Steve Herrera and Carlos Vigil knew and understood the value of opportunities and committed themselves to developing opportunities for others in our profession.

A handwritten signature in black ink, reading "Patricio M. Serna". The signature is written in a cursive, flowing style with a large initial "P".

Justice Patricio M. Serna

I. INTRODUCTION – AN UPDATE ON THE STATUS OF MINORITIES IN THE LEGAL PROFESSION IN NEW MEXICO –

A. The Original Task Force — History, Mission and the January 1990 Final Report on the Status of Minorities in the Profession

Keenly aware that the State Bar of New Mexico had long been perceived as a “large firm, white-male dominated” organization, the Board of Bar Commissioners initiated a campaign in the mid-1980s to encourage and promote participation in the organization by *solo* and small firm practitioners, women and minorities. The initiative met with little success as far as minorities were concerned, prompting then State Bar President C. Emery “Buck” Cuddy, Jr., to question “just how integrated is the State Bar of New Mexico?” This question and a subsequent inquiry into the history of the State Bar revealed some surprising facts.

In 1987, after one hundred and three (103) years of existence as a mandatory “integrated” bar association, a minority attorney had never served as President of the State Bar of New Mexico, nor even as an officer of the organization. As of 1987, only three (3) minority attorneys had ever served on the Board of Bar Commissioners, the governing body of the State Bar. Given the significant contributions of highly respected lawyers, justices and judges of minority descent throughout the political and judicial history of New Mexico, this discovery was both surprising and alarming.

Troubled by the traditional lack of involvement by minorities in the activities and leadership of the State Bar, the Board of Bar Commissioners on December 29, 1987, created the Task Force on Minorities in the Profession. Because of the significance of its mission, the Task Force was subsequently endorsed and co-sponsored by the New Mexico Supreme Court. A broad cross-section of lawyers and judges, including the Chief Justice of the New Mexico Supreme Court, was appointed to the Task Force. Its charge was to undertake a comprehensive study of minorities in the legal profession and to recommend ways of promoting greater interest and active involvement in the organization by minority attorneys.¹ In detailing the mission of the Task Force, Bar President C. Emery Cuddy wrote:

The basic purpose for the operation of this task force is to study the involvement of minority lawyers in the State Bar, to identify any barriers that still exist to ‘full integration’ of minority lawyers into our legal system and to identify and describe things that the State Bar of New Mexico could be doing which would assist minority lawyers in their practice.

¹ The members of the original Task Force were predominately Hispanics, African Americans and Native Americans, with women comprising approximately one-third (1/3) of the membership. A special effort was made to select participants from urban and rural communities, judges from each level of the judicial system and practitioners with various levels of experience, from large and small private firms as well as from the public sector. A list of the original Task Force members is attached hereto as “Appendix 1.”

We may have been too complacent about the position of minorities in our Bar and if there are things that still need to be done, the State Bar is anxious to know about them and to implement programs to remove all barriers for full minority participation in the benefits of the practice of law in New Mexico.²

In organizing its investigation, the original Task Force developed a “Statement of the Issues,” representing the principal questions and concerns impacting minority attorneys and law students in New Mexico. Those issues and concerns were as follows:

1. Are the programs and activities directed towards recruitment and retention of minority law students in New Mexico adequate and effective? What action, if any, should be taken by the State Bar of New Mexico to supplement these efforts?
2. What has been the level of interest and success by minority lawyers in obtaining faculty positions at the University of New Mexico School of Law, and what steps, if any, should be taken by the State Bar of New Mexico to encourage and promote the appointment of minority lawyers to faculty positions?
3. How have minorities fared over the past ten years in the New Mexico Bar Examination?
4. Are minority attorneys adequately represented among the ranks of public sector and private sector legal employees? If not, what are the reasons for disproportional representation and what role should the State Bar play in remedying this circumstance?
5. Has there historically been a disproportionate number of minority attorneys in New Mexico who have been the subject of disciplinary proceedings? If so, what are the reasons for this circumstance and what steps can be taken by the State Bar of New Mexico to correct it?
6. What factors explain the traditional lack of involvement by minority attorneys in the activities and leadership of the State Bar of New Mexico? What steps can be taken by the State Bar to encourage and promote the meaningful and active participation of minority attorneys in the State Bar?
7. What has been the level of interest and success by minority attorneys in seeking appointments to judicial positions in New Mexico, and what impact will the recent constitutional amendment on judicial selection have upon minority attorneys seeking judicial appointment?

²Letter dated December 29, 1987, from C. Emery Cuddy, Jr., President of the State Bar of New Mexico to Arturo L. Jaramillo, Chair of the Task Force on Minorities in the Profession, attached as “Appendix I” to the January 20, 1990 Final Report on the Status of Minority Attorneys in New Mexico. A copy of Mr. Cuddy’s letter is attached hereto as “Appendix 2.”

For two years the Task Force gathered historical and demographic data, conducted multiple surveys and interviewed minority attorneys throughout New Mexico in search of answers to these comprehensive questions. On January 20, 1990, the Task Force published its report entitled: “Final Report – The Status of Minority Attorneys in New Mexico,” hereinafter referred to as the “1990 Task Force Report.”

This ninety-eight (98) page report presented comprehensive findings and analysis on each of the seven issues being investigated, together with twenty-five (25) specific recommendations, all of which were subsequently adopted by the Board of Bar Commissioners and assigned to the newly created Standing Committee on Minorities in the Profession for implementation. It is the basic purpose of this current Report to update the findings of the original Task Force on each of the seven issues described above, and to determine what changes, if any, have occurred over the last decade with respect to each of these subjects.

B. The Standing Committee on Minorities in the Profession—A Creative Influence While It Lasted –

The creation of a Standing Committee on Minorities in the Profession was the centerpiece of the recommendations included in the 1990 Task Force Report³ Organized in late-1990, the Standing Committee was comprised of members of each of the minority bar associations, a member of the Board of Bar Commissioners, the Executive Director of the State Bar and a diverse group of members appointed by the President of the State Bar. The Standing Committee aggressively addressed each of the twenty-five recommendations in the 1990 Task Force Report and was an active and influential committee of the State Bar from 1990 until approximately 1996, when interest in the issues impacting minority attorneys began to wane. Nevertheless, the Standing Committee produced some highly innovative and successful programs, some of which served as models for similar programs nationwide.

For example, the Standing Committee redesigned the Bill Kitts Mentor Program, which matched an experienced lawyer with a newly admitted lawyer, or any member of the State Bar seeking guidance and advice in the practice of law. This one-on-one program offered a choice of MCLE credits, a curriculum and written materials if the participants so chose, or alternatively, a less formal mentoring relationship. The purpose of the project was to provide an effective resource not commonly available to *solo* or small firm practitioners needing assistance in such areas as law office management and economics, trust account controls, advice on general practice issues, case evaluation techniques and networking for referrals and business development. The Standing Committee also assumed the lead role in drafting, vigorously debating and lobbying the New Mexico Supreme Court to adopt a rule of Professional Conduct prohibiting invidious discrimination by attorneys in the practice of the profession. This Rule of Professional Conduct was adopted on January 1, 1994. (Rule 16-300, NMRA 1999).

³ Recommendation No. 18 provided: “A Joint Standing Committee on Minority Involvement in the Profession should be created, consisting of designated officers or directors of the New Mexico Hispanic Bar Association, the New Mexico Indian Bar Association, the New Mexico Black Lawyers Association, together with designated members of the Board of Bar Commissioners and the Executive Director of the State Bar. This Joint Standing Committee would be responsible for recruiting and recommending minority attorneys for active service and involvement in the activities and leadership of the State Bar and for developing a strategy for increasing the opportunities for meaningful involvement of minorities in the activities and leadership of the Bar.” (1990 Task Force Report, at 98).

The Standing Committee also designed and implemented the State Bar Summer Law Clerk Program in which law students completing their first year at the University of New Mexico School of Law apply for one of several law clerking positions in major law firms, corporate law departments and in the legal departments of large public agencies. This ongoing program involves a competitive application and interview process and focuses on those students with capable legal research and writing skills who, by reason of social, educational, economic, family or personal background, would not ordinarily apply for, or be highly competitive for such a position. Several of the participants of this program, which has just completed its seventh year, have obtained associate positions with the law firms or legal departments in which they were placed. All applicants have benefited significantly from the experience of participating in the rigorous application and interview process. The participating law firms, corporations and public agencies have recognized the significant benefits of expanding their applicant pool for prospective attorneys beyond traditional class ranking and grade point average.

A number of other initiatives of the Standing Committee on Minorities in the Profession are worthy of mention here, including the development of a process whereby minority bar associations, women's bar associations, and various sections and committees of the State Bar participated actively in the State Bar's Long Range Planning Process (See Vol 32 NMSBB No. 27, July 8, 1993); the development of a program in which minority lawyers and judges visited middle schools and high schools throughout New Mexico to encourage minority and non-minority students to consider the law as a career; the drafting of a proposed curriculum for a continuing series of CLE courses in law office management and practice for *solo* practitioners; the development of lists of minority attorneys interested in presenting CLE Programs; and coordination with minority bar associations for encouraging and promoting candidates for bar leadership positions.

After the twenty-five recommendations in the 1990 Task Force Report had been addressed, the focus and momentum that drove the Standing Committee began to fade. Then, in late 1996, prompted by the erosion of affirmative action programs in Texas and California law schools, and the passage of Proposition 209 in California,⁴ the Standing Committee petitioned the Board of Bar Commissioners to update the 1990 Task Force Report. The Standing Committee believed there would not be a more important time to reassess the status of minorities in the legal profession in New Mexico than in the midst of this changing legal and political environment. The Board of Bar Commissioners authorized the creation of the Task Force on Minorities in the Profession II ("Task Force II") in January of 1997.

⁴This so-called "California Civil Rights Initiative" provides that the State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

C. The Task Force on Minorities in the Profession II – Members and Mission

Like the original Task Force, the members of Task Force II comprise a highly diverse group of lawyers and judges. The forty members of the Task Force II are:

Carolyn J. Abeita	Attorney for the Bureau of Indian Affairs in Albuquerque
Ronald E. Andazola	Assistant United States Trustee in Albuquerque
Lillian G. Apodaca	Private Practitioner in Albuquerque and current President of the Hispanic National Bar Association
Patrick V. Apodaca	Private Practitioner in Albuquerque
Rudy S. Apodaca	Senior Judge of the New Mexico Court of Appeals in Las Cruces
Cheryl Bruce	Executive Director of the State Bar of New Mexico
Kimberly S. Brusuelas	Assistant Public Defender in Albuquerque
Sherri Burr	Law Professor, University of New Mexico School of Law
Cheryl D. Fairbanks	Private Practitioner in Santa Fe
Honorable Joe H. Galvan	United States Magistrate Judge for the District of New Mexico in Las Cruces
Carmen E. Garza	Private Practitioner in Las Cruces
Elmira Gonzales	Family Court Hearing Officer, Second Judicial District
Arturo L. Jaramillo	Task Force II Chair, former President of the State Bar of New Mexico and Private Practitioner in Santa Fe
Honorable Angela J. Jewell	District Judge Second Judicial District
Karl E. Johnson	Private Practitioner and former Executive Director of the Center of Civic Values in Albuquerque
Mitchel S. Jofuku	Private Practitioner in Albuquerque
Honorable Anne Kass	District Judge, Second Judicial District
Honorable Paul J. Kelly, Jr.	Judge, United States Court of Appeals for the Tenth Circuit in Santa Fe
Antoinette S. Lopez	Law Professor, University of New Mexico School of Law
Angela R. Luhan	Private practitioner in Albuquerque
Honorable Pamela B. Minzner	Chief Justice, New Mexico Supreme Court in Santa Fe
Sean Olivas	Private Practitioner in Albuquerque
Arthur G. Olona	Private Practitioner in Albuquerque
Monica M. Ontiveros	Special Assistant Attorney General for the Department of Taxation and Revenue in Santa Fe
Patrick T. Ortiz	General Counsel and Senior Vice President, Public Service Company of New Mexico
Honorable Richard L. Puglisi	United States Magistrate Judge for the District of New Mexico in Albuquerque
Honorable Geraldine E. Rivera	District Judge, Second Judicial District

Donovan A Roberts	Private Practitioner in Albuquerque
Honorable Robert E. Robles	District Judge Third Judicial District
Jose A. Sandoval	Private Practitioner in Espanola
Mary Ann Shaening	Shaening and Associates in Santa Fe, Consultant and Co-Author of the Task Force Report
Luis G. Stelzner	Private Practitioner in Albuquerque
Norman S. Thayer	Private Practitioner in Albuquerque
Nathaniel V. Thompkins	Private Practitioner in Santa Fe
Mary T. Torres	Private Practitioner and Secretary of the State Bar of New Mexico
Charles J. Vigil	Private Practitioner in Albuquerque
Jana L. Walker	Private Practitioner in Placitas
Bianca Ortiz Wertheim	Graduate Student, Anderson School of Business and former President of MANA de Albuquerque, a Chapter of MANA, a National Latina Organization
Robert M. White	City Attorney for the City of Albuquerque
Peter A. Winograd	Associate Dean, University of New Mexico School of Law

Succinctly stated, the mission of Task Force II has been to assemble demographic and other data relevant to the seven issues addressed in the 1990 Task Force Report, conduct additional surveys and report to the State Bar of New Mexico on the status of minority attorneys in New Mexico during the ten years since the original report. Where comparable data is available, comparisons are made with the data and findings contained in the 1990 Task Force Report. New data and analysis are identified separately in the Report. At the conclusion of this Report, the Task Force II has set forth its recommendations for consideration and action by the Board of Bar Commissioners.

D. A Mandate for the State Bar of New Mexico – Address the Issues Impacting Minority Attorneys in New Mexico

At the very outset of its investigation, given the changing legal and political environment relating to minority issues nationally, the Task Force II considered the question of whether the State Bar of New Mexico should be concerned about and address issues impacting its minority members. The answer from the Task Force was resounding and unanimous. The Task Force II concluded that the question is not whether the State Bar of New Mexico should address these issues, but rather, when and how!

Accordingly, we turn to the research methodology used to address the issues presented in the 1990 Task Force Report, and then to the information that has been assembled by the Task Force II to report on the status of minority attorneys in New Mexico as we approach the millennium.

E. Research Methods and Limitations of the Study

1. Research Design and Methodology

In addressing the issues described above, the Study of Minorities in the Legal Profession employed a descriptive research design to profile many of the characteristics and experiences of New Mexico law students, attorneys, judges, law firms and other employers of attorneys. The design describes current and recent realities about the

demographics and experiences of New Mexico law students, attorneys and judges, with a particular focus on minorities in the profession. In addition to this basic description, data from the January 1990 Task Force Report are compared, where possible, to determine the changes, if any, that have occurred over the last decade since the publication of the original Report.

The data collected for this project was generated from three surveys disseminated in 1998, as well as from a number of secondary sources. The surveys were directed at three sectors of the legal profession: (1) Survey of Members of the State Bar of New Mexico; (2) Survey of New Mexico Law Firms; and, (3) Survey of Employers of Attorneys other than Law Firms. The Survey of Members of the State Bar was sent to a cross-section of the membership of the State Bar using a stratified sample. The sample included respondents from each respective ethnicity, gender and judicial district in New Mexico. Because the universes were relatively small for the surveys of law firms and employers of attorneys other than law firms, surveys were sent to all known firms and employers. See respondent profiles below for further discussion.

The secondary sources used in this report included data provided by the State Bar of New Mexico, the American Bar Association, the University of New Mexico School of Law, the New Mexico Board of Bar Examiners, the New Mexico Disciplinary Board, the Chair of the Judicial Nominating Commissions, Meyners+ Company, and miscellaneous letters and research articles (cited in the body of the report).

The material that follows profiles the respondents to each of the three surveys. Following these profiles, findings from the data are presented by specific topic areas. The main topic areas include discussions of demographic data on minorities in the legal profession, enrollment of minorities at the University of New Mexico School of Law, comparative passage rates for the New Mexico Bar Examination, career preferences and employment opportunities of minority attorneys, disciplinary sanctions imposed by the New Mexico Disciplinary Board, the impact of the Judicial Reform Act on minority attorneys, and perspectives on racial and ethnic fairness in the legal system.

2. Survey Respondent Profiles and Limitations

Three surveys were disseminated by the State Bar Task Force on Minorities in the Profession II. These were a Survey of Members of the State Bar of New Mexico, a Survey of New Mexico Law Firms, and finally, a Survey of Employers of Attorneys other than Law Firms. The following section describes the characteristics of survey respondents for each survey and describes the limitations inherent in the number of responses.

a. Survey of the Members of the State Bar of New Mexico on the Status of Ethnic Minority and Women Members of the Bar

The Survey of Members of the State Bar was sent to 634 persons. A total of 152 surveys were completed and returned by members of the State Bar (**24%** response rate). While this response rate is very typical of New Mexico bar membership surveys generally, the relatively low response rate and small sample size limit the ability of the Task Force to generalize the findings of the survey to the larger membership of the State Bar of New Mexico. Nevertheless, the survey results reflect a number of consistent trends from which reasonable inferences and conclusions have been drawn in the body of the Report.

The characteristics of these 152 respondents are as follows. Fifty one percent (51%) were White non-Hispanics, 39% Hispanics, and 10% other minorities. It is noted that the percentage of minority respondents (49%) is noticeably higher than the percentage of minority members in the State Bar (22% in 1998). Of the 152 respondents, 63% were male and 37% were female. These numbers are close to the actual number of males and females in the whole membership of the state bar (the 1998 State Bar membership was 68% male and 32% female).

The median yearly income for respondents was approximately \$60,000. Respondents ranged in age from 28 to 76 years with the average age being 44 years. The average year respondents were admitted to the bar was 1984 and the number of years of active law practiced in New Mexico ranged from 1 to 47 years, with the average being 13 years of active practice. Both White non-Hispanic and Hispanic respondents most frequently practice in the cities of Albuquerque and Santa Fe and in Judicial Districts I and II. Respondents practiced in multiple areas with the most frequent practice type being civil litigation and personal injury, and most respondents were employed by private law practices. The following table summarizes the main characteristics of respondents as a group and by ethnicity. The table includes data for White non-Hispanic and Hispanic respondents only because there were too few respondents from the other ethnicity groups to be statistically significant.

**TABLE 1.
RESPONDENT PROFILE FOR SURVEY OF MEMBERS OF THE STATE BAR**

Respondent Characteristic	White Non-Hispanic Respondents		Hispanic Respondents		All Respondents	
	Male:	Female:	Male:	Female:	Male:	Female:
Gender	59%	41%	67%	33%	63%	37%
Average Age (years)	47		44		44	
Median Yearly Income	\$65,000		\$50,000		\$60,000	
Average Year Admitted to the Bar	1982		1986		1984	
Average Number of Years Practice in New Mexico	14		11		13	
Principle Location of Practice	Albuquerque & Santa Fe		Albuquerque & Santa Fe		Albuquerque & Santa Fe	
Primarily Practice in Which Districts	Districts I & II		Districts I & II		Districts I & II	
Most Common Type of Practice	Private Law Practice		Private Law Practice		Private Law Practice	
Most Common Area of Law Practice	Civil Litigation and Personal Injury		Civil Litigation and Personal Injury		Civil Litigation and Personal Injury	

Data also indicate that **61%** of White non-Hispanic respondents reported they grew up in a middle class environment (self-identified), compared to **27%** of Hispanic respondents. Also, **26%** of White non-Hispanic respondents and **46%** of Hispanic respondents grew up in working class environments (self-identified).

As a group, just over half of the respondents were *solo* practitioners. For respondents from firms, the average number of attorneys was **14**, and most respondents from firms were partners or directors (**75%** for White non-Hispanics and **50%** for Hispanics). The average number of lawyers in respondents' firms who were females was three and the average number of Hispanics was two. Of the respondents working in the public sector, they most frequently worked as criminal prosecutors, in administrative law, and as government agency representatives. When respondents were asked about their first jobs immediately after admission to the New Mexico Bar, approximately one-third reported they first went into private practice with other attorneys. As a group, White non-Hispanic respondents chose their area of specialization most frequently because of enjoyment, followed by employment opportunity. In contrast, Hispanic respondents chose their area most frequently because of employment opportunity followed by enjoyment. Just over half of the respondents have applied for employment with law firms with five to nine attorneys and also half have applied to law firms with 10 or more attorneys.

b. Respondent Profile – Survey of New Mexico Law Firms on Recruitment Practices and Employment Opportunities

Ninety-five New Mexico law firms responded to The Task Force Survey out of a possible 337 (**28%** response rate). This section summarizes the characteristics of these 95 respondents. The average age of the firm responding to the survey was **18** years and **70%** of respondents currently held positions as partners or presidents. Of the 95 firms, **78%** were located in Albuquerque and Santa Fe, and all other locations comprised **22%**. Table 2 below reports the characteristics for the 95 firms responding to the survey.

**TABLE 2.
RESPONDENT PROFILE FOR SURVEY OF NEW MEXICO LAW FIRMS**

Characteristic	Respondent Characteristics
Average Age of the Firm	18 years
Location of the Firm	78% Albuquerque and Santa Fe and 22% Other Locations
Respondent's position in Firm	70% Partners or President

c. Respondent Profile – Survey of Employers of Attorneys Other than Law Firms

There were a total of **68** employers responding to the Task Force Survey out of a possible **235** (**29%** response rate). The most frequent type of work of these employers is government/public agency (**50%**), followed by corporate (**17%**), public interest or legal services (**14%**), other types of legal work (**12%**), judiciary (**6%**) and tribal government (**2%**). The following table reports the type of legal work done by the responding organizations.

TABLE 3.
TYPE OF LEGAL WORK DONE BY RESPONDING ORGANIZATIONS

Type of Legal Work	Percent
Corporate Legal Department	17%
Government/Public Agency	50%
Judiciary	6%
Public Interest/Legal Services	14%
Tribal Government	2%
Other	12%
TOTAL	100%

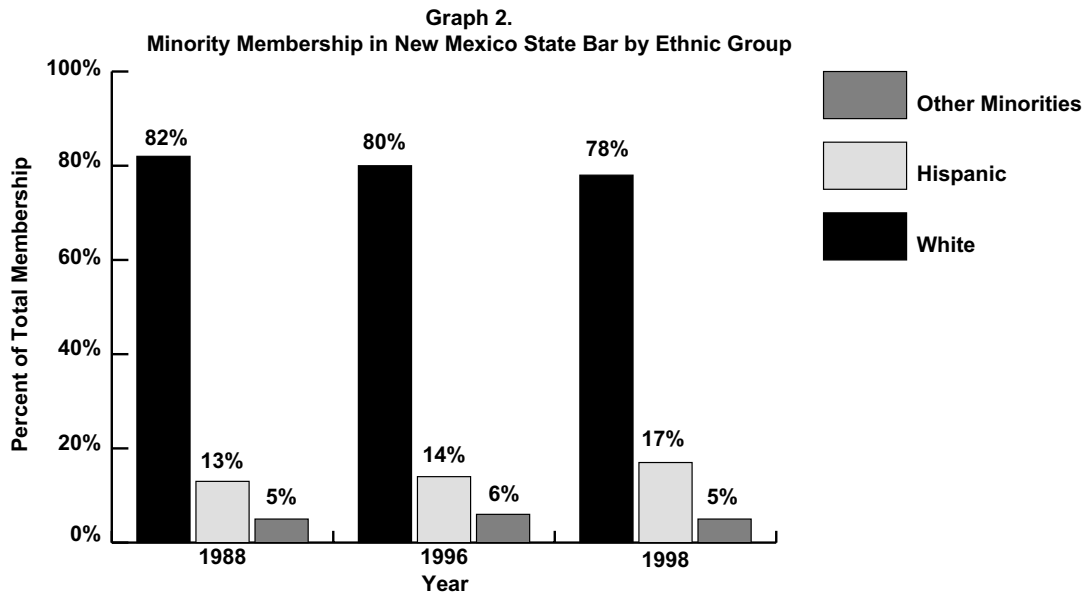
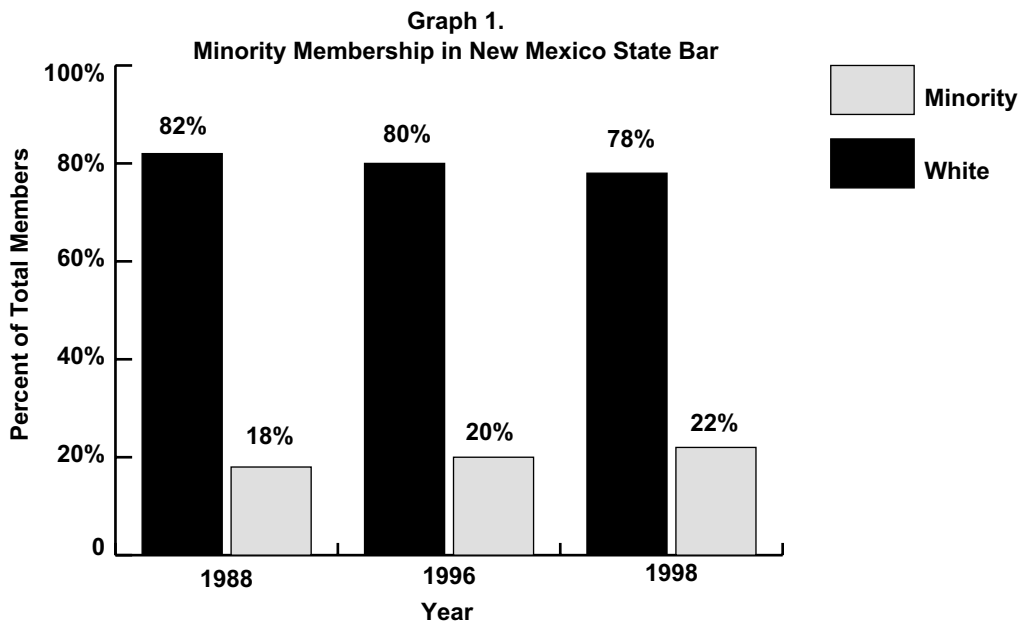
The agencies surveyed also are engaged in multiple types of law ranging from administrative law to worker's compensation. Responding employers have an average of 2.2 white non-minority males employed either full-time or part-time, less than one Hispanic male, 2.2 white non-minority females, less than one Hispanic female, and no African American, American Indian/Native Alaskan, Asian American/Pacific Islander, or other minorities.

II. DEMOGRAPHIC DATA ON MINORITY ATTORNEYS IN NEW MEXICO

A. The Distribution of Minorities in the Profession – Marginal Increases Since 1988

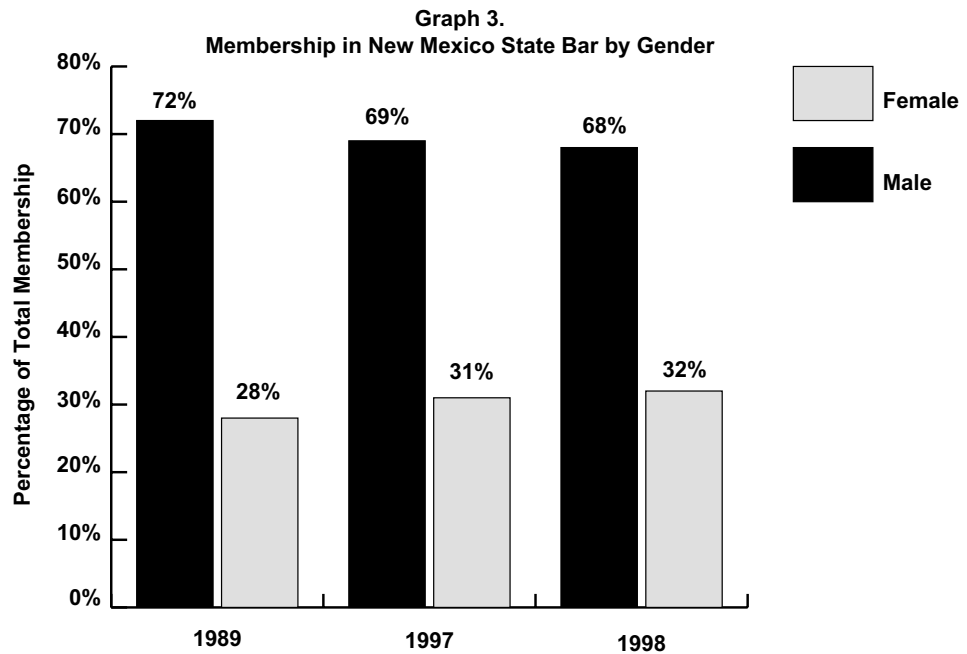
Between 1988 and 1998 minorities who are members of the State Bar of New Mexico (active in-state members) have increased by **four (4) percentage points**. According to data provided by the State Bar, **18%** of all active in-state membership were minorities in **1988** (Hispanic and other minorities) compared with **22%** in **1998**. Graph 1 reports the percentages of active in-state White non-Hispanic and minority members comprising the State Bar (minority includes Hispanic/Latino, Black, Asian American/Pacific Islander, American Indian/Native Alaskan, and other minorities). Graph 2 shows the change between 1988 and 1998 in the percentage of White non-Hispanics, Hispanics, and other minorities who comprise the **total** membership of the State Bar (including active out-of-state and inactive members). During this ten-year period, there was a **four (4) percentage point** increase in the percentage of **Hispanics** who are members of the State Bar (a change from **13%** in **1988** to **17%** in **1998**). **No change** occurred in the percentage of **other minority** members of the State Bar between 1988 and 1998; other minorities comprised approximately **5%** in **1988** and **1998**.

The Task Force believes that the potential for any significant increase in the percentage of minority attorneys in New Mexico in the future is limited by a number of factors. First, any significant increase in the number of minority attorneys will likely have to come from outside of the state. The University of New Mexico School of Law is consistently enrolling classes of approximately 40% minorities each year, and is a major factor in the number of minorities admitted annually to the State Bar. However, there is no guarantee that these students will continue their professional career in New Mexico. Second, lower than average salaries, static economic conditions, modest employment opportunities, and the lack of minority recruitment by New Mexico law firms and other employers discourage minorities from considering New Mexico as an option.



B. Gender of the State Bar of New Mexico – 1989 to 1998

Data provided by the State Bar indicate that the percentage of females in the State Bar has increased by four (4) **percentage points** from 1989 to 1998. Twenty-eight percent (**28%**) of the total membership of the State Bar was female in 1989 compared to **32%** in 1998. The following graph reports the percentage of male and female members in the State Bar in the years of 1989 and 1998. (Data report on all attorneys in the state bar membership except suspended and inactive.)



Data were collected on the type of practice in which male and female attorneys were employed during 1998. The following table reports the percentage of men and women employed by firms, as *solo* practitioners, and by the government who were active in-state members of the bar in 1998. According to these data, law firms in New Mexico are comprised of **75%** male attorneys and **25%** female attorneys. Males comprise almost three-quarters of *solo* practitioners and females make up about one-quarter. Women are over-represented as lawyers employed by the government; they make up only **32%** of the members of the State Bar, but comprise **43%** of all the attorneys working for the government.

TABLE 4.
TYPE OF PRACTICE BY GENDER
1998 NEW MEXICO STATE BAR MEMBERSHIP

Type of Practice	Male	Female
Firm	75%	25%
Sole Practitioner	74%	26%
Government	57%	43%

C. Age Group by Type of Practice

Data furnished by the State Bar of New Mexico on active in-state members indicate that **82%** of attorneys practicing as *solo* practitioners are over **40** years of age, whereas **68%** of attorneys who practice in firms, and **64%** of attorneys who practice in government are over **40**. The following table reports the percentage of attorneys working as *solo* practitioners, in firms and in government settings by each age group (according to data collected in 1998). In general, attorneys who practice as *solo* practitioners are older than those who practice in firms and government. Attorneys under the age of 40 are employed in the greatest percentage in government positions.

**TABLE 5.
AGE GROUP BY TYPE OF PRACTICE
(ACTIVE IN-STATE MEMBERS –1998)**

Age Group	Solo Practitioner	Firm	Government
20-25	<1%	0%	0%
26-30	2%	7%	8%
31-40	17%	25%	27%
41-50	42%	38%	37%
51-60	28%	22%	23%
Over 60	12%	8%	4%
Total	100%	100%	100%

D. Geographic Distribution

According to data from the Survey of Members of the State Bar, the principal locations of practice for responding members of the State Bar was Albuquerque and Santa Fe. The following table reports the percentages of active in-state attorneys (excluding inactive and out-of-state attorneys) located in the major cities in New Mexico according to data furnished by the State Bar. As is evident therein, the majority of attorneys practice in Albuquerque and Santa Fe.

**TABLE 6.
GEOGRAPHIC DISTRIBUTION IN NEW MEXICO CITIES
(ACTIVE IN-STATE MEMBERS)**

Location	1997		1998	
	#	%	#	%
Albuquerque	2,489	64%	2,525	63%
Santa Fe	869	22%	882	22%
Las Cruces	228	6%	246	6%
Gallup & Farmington	126	3%	135	3%
Clovis, Hobbs & Roswell	206	5%	203	5%
Total	3,918	100%	3,991	100%

E. Type of Practice

The following section summarizes data from the State Bar of New Mexico about the percentage of attorneys working in several types of legal practice. Data are provided for 1988 and 1998. It should be noted, when looking at changes over time, that the overall percentage of minorities in the Bar increased by **four (4) percentage points** in this time period. Data collected indicate that the percentage of minorities who practice in firms has increased only slightly between 1988 and 1998. Of the attorneys working in firms, **13%** were minorities in **1988** compared to **16%** in **1998**. There has also been a small increase in the percentage of minorities who practice as *solo* practitioners (a **five (5) percentage point** increase from **1988** to **1998**). Minority attorneys employed by the government made up **27%** of attorneys working for government in **1988** and made up **32%** in **1998** (a **five (5) percentage point** increase). The largest change in the representation of minority attorneys was in the area of corporate practice. Between 1988 and 1998 there was an **11%** increase in the percentage of minority attorneys in

corporate practice (from **17%** in **1988** and **28%** in **1998**). (No comparison data were available for attorneys working in other types of practice in 1988.) Data collected in 1998 indicate that “other” types of law practices were comprised of **72%** White non-Hispanics and **27%** minorities.

TABLE 7.
TYPE OF PRACTICE BY ETHNICITY
(ACTIVE IN-STATE MEMBERS)

Type of Practice	White non-Hispanics		Minorities	
	1988	1998	1988	1998
Firm	87%	84%	13%	16%
Solo Practitioner	79%	74%	21%	26%
Government	74%	69%	27%	32%
Corporate	83%	72%	17%	28%
Other	N/A	72%	N/A	27%

The table below reports the percentage of White non-Hispanic and minority respondents comprising three different sizes of law firms in 1988 and 1998. Over this 10-year period, minority attorney representation in all three sizes of firms increased. In firms with two to five attorneys, between **1988** and **1998**, there was a two (**2**) **percentage point** increase in the percentage of minority attorneys. Similarly, there was a six (**6**) **percentage point** increase in the percentage of minorities employed by firms with six to nine attorneys and a three (**3**) **percentage point** increase in the percentage of minorities who were employed by firms comprised of **10** or more persons.

TABLE 8.
SIZE OF FIRM BY ETHNICITY
(ACTIVE IN-STATE MEMBERS)

Size of Firm	White non-Hispanics		Minorities	
	1988	1998	1988	1998
2-5 persons	84%	82%	16%	18%
6-9 persons	89%	83%	11%	17%
10 or more persons	89%	87%	10%	13%

Table 9 reports types of legal practice by ethnicity and gender collected by the State Bar. Based on the percentage of Hispanic attorneys in the State Bar, Hispanic attorneys are still significantly underrepresented as employees in law firms (Hispanics represent **17%** of members of the State Bar and only **11%** of attorneys working for law firms). Hispanics comprise **20%** of attorneys who work as *solo* practitioners and **22%** of attorneys who work in government. Data from the State Bar indicated that **65%** of the employees in law firms were male White non-Hispanics, followed by female White non-Hispanics comprising **21%**, male Hispanics comprising **8%**, female Hispanics comprising **3%**, and males of other minorities and females of other minorities each comprising **1%** of firms. Of those attorneys who practiced as *solo* practitioners **54%**

were male White non-Hispanics; **21%** were female White non-Hispanics; **16%** were Hispanic males; **4%** are Hispanic females; **4%** are males of other minorities; and **1%** were females of other minorities.

Attorneys working in government were comprised of **40%** White non-Hispanics; **31%** female White non-Hispanics; **13%** Hispanic males; **9%** Hispanic females; **4%** males of other minorities; and **3%** females of other minorities. Of the three types of practice, (firm, *solo* practitioner, and government) female attorneys worked in government positions in the greatest percentages.

**TABLE 9.
TYPE OF PRACTICE BY ETHNICITY AND GENDER
1998 NEW MEXICO STATE BAR MEMBERSHIP**

Type of Practice	White Non-Hispanic		Hispanic		Other	
	Male	Female	Male	Female	Male	Female
Firm	65%	21%	8%	3%	1%	1%
Solo Practitioner	54%	21%	16%	4%	4%	1%
Government	40%	31%	13%	9%	4%	3%

F. Income

Data were collected in 1996 on average yearly income for attorneys in New Mexico on behalf of the State Bar of New Mexico by Meyners+ Company, LLC Certified Public Accountants/Consultants to Business. The following section reports the average income per year of attorneys by ethnicity based on these data. There were a total of **1156** respondents or about **26%** of the State Bar. The following two tables report the average yearly income based on ethnicity and gender. The first table reports data collected on income for each ethnic group and the second table combines the categories of African American, Native American, and Asian into the category called “Other Minorities.” Please note that sample sizes are small in several categories and, therefore, the averages may not be representative of the membership of the State Bar or a particular group within the State Bar. (Also note that the average income for males from other minorities excluded one income of \$650,000, as this figure skewed results for that group.)

**TABLE 10.
AVERAGE YEARLY INCOME BASED ON ETHNICITY AND GENDER
(1996 FIGURES)**

Ethnicity and Gender	Sample Size (n)	Average Yearly Income
Hispanic Male	(111)	\$81,532
Hispanic Female	(41)	\$55,805
African American Male	(3)	\$87,333
African American Female	(1)	\$73,000
Native American Male	(6)	\$57,500
Native American Female	(8)	\$57,500
Asian Male	(2)	\$46,000*
Asian Female	(7)	\$48,714
White Non-Hispanic Male	(623)	\$91,037
White Non-Hispanic Female	(353)	\$57,901

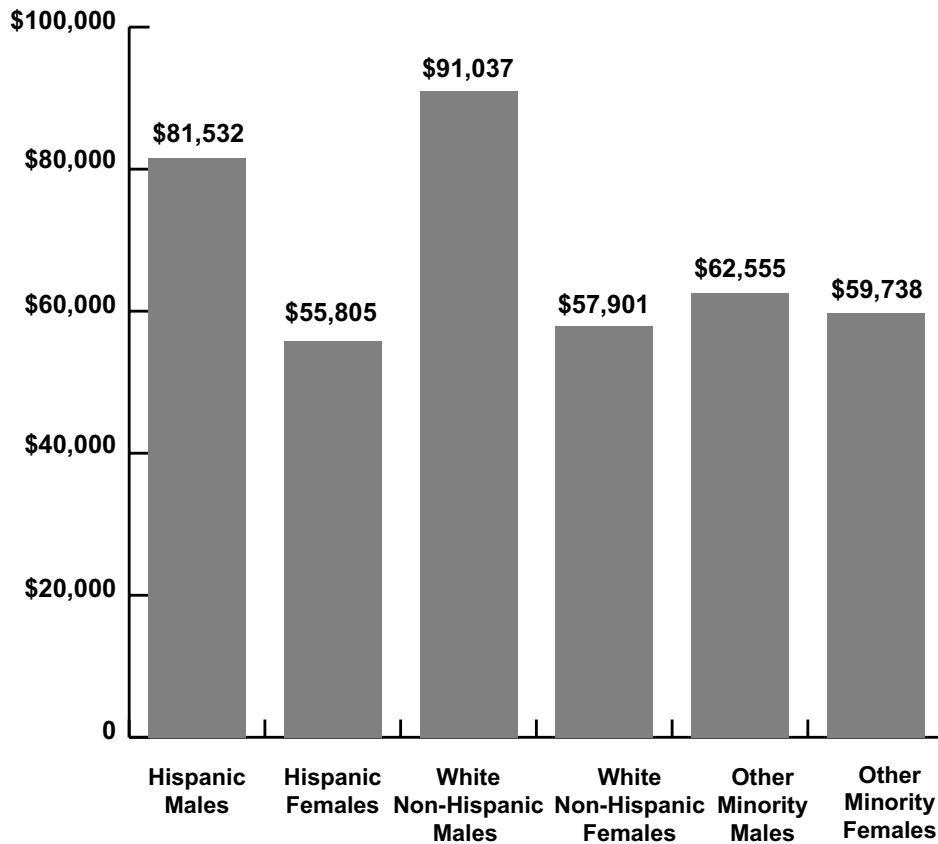
**Excludes one outlying case of \$650,000 annual income*

**TABLE 11.
AVERAGE YEARLY INCOME BASED ON
COMBINED ETHNICITY AND GENDER
(1996 FIGURES)**

Ethnicity and Gender	Sample Size (n)	Average Yearly Income
Hispanic Male	(111)	\$81,532
Hispanic Female	(41)	\$55,805
White Non-Hispanic Male	(623)	\$91,037
White Non-Hispanic Female	(353)	\$57,901
Other Minority Males	(11)	\$62,555*
Other Minority Female	(16)	\$59,738

**Excludes one outlying case of \$650,000 annual income*

**GRAPH 4.
AVERAGE YEARLY INCOME BY GENDER AND ETHNICITY**



As indicated in Table 11 and Graph 4, White non-Hispanic male attorneys had the highest averaged income of any of the above groups. Of those surveyed, Hispanic female attorneys have the lowest average income. It should be noted that female attorneys of all ethnicities make roughly the same amount of income, around **\$56,000** to **\$60,000** per year. There is a difference of about **\$10,000** between the average income of male White non-Hispanic attorneys and male Hispanic attorneys; White non-Hispanic male attorneys make on average **\$91,037** per year whereas Hispanic male attorneys make on average **\$81,532** per year. The difference between average incomes for White non-Hispanic male and White non-Hispanic female attorneys is about **\$33,000**, with male attorneys making on average **37%** more than females. Similarly, Hispanic female attorneys on average make about **\$26,000** less than Hispanic male attorneys or **31%** less. There is a small difference between the average income of male and female attorneys from other minorities; male attorneys from other minorities make on average about **\$3,000** more than females from other minorities.

G. Conclusions on the Diversity and Distribution of Minorities in the Profession

Data collected indicate that the relative population of minorities in the profession increased only slightly between 1988 and 1998. Overall, there was a four (**4**) **percentage point** increase in the percentage of minority attorneys practicing in New Mexico (**18%** in 1988 compared to **22%** in 1998). This increase of minorities in the general population of attorneys is also reflected in the increase of minorities practicing in firms, government, corporate settings, and as sole practitioners. Minority representation in all types of legal practices increased between 1988 and 1998.

Based on the 1998 percentages of minorities in the State Bar (**22%**), minorities are still underrepresented in employment at firms. Also, ethnic minority and female attorneys are still over represented in government positions based on the number of ethnic minorities and females in the State Bar.

Ethnic and racial minorities still make less income each year than their White non-Hispanic counterparts. In general, female attorneys continue to make significantly less than male attorneys. It should be noted that female attorneys of all ethnicities make roughly the same amount of income, around **\$56,000** to **\$60,000** per year, whereas male attorneys of all ethnicities make on average between **\$63,000** and **\$91,000** per year.

III. THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW – A MODEL OF DIVERSIFICATION IN STUDENT ENROLLMENT AND FACULTY HIRING

A. ABA Standards and the Law School’s Admissions Policy

Established in 1947, the University of New Mexico School of Law (“the Law School”) remains the only law school in New Mexico. The Law School was accredited by the American Bar Association (ABA) in 1948 and is a member of the Association of American Law Schools (AALS). The Law School is reviewed every seven years by the accrediting committees of the ABA and the AALS in order to retain its accreditation. Among the accreditation criteria considered by the ABA is the extent to which the Law School fosters and maintains equality of opportunity in legal education, without discrimination, in admissions and in the employment of faculty and staff. (See Standard 210 – Standards for Approval for Law Schools by the American Bar Association).

The commitment of the Law School to the ABA Standard is aptly described in the Law School’s Admissions Policy, as follows:

The faculty at the University of New Mexico School of Law is committed to excellence and diversity in its student body. Indeed we believe that diverse backgrounds, experiences, and perspectives among the student body help to insure a dynamic, productive, and positive learning experience. In seeking to achieve diversity, the admission committee is instructed to consider a wide range of factors in evaluating applicants for admission, including, but not limited to: demonstrated intellectual capacity, academic achievement, employment history, life experiences (including those related to ethnicity and national origin), academic and personal motivation, commitment to public service, the extent to which the applicant has overcome educational and/or economic obstacles, and other indicia that the applicant can succeed in law studies and make a significant contribution to the law school community.

Applicants are to be evaluated for their potential for academic success in law school and their potential to contribute to an enriching educational environment while in law school.

The University of New Mexico School of Law Admission Policy, Adopted by the Faculty February 12, 1996 (“Admission Policy”).

As in most law schools, undergraduate grade point average (UGPA) and performance on the Law School Admission Test (LSAT) are important factors in evaluating an applicant's potential. UGPA and LSAT scores are considered at the Law School along with other factors in deciding which students should be admitted. Unlike some schools, however, the Law School does not apply any presumptive cutoff in UGPA or LSAT scores. Under the Admission Policy, while higher scores are positive factors and lower scores negative factors, UGPA and LSAT scores at one extreme or the other do not automatically grant or preclude admission.

For the **1998-1999** entering class, UGPA and LSAT scores were widely distributed, with UGPAs ranging from **2.32 to 3.96** and LSAT scores from **141 to 169**. Most of the entering class had UGPAs ranging from **3.00 to 3.24** and LSATs ranging from **150 to 159**. The Admission Policy provides that applicants with relatively low undergraduate grades and/or LSAT scores, but with overall records demonstrating that they have overcome educational and/or economic obstacles and show other indicia that they can succeed in law studies, may be admitted conditioned on their successful completion of an approved summer pre-law program.

Applicants are required to submit a personal statement with their application form. The personal statement provides applicants with the opportunity to bring to the attention of the admission committee autobiographical information (history of family, educational experiences, work experiences, extracurricular activities, etc.) as well as the applicant's reasons or motivations for wanting to study law in New Mexico. Applicants are well advised to give considerable attention to each of the required documents to insure that the completed application fully and accurately reflects the applicant's individual background, abilities, qualifications and goals.

B. The Preference for New Mexico Residents

Because the Law School is a publicly funded institution and the only law school in the state, New Mexico residents are given preference, although nonresident applications are encouraged. Under the Admission Policy, the admission committee seeks to admit an entering class comprised of approximately **85 to 90 percent** New Mexico residents and **10 to 15 percent** nonresidents. Geographical distribution from within the state also may be a factor in selecting the entering class as part of the Law School's search for diversity.

Admissions decisions at the Law School are made by a five-person admission committee, which includes a third-year student elected by the student body. Each member of the admissions committee evaluates all New Mexico resident applications; all non-resident applications are prescreened by the director of admission, and those deemed to be within the range of possible acceptance are then considered by the committee. The combined evaluation and judgment of the entire admission committee is used to decide which applicants should be admitted. The Law School does not grant personal interviews as part of the evaluative process because it does not have the resources to conduct the number of interviews that would be required. The Law School currently enrolls between **110 and 115** first year students, which is slightly less than half of the acceptances issued. The number of acceptances depends on the committee's ability to forecast the number that will ultimately enroll.

C. Financial Aid and Tuition Costs

Sources of financial aid at the Law School include loans, grants and work-study. Most financial aid is need-based. This includes federal Perkins loans, federal direct loans (subsidized), federal work-study and Law School grant aid. All need-based aid and most non-need-based aid must stay within a cost-of-education budget, which is determined by the UNM Financial Aid Office. Non-need based sources of financial aid include federal direct loans (unsubsidized), law access loans (LAL), law study loans (LSL) and other private grant or loan programs.

Tuition costs for New Mexico residents at the Law School remain reasonable in amount. For the 1998-99 academic year, in-state tuition and fees were a total of \$3,984. With room and board, books, transportation and personal expenses, the estimated total cost for one year of law school for an in-state student was \$14,666 and \$ 24,020 for an out-of-state student.

D. The Law School Continues to Meet Its Commitment to Diversity

As reported in the 1990 Task Force Report, minority enrollment for the entering class at the Law School in **1987** was **34%**, compared with a combined average first year minority enrollment in all ABA accredited law schools of **12%**. The percentage of first year minority enrollment at the Law School from **1987 to 1997** was more than twice the combined percentage of first year minority enrollment in all ABA accredited law schools across the country.

**TABLE 12.
UNM AND ABA LAW SCHOOLS AVERAGE
FIRST YEAR MINORITY ENROLLMENT**

Average First Year Minority Enrollment												
Law School	1987-1997						1994-1997					
UNM	41.0%						40.0%					
ABA Accredited Law Schools ⁵	16.81%						20.5%					
Minorities in Entering Class – Percent of Class By Year												
UNM School of Law vs. ABA Accredited Law Schools												
	<u>1987</u>	<u>'88</u>	<u>'89</u>	<u>'90</u>	<u>'91</u>	<u>'92</u>	<u>'93</u>	<u>'94</u>	<u>'95</u>	<u>'96</u>	<u>'97</u>	<u>'98</u>
UNM	34%	32%	39%	47%	46%	46%	48%	41%	45%	37%	36%	40%
ABA	12%	12%	13%	14%	16%	17%	19%	20%	21%	21%	20%	NA

⁵ Memorandum D9697-19, Office of the Consultant on Legal Education to the American Bar Association, September 4, 1997.

Similarly, **total** minority enrollment (all three years) at the Law School over the past five years has ranged from **38%** to **45%** (an average of **41%**). By way of comparison, total minority enrollment at all ABA accredited law schools over the same five year period averaged **19.6%**.

**TABLE 13.
TOTAL MINORITY ENROLLMENT UNM VS. ABA LAW SCHOOLS**

Total Minority Enrollment				
UNM School of Law				
<u>94-95</u>	<u>95-96</u>	<u>96-97</u>	<u>97-98</u>	<u>98-99</u>
43.7%	44.7%	39.3%	40.0%	38.0%
ABA Accredited Law Schools⁶				
<u>94-95</u>	<u>95-96</u>	<u>96-97</u>	<u>97-98</u>	<u>98-99</u>
19.0%	19.8%	19.7%	19.6%	20.1%

E. The Distribution of Minorities in the Student Body – A Close Correlation to the “Working Age” Category of the 1990 New Mexico Census

The distribution of minorities among the student body at the law school compares favorably with the distribution of minorities in the State of New Mexico. The 1990 New Mexico census reflects the following ethnic and racial distribution among the population of the state for persons **25 to 64** years of age (“working age”):

**TABLE 14.
NEW MEXICO “WORKING AGE” 1990 CENSUS DEMOGRAPHICS**

Hispanic	31.0%
Native American	6.1%
Asian	.9%
African American	1.6%
White	60.2%

⁶ Memorandum D9899-45, Office of the Consultant on Legal Education to the American Bar Association, February 12, 1999.

As seen in the chart that follows, the distribution of minorities among the student body population at the Law School for the last five years is consistent with the statewide census data.

**TABLE 15.
MINORITY ENROLLMENT AT UNM SCHOOL OF LAW**

Minority Enrollment at UNM School of Law Racial and Ethnic Groups by Number and Percentage - 1994 to 1999					
	<u>'94-95</u>	<u>'95-96</u>	<u>'96-97</u>	<u>'97-98</u>	<u>'98-99</u>
Hispanic	89 – 27.2%	100 – 29.8%	84 – 24.8%	92 – 27.0%	89 – 27.0%
Native Am.	31 – 9.4%	34 – 10.1%	28 – 8.3%	25 – 7.0%	20 – 6.0%
Asian	10 – 3.0%	7 – 2.0%	11 – 3.2%	8 – 2.0%	9 – 3.0%
African Am.	13 – 3.9%	9 – 2.6%	10 – 3.0%	10 – 3.0%	8 – 2.0%
White	170 – 51.9%	172 – 51.3%	181 – 53.4%	174 – 51%	174 – 52.0%
Undeclared	14 – 4.2%	13 – 3.8%	25 – 7.3%	32 – 9.0%	35 – 10.0%
Total Minority Enrolment %	43.7%	44.7%	39.3%	40.0%	38.0%

Although their numbers remain relatively small, African Americans, Native Americans and Asians tend to be slightly better represented among the Law School's student body than in the statewide population figures, while Hispanics tend to be slightly underrepresented in the student body population. The relatively close correlation with statewide "working age" census figures is attributable to the preference accorded New Mexico residents in the Law School's admissions process. From data provided by the Law School, the Task Force observed an increasing trend over the past five years for students to decline to declare their ethnicity or race.

F. Minority Enrollment and Gender – Minority Women Proportionally Represented in the Student Population

The gender of minority students enrolled at the Law School over the last five years corresponds closely with the gender of the student body as a whole. The following chart illustrates total enrollment by gender compared with minority enrollment by gender for academic years 1994 through 1999.

TABLE 16.
TOTAL ENROLLMENT BY GENDER VS. MINORITY
ENROLLMENT BY GENDER 1994-1999

UNM School of Law – Total Enrollment by Gender Compared with Minority Enrollment by Gender 1994-1999					
<u>Total Class</u>	<u>'94-95</u>	<u>'95-96</u>	<u>'96-97</u>	<u>'97-98</u>	<u>'98-99</u>
Women	54.7%	51.9%	48.0%	51.0%	53.0%
Men	45.3%	48.0%	52.0%	49.0%	47.0%
<u>Total Minorities</u>					
Minority Women	55.2%	54.0%	48.9%	51.9%	53.2%
Minority Men	44.8%	46.0%	51.1%	48.1%	46.8%

G. Graduation Rates Among Minority Students – A Meaningful Measure of the Law School’s Commitment to Diversification

While the admissions process at the Law School has clearly and consistently been successful in diversifying the student body, an important measure of the Law School’s commitment to diversification lies in its minority retention and graduation rates. Although it was beyond the resources of the Task Force to track minority students from admission to graduation over the last ten years, the following data nevertheless suggests that the Law School has an excellent record of retaining and graduating its minority students.

A comparison of degrees awarded (by ethnicity) for the period 1990 to 1998 with first year minority enrollment data for the corresponding period 1987 to 1995 indicates no significant deviation between minority admission and corresponding graduation rates. This analysis shows that the Law School has experienced a retention and graduation rate during the 1990s of approximately **94%** for Hispanics, **90%** for Native Americans, and perhaps even higher rates for African Americans and Asians.⁷

⁷ It is noted that a number of variables can affect the percentages arrived at in this analysis. For example, excluded from this analysis are those students whose ethnicity or race is listed as “undeclared” in the enrollment and graduation rate data provided by the Law School. Thus, minorities who may be included among these two groups will not be accounted for in the analysis. Second, “undeclared” students in the enrollment data may or may not be the same as those “undeclared” students in the graduation data. Finally, this analysis does not account for transfer students (incoming or outgoing) or minority students who graduate after more than three years at the Law School. The limited purpose of this analysis is simply to correlate first year minority enrollment data with minority graduation rates three years later to determine whether there is any significant deviation. No significant deviation is found.

TABLE 17.
FIRST YEAR MINORITY ENROLLMENT
1987-1995 VS. GRADUATION RATES 1990-1998

A Comparison – First Year Minority Enrollment 1987 to 1995 With Minority Graduation Rates for Corresponding Period 1990 to 1998 – By Race and Ethnicity									
<u>First Year Minority By Number of Students</u>					<u>Third Year Minority Graduation Rates By number of Students</u>				
	<u>Hispanic</u>	<u>Nati. Am.</u>	<u>Afri. Am.</u>	<u>Asian</u>		<u>Hispanic</u>	<u>Nat. Am.</u>	<u>Afri. Am.</u>	<u>Asian</u>
1987	27	7	1	3	1990	27	6	2	3
1988	29	3	2	1	1991	25	2	2	1
1989	33	6	1	2	1992	29	5	1	2
1990		NA			1993		NA		
1991	33	10	3	5	1994	31	9	2	5
1992	33	6	5	5	1995	27	5	4	5
1993	34	12	5	1	1996	39	12	7	1
1994	24	13	4	4	1997	23	11	2	4
1995	34	10	2	2	1998	32	10	4	4
Totals	247	67	23	23	Totals	233 (94%)	60 (90%)	24	25

H. Law School Enrollment and Diversity — Ten Years Later — Conclusions

The 1990 Task Force Report concluded that since the late 1960s, the School of Law had played an important role in increasing the number of minority lawyers in New Mexico. Even though graduates of the law school typically account for far less than one-half of attorneys who are admitted annually to the State Bar of New Mexico, the Law School is without question the largest and most important supplier of minority attorneys for the State Bar of New Mexico.

Having increased its minority enrollment from approximately 31% in the late 1980s to approximately 40% in the late 1990s, it is fundamentally clear that the Law School continues to play an effective and vital role in enhancing the ethnic and racial diversity of the State Bar of New Mexico. The overall percentage of minority attorneys in New

Mexico has increased four percent (**4%**) over the last ten years; the increase is attributable largely to the admission policy of the Law School and the Law School's continuing commitment to diversity in the legal profession.

I. Diversity and Law School Faculty — Still Ahead of the Curve

Ten years ago the Law School had 29 full-time faculty members, all in tenure or tenure track positions. Six, or **20.6%** of these faculty members were members of minority groups. (Task Force Report, January 20, 1990, at 33). The Task Force stated in its 1990 Report that even though the Law School ranked high in minority faculty hiring in comparison with other law schools in the United States, "the Task Force believes that because of the minority population in New Mexico, greater efforts in this area should be considered." (*Id.*).

The Law School continues to be highly ranked among the nation's law schools in minority faculty in the 1990s. For the 1998-99 academic year, the Law School has **34** full-time tenured or tenure track faculty members, including the Dean and Associate Deans. Of these, **9** or **26.5%** are members of minority groups, including Hispanics, Native Americans and African Americans. Over the past five years, the percentage of full-time minority faculty at the Law School has ranged from **21%** to **26%**. The most recent (1998-99) data on ABA Accredited Law Schools reflects that minorities comprise **13%** of all full-time faculty.⁸ The Law School continues to measure up well against national law school statistics.

Because of tenure, stable student enrollment numbers and the solid reputation of the Law School, full-time faculty positions at UNM are rarely available. Accordingly, one would not expect to see significant swings in the percentage of minority faculty since the 1990 Task Force Report was published. Nevertheless, as the Task Force observed a decade ago, New Mexico is unique in its diverse population, where minorities comprised forty percent (**40%**) of the working age population in the 1990 Census. That percentage will almost certainly increase with the 2000 Census. As more minorities enter the Law School and the legal profession in New Mexico, the need for qualified, full-time minority faculty at the Law School becomes increasingly important. The need for greater efforts by the Law School in recruiting and hiring qualified full-time minority faculty remains as important today as it was in 1990.

⁸ Memorandum QS9899-30, Office of the Consultant on Legal Education to the American Bar Association, March 10, 1999.

IV. NEW MEXICO BAR EXAMINATION – HISTORY AND PROGRESS – AN UPDATE

A. Judge Steve Herrera and *Melendez v. Burciaga* – A Point of Departure

The original Task Force on Minorities in the Profession was privileged to have among its members the Honorable Steve Herrera, Chief Judge of the First Judicial District. Judge Herrera died tragically in an automobile accident in August of 1998. No one understood or appreciated the history of the New Mexico Bar Examination and its impact on minorities any better than Judge Herrera. As a young attorney in the 1970s he changed the course of that history, first as an outspoken and resolute advocate for change, and ultimately as an architect of reform in his role as lead counsel for the Petitioners in *Melendez v. Burciaga* (NMSC No. 12449, April 1979).

Melendez was an original evidentiary proceeding before the New Mexico Supreme Court in which 15 attorneys, including Steve Herrera, challenged the New Mexico Bar Examination on equal protection and due process grounds. As described more fully below, the challenge was prompted by a decade of highly disparate bar passage rates experienced by Hispanics and other minority applicants. At the close of the proceedings in *Melendez*, the Supreme Court ordered that a number of substantive modifications be made in the content, structure and administration of the Bar Examination. (See Task Force Report, January 20, 1990, at 37-38). Over the next decade the disparity in bar passage rates between minority and non-minority applicants was significantly reduced.

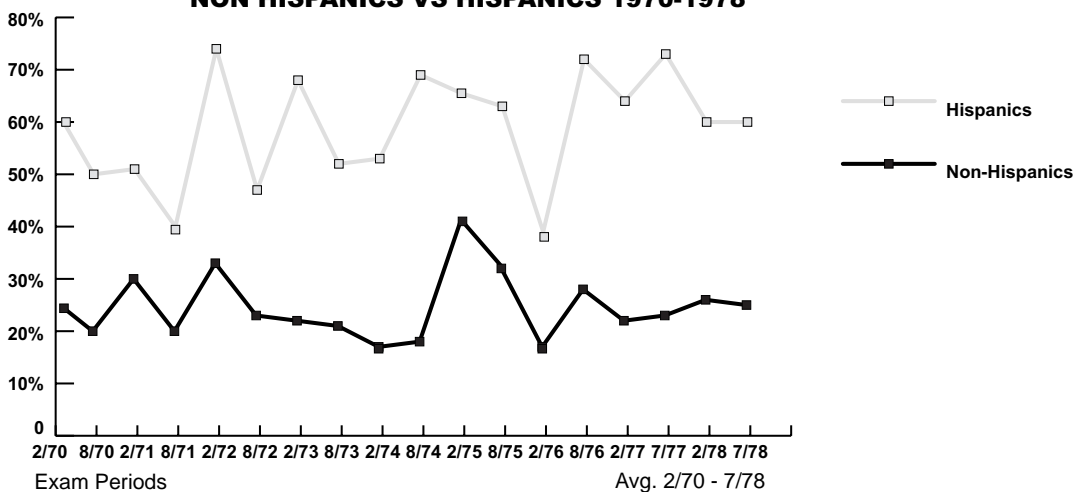
Judge Herrera was the author of the history of the struggle by minorities with the New Mexico Bar Examination in the January 1990 Task Force Report. (Task Force Report, January 20, 1990, pp. 35-39). His first-hand knowledge of the issues, the people involved and the importance he ascribed to this subject in his professional life made Judge Herrera uniquely qualified for the assignment. Because that history provides a proper context and a baseline for evaluating how well minorities have fared in the New Mexico Bar Examination during the 1990s, the principal aspects of Judge Herrera's history of the Bar Examination are summarized as follows.

B. Bar Passage/Failure Rates in the 1970s and 1980s – The Disparity Revisited

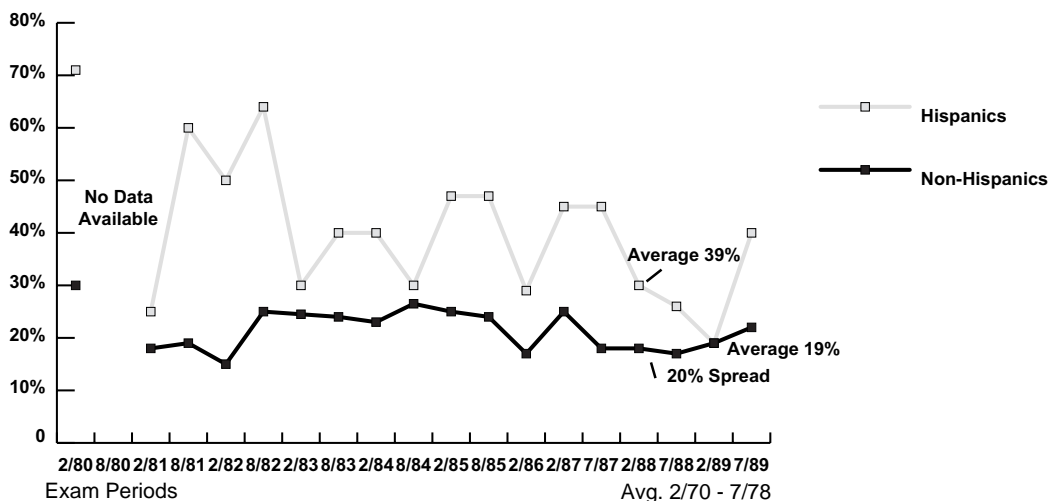
The centerpiece of Judge Herrera's history was a comparison of bar examination failure rates for Hispanics and non-Hispanics from 1970 to 1978 (Pre-*Melendez*), and from 1980 to 1989 (Post- *Melendez*). Task Force Report, January 20, 1990, at 36 and 38. (Judge Herrera's graphs have been reproduced on the following page for ease of reference).⁹

⁹The data and research methodology used in preparing these graphs is fully described in Section C, below, in response to certain questions raised about the reliability of the results by the current Chair of the New Mexico Board of Bar Examiners.

**GRAPH 5.
BAR EXAMINATION FAILURE RATES –
NON HISPANICS VS HISPANICS 1970-1978**



**GRAPH 6.
BAR EXAMINATION FAILURE RATES –
NON HISPANICS VS HISPANICS 1980-1989**



The pre-*Melendez* graph demonstrates a huge disparity in failure rates throughout the 1970s, just as minorities began graduating from law schools in significant numbers. Hispanics averaged a **61%** failure rate during this decade compared with an average failure rate of **24%** for non-Hispanics (including other minorities), a huge differential of **37%**. The magnitude of this disparity gave rise to a long series of newspaper articles, sit-ins and other protests challenging the fairness of the New Mexico Bar Examination. The United States House of Representatives Committee on Education and Labor conducted hearings in Santa Fe on a proposed bill to remove discriminatory barriers to minorities seeking legal services or admission to the practice of law. (Task Force Report, January 20, 1990, at 36). The continuing wide disparity in failure rates would become a turning point in the history of the New Mexico Bar Examination by the end of the decade.

The 1970s was a particularly frustrating period for unsuccessful minority applicants. In 1972, a Hispanic applicant petitioned the New Mexico Supreme Court seeking a review and evaluation by the Court of his answers to the bar examination. *Petition of*

Pacheco, 85 N.M. 600 (1973). A number of novel issues were presented, including a claim that the bar examination, by concentrating on business law and other traditional subjects as distinguished from legal problems of the poor, was unfair to minorities and discriminated against persons whose culture or values were different from those of the examiner. 85 N.M. at 600-601. The Court observed that an unsuccessful applicant had the right to review the questions asked, the applicant's responses thereto and a sample of a passing answer to each question. The Court determined that this post-examination procedure was adequate and that Petitioner had not been denied due process or equal protection. *Id.*, at 604.

Thereafter, in October of 1974, the New Mexico Supreme Court refused to administer the attorney's oath to several prospective attorneys who had passed the Bar Examination when they appeared at the swearing-in ceremony wearing black arm-bands in silent protest of disproportionate bar passage rates for Hispanics and other minorities. (Task Force Report, January 20, 1990, at 35). More than four years later, in April of 1979, mounting discontent over highly disproportionate failure rates by Hispanics provoked the filing of the petition in *Melendez*.

If the 1970s were a time of frustration and confrontation over disproportionate failure rates, the 1980s were a time of transition that witnessed a gradual and sporadic narrowing of the disparity. Within three years after the reforms ordered by the Supreme Court in *Melendez* were implemented, the disparity in failure rates was reduced to approximately five percentage points (5%) in the February 1983 bar examination. (Task Force Report, January 20, 1990, at 38). The good news was short-lived, however. Over the next six years, failure rates for Hispanics exceeded 40% in the August 1983 exam, the February and August 1985 exams and the February 1987 exam. Over the entire decade of the 1980s, the failure rate for Hispanics averaged 39%, compared with 19% for non-Hispanics, a differential of 20%. *Id.* While the differential of 20% in the 1980s was certainly better than the 37% differential seen in the 1970's, the continuing disparity was still significant and very troublesome to the original Task Force on Minorities in the Profession.

The 1990 Task Force Report concluded that much remained to be done on the subject of disproportionate bar passage rates. The Report stated:

The Board of Bar Examiners should recognize that they are administering an imperfect examination and that further study and analysis of methods for improving the fairness of the Examination and its administration must continue as a crucial part of the Board's functions and duties.

* * *

Much hard work has been done in the past ten years to make the New Mexico Bar Examination more "reliable." This conscientious effort by the Board of Bar Examiners is highly commendable, and the effort must continue. The Bar Examination will remain a "minority" issue as long as minorities continue to "fail" the Examination at higher rates than non-minorities.

(Task Force Report, January 20, 1990, at 39)

C. Reliability of the Data in the 1990 Task Force Report – A Question Posed by the Current Chair of the New Mexico Board of Bar Examiners

Among the recommendations made in the January 1990 Task Force Report was the following concerning the New Mexico Bar Examination:

10. * * * Accurate records on applicants' ethnicity and passing rates should be maintained. . . .

(Task Force Report, January 20, 1990, at 97)

As a first step in updating information on bar passage/failure rates for minorities in the 1990s, the Task Force on Minorities in the Profession II requested in early 1998 that the Board of Bar Examiners provide information on pass/failure rates by race and ethnicity from 1990 to current date. The Chair of the Board of Bar Examiners responded by letter with attachments dated February 13, 1998. A copy of the letter and its enclosures are attached hereto as "Appendix 3."

As a preliminary matter, the Board of Bar Examiners stated that the Board had reviewed the 1990 Report of the Task Force on Minorities and was unable to identify the source of the data used for the statistics and charts in the 1990 Report. The Board commented, therefore, that it was not clear how reliable the information was that formed the basis of the 1990 Report. "Appendix 3," at page 1. Because the data and graphs prepared by Judge Herrera and his subcommittee serve as a baseline for comparing how well Hispanics and other minorities have fared in the New Mexico Bar Examination during the 1990s, it is important to describe the data and the reliability of the research methods used in the original Task Force Report.

Judge Herrera and his subcommittee (comprised of Judge Herrera and Henry Narvaez, who at the time was the Chair of the New Mexico Board of Bar Examiners, and Arturo L. Jaramillo, Chair of the Task Force on Minorities in the Profession) reviewed and compared two decades of bar examination and bar admissions records in preparing the graphs that were used in the Task Force Report. First, the subcommittee compared annual lists of bar examination applicants with annual lists of new admittees to the State Bar of New Mexico.¹⁰ The vast majority of Hispanic applicants who had not been successful in the Bar Examination were personally known to Herrera or to his subcommittee members. The few unsuccessful Hispanic applicants who were not known to the subcommittee members were identified by surname. (See Task Force Report, January 20, 1990, at 35 and 38). Based on this information, annual failure rates for Hispanics and non-Hispanics were compiled from 1970 to 1979 and 1980 to 1989, and the data was plotted on graphs over these two decades. *Id.*, at 36 and 38.

The 1990 Task Force Report observed that while some Hispanics were probably excluded from this analysis, the Task Force did not believe the methodology would materially affect the results shown in the graphs. *Id.*, at 35. This approach was made necessary because the Board of Bar Examiners did not maintain records on the race or ethnicity of its applicants during the 1970s and 1980s. The Task Force concluded that the data used to prepare the graphs was highly reliable and could reasonably be used to support the findings and conclusions in the Task Force Report. No information was provided

¹⁰ The annual lists of bar examination applicants were provided to the Task Force on Minorities in the Profession by the Board of Bar Examiners with the approval and authorization of the New Mexico Supreme Court. The New Mexico Supreme Court was a co-sponsor of the Task Force on Minorities in the Profession and then Chief Justice Dan Sosa was a participating member of the original Task Force.

by the Board of Bar Examiners in 1990 when the Task Force Report was published, nor in its February 13, 1998, letter to challenge the reliability of the data used in the two graphs.

D. Minorities and the Bar Examination in the 1990s – Focus of Disproportionate Pass/Failure Rates Turns to “Repeat” Minority Applicants

The data on bar passage rates by ethnicity and race provided by the Board of Bar Examiners in its February 13, 1998 letter was set forth on two spreadsheets. The first, entitled “Ethnic Origin/Gender Statistics,” provided overall bar passage rates by ethnicity and gender for the period July 1993 to February 1995. (See “Appendix B” to the Board’s February 13, 1998 letter). The Board of Bar Examiners cautioned that this data was initially requested on a form that was introduced in October of 1992, and “there was not a high rate of voluntary response.” From the materials provided by the Board of Bar Examiners, the response rate appears to be 198 of 259 total applicants, or 76%. The Board’s data is reproduced in material part on the following chart (Table 18). The chart shows bar examination passage rates from 1993 to 1995, by ethnicity and gender (percentage passed and number passing/failing). The data reflects a trend for Hispanics that is remarkably similar to Judge Herrera’s graph for the decade of the 1980s:

**TABLE 18
PASSAGE RATES BY ETHNICITY JULY 1993-FEBRUARY 1995**

	Passage Rates By Ethnicity – July '93 – Feb. '95 (Overall percentage and number passing/number failing)				Overall % Passed
	July '93	Feb. '94	July '94	Feb. '95	
White	87% 110/17	92% 55/5	85% 126/22	92% 60/5	88%
Hispanic	64% 25/14	56% 10/8	70% 26/11	77% 17/5	67%
African Am.	100% 1/0	100% 1/0	20% 1/4	0% 0/1	38%
Asian	100% 5/0	67% 3/2	83% 5/1	50% 3/3	73%
Native Am.	50% 6/6	60% 3/2	83% 5/1	50% 3/3	59%
Non ID.	85% 11/2	87% 7/1	92% 12/1	90% 9/1	89%
Women	78% 68/19	80% 33/8	83% 89/19	87% 46/7	82%
Men	80% 89/22	83% 45/9	77% 83/25	82% 54/12	80%

Consistent with Judge Herrera’s graph for the 1980s, the passage rate for Hispanics averaged **21%** less than white applicants. The passage rates for other minorities were between **15%** (Asian) and **50%** (African American) **less** than for white applicants. The Board of Bar Examiners data was based on a passing score for the Bar Examination of **133**. See “Appendix B” to the Board’s letter of February 13, 1998.

Effective with the July, 1995 Bar Examination, the passing score for the Bar Examination was lowered from **133** to **130**. At the same time, the Board of Bar Examiners began compiling a computerized database that included a statistical breakdown for comparing **first-time** applicants and **repeat** applicants. The Board emphasizes in its February 13, 1998 letter that “in the February, 1996 and February, 1997 bar exams, although the overall pass rate of Hispanics was 85% and 88% respectively, the pass rate for **first-time** applicants in each of those categories was 100%. The Board of Bar Examiners data for July 1995 through July 1997 is reproduced on the following page.

This more recent data leads to a number of important observations. First, the **overall** differential in passage rates between Hispanic applicants and white applicants from July 1995 to July 1997 has been narrowed to an average of **12%** (Hispanic **83% 119P/25F** vs. White non-Hispanic **95% 542P/31F**). This is an important and significant reduction from the **20%** differential seen in the 1980s and the early 1990s.

Lowering the passing score from 133 to 130 appears to have been one factor in closing this gap, at least for most minority groups. The passage rate for White non-Hispanic applicants after the score was lowered went from an average **88%** overall to **95%** for **first-time applicants**, a gain of **7%**. The average passage rate for Hispanics went from **67%** overall to **87%** for **first-time applicants**, an increase of **20%**, for a net gain of **13%** when compared with White non-Hispanic applicants. (See Tables 18 and 19). This analysis logically suggests that many first-time applicants, minority and non-minority alike, had been on the borderline in passing the bar examination prior to July 1995.

Although small numbers permit only limited analysis, the passage rate for African American applicants increased significantly from **38%** overall to **75%** for **first time applicants**, an increase of **37%**. For Native Americans, however, the passage rate went from **59%** overall to **56%** for **first-time applicants**, a **reduction** of **3%**. Other than the small number of applicants, there is no apparent explanation for this anomalous result.

Second, as the Board of Bar Examiners points out, **first-time** Hispanic applicants had passage rates of 100% in the February 1996 and February 1997 Bar Examinations. Indeed, the differential in passage rates for **first-time** Hispanic applicants and **first-time** White non-Hispanic applicants between July 1995 and July 1997 was only **8%** (Hispanic **87%** 103/15 vs. White non-Hispanic **95%** 523P/25F) compared with a **12%** differential for **all** Hispanic and White non-Hispanic applicants. Thus, first-time Hispanic applicants experienced a significantly higher passage rate, and a lower differential compared with White non-Hispanic applicants when considered separately from repeat Hispanic applicants.

Correspondingly, the differential in passage rates between **repeat** Hispanic applicants and **repeat** White non-Hispanic applicants for this same period was **14%** (Hispanic **62%** 16/10 vs. White non-Hispanic **76%** 19/6). The passage rates for both groups of repeat applicants are significantly lower than for first-time applicants. This analysis supports the position of the Board of Bar Examiners that passage rates for first-time applicants should logically be considered and evaluated separately from passage rates for repeat applicants.

TABLE 19.
PASSAGE RATES — FIRST TIME APPLICANTS
BY RACE AND ETHNICITY JULY 1995-JULY 1997

First Time Applicants – Passage Rates By Ethnicity By Percentage and Pass/Fail Numbers)						
	<u>July '95</u>	<u>Feb. '96</u>	<u>July '96</u>	<u>Feb. '97</u>	<u>July '97</u>	<u>Overall %</u>
White	96% 135/6	96% 68/3	95% 126/7	97% 83/3	95% 111/6	95%
Hispanic	86% 25/4	100% 15/0	79% 33/9	100% 7/0	92% 23/2	87%
Afri. Am.	100% 1/0	50% 1/1	100% 3/0	50% 0/1	100% 3/0	75%
Asian	100% 5/0	NA	NA	100% 1/0	100% 2/0	100%
Nat. Am.	50% 3/3	50% 1/1	50% 5/5	33% 1/2	83% 5/1	56%

TABLE 20.
PASSAGE RATES — REPEAT APPLICANTS
BY RACE AND ETHNICITY JULY 1995-JULY 1997

Repeat Applicants Passage Rates By Race & Ethnicity By Percentage and Pass/Fail Numbers						
	<u>July '95</u>	<u>Feb. '96</u>	<u>July '96</u>	<u>Feb. '97</u>	<u>July '97</u>	<u>Overall %</u>
White	100% 5/0	60% 3/2	40% 2/3	83% 5/1	100% 4/0	76%
Hispanic	0% 0/1	40% 2/3	20% 1/4	80% 8/2	100% 5/0	62%
Afri. Am.	NA	25% 1/3	50% 1/1	0% 0/2	0% 0/1	22%
Asian	0% 0/1	NA	NA	NA	NA	NA
Nat. Am.	14% 1/6	50% 4/4	50% 5/5	0% 0/2	0% 0/3	33%

While the number of applicants is significantly smaller, the point made by the Board appears to apply to African Americans and Native Americans as well, although it must be pointed out that passage rates for **first-time** applicants in both of these racial groups are **20% to 39%** lower than for **first time** White non-Hispanic applicants, resembling the substantial disparity in passage rates experienced by Hispanics **in the 1970s**. These highly disproportionate passage rates for **first-time** African American and Native American applicants would seem to require some specific study and analysis by the Board of Bar Examiners.

The difficulties experienced by **repeat** bar examination applicants is certainly not news to the Board of Bar Examiners. In many cases, at least one answer to the problem has been found in mentoring repeat applicants about how to “take” the bar examination, that is, focusing on the mechanics of reading and outlining the essay questions, identifying the issues, planning and organizing the answers and writing effective, thorough and concise answers. See the Letter from Henry F. Narvaez, dated March 29, 1999, addressed to the Task Force (a copy is attached hereto as “Appendix 4”). Mr. Narvaez has served on the Board of Bar Examiners for 18 years, since 1981, and was Chairman of the Board from 1987 to 1990. In his letter to the Task Force, Mr. Narvaez describes his experience and success in mentoring repeat applicants in methods of taking the bar examination. As recommended below, affordable programs by the State

Bar and/or minority bar associations designed to better prepare first-time and repeat applicants for taking the bar examination are critical to further reductions in disparate bar passage rates.

E. Innovative Responses From The Board of Bar Examiners

The disproportionate bar passage rates experienced by minorities has been a continuing concern of the Board of Bar Examiners for the past two decades. As the current Chair explained in the Board's letter of February 13, 1998, much has been done to address this problem. Specific action identified by the Board include the following:

1. The passing score has been lowered from 133 to 130.
2. The Board has re-instituted a third phase of the re-grade for borderline applicants whose scores are within 3 points of passing.
3. Effective July 1997, the Board has included a performance test component in the Bar Examination.
4. The Board has continued to work with nationally recognized consultant, Dr. Stephen P. Klein. Dr. Klein is the author of an article attached to the Board's letter of February 13, 1998 entitled, "The Size and Source of Differences in Bar Exam Passing Rates among Racial and Ethnic Groups."
5. Based on Dr. Klein's recommendation, the Board approved and is implementing a change in the statistical scoring method for conversion of raw scores and equating the MBE and essay scores using the standard deviation method.
6. The Board's Executive Director was appointed to the National Conference of Bar Examiners Committee on Minority Issues.

F. Observations and Recommendations of the Task Force

The Board of Bar Examiners remains highly attentive, open minded and sensitive to issues that impact minority applicants. The Board is to be commended for its continuing efforts, for as three decades of data on disproportionate passage rates demonstrate, those efforts are as necessary today as they were in the early 1970s. The data continues to illustrate disparate passage rates for minorities, and as Judge Herrera commented nearly a decade ago, the Bar Examination will remain a "minority" issue as long as significant disparity persists. The most significant issue is why minorities continue to encounter disparate passage rates.

The Task Force considered the conclusion stated in Dr. Stephen Klein's article, "The Size and Source of Differences in Bar Exam Passing Rates among Racial and Ethnic Groups," that bar examination **scores** are highly related to an applicant's law school grade point average (LGPA). As a general principal, Dr. Klein's thesis is quite logical. It's direct application to disparate **passage rates** for minorities, however, appears to require further analysis. Dr. Klein states that minority applicants generally have lower passing rates because they usually have lower (and sometimes substantially lower) LGPAs

than their classmates, i.e., they apparently have different average levels of mastery of law. Dr. Klein concludes that “[t]he bar exam itself is not the source of the differences. It merely reflects the disparities that were present when the student graduated from law school.” Stein, “The Size and Source of Differences in Bar Exam Passing Rates among Racial and Ethnic Groups,” at 5.

While the Task Force recognizes and respects the considerable expertise of Dr. Klein, it also notes from the comments of Mr. Narvaez, former Chair and member of the New Mexico Board of Bar Examiners for 18 years, that 90%+ of all applicants ultimately pass the New Mexico Bar Examination. As Mr. Narvaez explains in his letter of March 19, 1999, passing the Bar Examination after a first unsuccessful attempt is a learning process that often has more to do with understanding *how* to take the bar examination than mastering the substantive law learned in law school.

On this point, the personal experiences of most minority judges and attorneys who served on the Task Force on Minorities in the Profession II suggest that success on the bar examination has less to do with law school grade point averages than with adequate preparation for the bar examination. The Task Force members believe, from their own experiences, that the vast majority of law schools provide a competent legal education for their graduates, minorities included, and that LGPA differentials are not the only explanation to three decades of disproportionate bar passage rates in New Mexico. Clearly, commercial bar review courses can be significantly helpful in this regard. Unfortunately, these courses are also expensive and therefore not equally available to applicants of limited financial means. The legal profession generally, and the State Bar, the law school, and minority bar associations specifically, must recognize the need to provide effective assistance in bar examination preparation for applicants who cannot afford the commercial courses. Stated quite pointedly, entry into the legal profession cannot be made to depend upon economic preferences.

Whether the first decade of the millennium will see further improvement in bar passage rates for minorities in New Mexico remains to be seen. The Task Force is satisfied that the Board of Bar Examiners is keenly aware of the issues and continues to address them. The Task Force urges the Board to continue its diligent work. However, the challenge ahead is also the responsibility of the profession to see that bar examination preparation is made available on an equal basis to all those who seek it out. The State Bar of New Mexico Continuing Legal Education division should investigate the potential of providing bar review programs to applicants on a cost-affordable basis, and mentoring assistance by experienced attorneys on a volunteer basis. One such program designed by the Young Lawyers Division of the State Bar of New Mexico entitled: “Minority Bar Passage Project,” has been proposed, but not yet adopted. A description of the Program is attached hereto as “Appendix 5.” Programs of this type must be given due consideration by the leadership of the State Bar and minority bar associations.

Finally, applicants themselves must accept the ultimate responsibility for adequate bar examination preparation. As with every other aspect of the practice of law, preparation is essential to success. If assistance is necessary, it is the responsibility of the applicant to seek it out; the legal profession must then have an effective response equally available to all.

V. CAREER PREFERENCES AND EMPLOYMENT OPPORTUNITIES OF MINORITY ATTORNEYS

A. Survey of New Mexico Law Firms on Recruitment Practices and Employment Opportunities

Data were collected on the number of minorities working in New Mexico law firms, the hiring of minority attorneys, the referring of minority attorneys, recruiting efforts, criteria for hiring, and perceived explanations of barriers to hiring minority attorneys in the Task Force's "Survey of New Mexico Law Firms." This section summarizes the findings from these surveys completed by 95 New Mexico law firms. Profiles of these 95 responding firms are presented above in the methodology section (Section I.D.2.). For this particular survey, data were gathered on "law firm characteristics," rather than on characteristics such as respondent ethnicity, gender, and age (See respondent profile for New Mexico Law Firm Survey, Table 1). Thus, comparison between responses from minority and non-minority respondents are not relevant. The tables in this section report data from all of the responding law firms combined. It should be noted that the response rate is relatively low (28%), thus limiting the extent to which these data can be generalized to law firms across the state. On the other hand, the answers given to most of these survey questions by the respondents were highly consistent, demonstrating a clear trend and allowing reasonable inferences and conclusions to be made from this data.

1. Law Firm Recruitment and Referral Practices

According to data from the survey of law firms, if there are no minorities currently in the firm, one-third (**1/3**) of these firms have formerly employed, or attempted to employ minority attorneys in the past. Almost all responding firms (93%) have referred matters to minority lawyers outside of their firm and similarly, the vast majority of firms (**97%**) have referred matters to female lawyers outside of their firm. Just over two-thirds of firms (70%) have utilized minority lawyers as co-counsel, and 77% have utilized female lawyers as co-counsel. The high percentage of responding firms that have referred cases to, or associated minority and women attorneys as co-counsel, suggests that at least some minorities and women are networking well with New Mexico law firms. The number of firms that have employed or attempted to employ minorities is not as encouraging.

When law firms were asked about the kind of recruiting methods they use, the most frequent method reported was "advertisements in legal publications." Open-ended responses from firms also indicate that "informal networking" is the second most frequent method of recruitment. Most firms reported that they recruit "when needed" as opposed to recruitment during a particular month of the year. The majority of responding law firms (95%) do not recruit at law schools instate or outside the state. Most firms do not rely on any cut-off level in LSAT or GPA's to screen applicants. This data suggests that minority and women candidates for positions with law firms ought to be responding to advertisements in legal publications as a primary means of locating and pursuing available law firm positions.

Table 21 below reports the importance of various factors used to evaluate prospective associates. The average score is based on a scale of one to six; one representing “not important” and six representing “very important.” In evaluating prospective associates, the data from the 1998 Law Firm Survey indicate that employment experience is most important, followed by law school GPA, leadership positions held, and law school attended.

Interestingly, when comparing data from 1988 and 1998, respondents from each of the two years ranked the importance of various factors used to evaluate prospective associates in the **same** order of importance. For example, employment experience was the most important factor in 1988 and 1998. Please note that the scale used a ranking of one-to-five in 1988, compared to a ranking of one-to-six in 1998. Results are thus provided as rankings for comparability, with the actual average rating provided in parenthesis for 1998 to show differences in degree of importance.

TABLE 21.
FACTORS IN EVALUATING PROSPECTIVE ASSOCIATES

Factor in Evaluating Prospective Associates	1988 Rank	1998 Rank & (Average)
Employment Experience	1	1 (4.8)
Law School GPA	2	2 (3.8)
Leadership Positions Held	3	3 (3.6)
Law School Attended	4	4 (3.4)
Law Review	5	5 (2.6)
Undergraduate GPA	6	6 (2.3)
Social Standing	7	7 (2.1)
LSAT Score	8	8 (1.8)

2. Retention and Promotion of Ethnic Minority and Female Lawyers

Out of the 95 law firms responding to the Task Force Survey of New Mexico Law Firms, **79%** do not make any special efforts to recruit ethnic minority lawyers and **84%** do not make any special efforts to recruit female lawyers. About the same percentage of law firms surveyed in 1988 (**81%**) said they did not make any special efforts to recruit minority lawyers. When respondents were presented with a list of possible reasons for the relatively low number of ethnic minority lawyers in law firms, none of the possible reasons were rated as a particularly strong factor. (In fact, one-third of respondents reported they “did not know” if these items listed were factors.) The reasons presented included such things as recruitment and screening processes, reluctance on the part of minorities, and perceptions of discrimination.

Similarly, none of the possible reasons listed on the survey for why minority lawyers leave before partnership decisions are made were rated as particularly strong. Again, a large proportion of responding firms (almost one half) did not know if the factors listed on the survey were a reason why minorities leave before partnership decisions are made. The reasons presented included such things as demand for minority lawyers,

minority preferences, and perceptions of discrimination. Responding firms also did not rate any of the possible factors that could contribute to the difficulty minority lawyers face in becoming partners as particularly strong (about one-half responded with “Don’t Know”). The factors listed on the survey included lack of mentoring, lack of opportunity to demonstrate talent, philosophical differences, and unsatisfactory performance.

According to the data collected in **1998**, the percentage of firms who have employed or made formal offers of employment to ethnic minority attorneys within the past two years is **35%**. About one-third (**1/3**) of firms have made offers to ethnic minorities within the past three to five years, and **44%** of firms have made offers to ethnic minorities within the past five to ten years. The respective rates for females are **27%** within the past one to two years, **30%** within the last three to five years, and **41%** within the past five to ten years. Table 22 below reports the percentages of firms who have employed or made formal offers of employment to ethnic minority or female lawyers. Available data for 1988 are also included.

Comparable data in **1988** indicate that **41%** of responding firms had employed or made formal offers of employment to ethnic minority lawyers, whereas only **35%** of responding firms in **1998** had employed or made formal offers of employment to minority attorneys in 1998. Also, **39%** of firms in **1988** had made formal offers of employment to minorities within the past three to five years, compared to **33%** in **1998**. Finally, in **1988** one-quarter (**25%**) of firms had employed or made formal offers of employment to ethnic minority lawyers and **44%** of firms in **1988** had employed or made formal offers of employment to ethnic minority lawyers in the past five to ten years. No data were available in 1988 on employment and formal offers made for female attorneys. The decrease in employment or offers of employment compared with the 1988 data is discouraging information for minority attorneys who have typically been underrepresented in law firm practice.

TABLE 22.
PERCENTAGE OF FIRMS WHO HAVE EMPLOYED OR MADE FORMAL OFFERS OF EMPLOYMENT TO ETHNIC MINORITY OR FEMALE LAWYERS

Time Period	1988 Minority	1998 Minority	1988 Female	1998 Female
Past 1-2 years	41%	35%	N/A	27%
Past 3-5 years	39%	33%	N/A	30%
Past 5-10 years	25%	44%	N/A	41%

The Task Force Survey also asked respondents to assess the importance of factors that are used to evaluate an associate for partnership. The following table lists factors for evaluating an associate for partnership and reports the average score based on a scale of one to six; one representing “not important” and six representing “very important.” Please note that the scale used to rank factors in 1988 was from one-to-five, compared to a ranking of one-to-six in 1998. Results are thus provided as rankings for comparability, with the actual average rating provided in parenthesis for 1998 to show differences in degree of importance.

TABLE 23.
FACTORS IN EVALUATING ASSOCIATES FOR PARTNERSHIP

Factor in Evaluating Prospective Partners	1988 Rank	1998 Rank & (Average)
Demonstrated Legal Skills	1	1 (5.5)
Compatible Personality	2	2 (5.4)
Allegiance to Firm's Goals	3	3 (5.2)
Demonstrated Leadership	4	4 (4.8)
Success in Attracting Clients	6	5 (4.7)
Billed Dollars	5	6 (4.1)
Billable Time	7	7 (4.0)
Participation in Pro Bono Work	8	8 (3.1)
Active Participation in Bar	8	9 (2.9)
Other	N/A	10 (2.3)
Law School Attended	9	11 (1.8)
Law School GPA	N/A	11 (1.8)
Social Standing	10	11 (1.8)
LSAT Score	11	12 (1.3)

As is evident in the table above (using 1998 data), demonstrated legal skills is the most important factor for evaluating an associate for partnership, followed by: compatible personality, allegiance to firm's goals, and demonstrated leadership qualities.

Survey respondents in 1988 ranked the factors presented for evaluating an associate for partnership in a similar order of importance as respondents in 1998. Demonstrated legal skills was the most important factor for evaluating an associate for partnership in 1988 and 1998. The top four factors (demonstrated legal skills, compatible personality, allegiance to firm's goals, and demonstrated leadership) were the same in 1988 and 1998.

Approximately one half (**1/2**) of responding firms said they did not know if it was more difficult for minorities to become partners; one-quarter (**1/4**) said there was no difference. As was the case concerning the promotion of minority attorneys to partnership status, responding firms did not indicate that any of the possible factors presented contribute to these decisions when applied to females. About **36%** of firms said they didn't know if it was more difficult for females to become partners; just over one-quarter (**1/4**) said there was no difference, and just over one-quarter (**1/4**) said it was somewhat more difficult.

3. Professional Opportunities for Ethnic Minority and Female Lawyers

Law firms were asked if professional opportunities for beginning ethnic minority lawyers were any better in their locale than elsewhere in New Mexico. Over half of the respondents did not know; about **40%** said yes, primarily because there are many minority clients to serve. Also, responding firms indicate two other major reasons that

opportunities may be better for ethnic minority lawyers: (1) ethnic minorities hold sufficient political/economic power in the area to create positions for ethnic minority lawyers; and, (2) majority law firms are very willing to hire ethnic minority lawyers.

Respondent opinions about professional opportunities for beginning female lawyers indicate that just over one half of responding firms did not know if opportunities were better in particular New Mexico locations; **35%** of firms said opportunities were better. Of those firms reporting opportunities were better in their locale, reasons given included the following: majority of laws firms are very willing to hire female lawyers (43%); active network of female lawyers and law students to assist with employment (40%); females hold sufficient political/economic power in the area to create positions for female lawyers (40%); many female clients to serve (37%); a law school in the area assures a pool of qualified female lawyers (37%); and, other responses (20%).

4. State Bar Support of Recruitment of Ethnic Minority and Female Lawyers

Law firms were asked if they thought the State Bar should promote the recruitment of ethnic minority and female lawyers by the private sector. The table below reports responses from law firms surveyed. Half of responding firms (**1/2**) said that the State Bar should **not** promote the recruitment of ethnic minority lawyers by the private sector; about a third of firms said yes; and 16% said they didn't know. Regarding opinions about promoting the recruitment of female lawyers, about half of responding firms (**1/2**) felt that the State Bar should **not** promote the recruitment of female lawyers by the private sector; about a third said yes; and 14% did not know.

TABLE 24.
SUPPORT OF STATE BAR ACTIVITIES FOR
RECRUITMENT OF MINORITY AND FEMALE ATTORNEYS

Question? Should the State Bar promote the recruitment of ethnic minority and/or female lawyers by the private sector?		
Response	Minorities	Females
Yes	34%	36%
No	50%	52%
Don't Know	16%	14%
Total	100%	100%

The Task Force survey asked respondents to “indicate the degree to which your firm might support each activity if it were to be implemented in your area.” The following table reports the responses relating to activities aimed at ethnic minorities.

**TABLE 25.
SUPPORT OF ACTIVITIES AIMED AT ETHNIC MINORITIES**

Activity	1998 Rank & (Average)
Individual mentoring and counseling programs for ethnic minority law and pre-law students by experienced lawyers	1 (3.7)
CLE programs geared to improve practice skills of solo and small firm ethnic minority lawyers	1 (3.7)
Program to identify outstanding minority high school graduates and college undergraduates and encourage them to study law	2 (3.6)
Programs to promote mentor relationships between non-ethnic minority lawyers and solo and small firm minority practitioners	3 (3.5)
Law firm programs, apart from recruitment, to provide clerkships and law-related summer employment for disadvantaged minority law students	4 (3.1)
Programs to sensitize law firms to ethnic discrimination in the profession and to recommend changes in current methods used to recruit associates	4 (3.1)
Law school scholarships, with living expenses, so that ethnic minority students could pursue full-time study	5 (2.9)
Establishment of permanent liaison arrangements between the State Bar and ethnic minority bar associations	5 (2.9)
Training for recruitment interviewers to sensitize them to race/ethnic biased questions and behavior	6 (2.8)
Programs geared to assist law firms in referring matters to experienced ethnic minority lawyers	7 (2.7)

As is evident from the Table above, item averages ranged from 2.7 to 3.7 on a six-point scale, indicating low to moderate support of activities aimed at minorities. The most supported activities included programs to identify outstanding minority high school graduates and college undergraduates to encourage them to study law; individual mentoring and counseling programs; CLE programs to improve practice skills of solo and small firm minority lawyers; and programs to promote mentor relationships between non-ethnic minority lawyers and solo and small firms minority practitioners.

Along with assessing responding firms' support of activities aimed at minorities, a similar set of questions asked firms to indicate the degree to which they might support activities aimed at females. The following table reports responses from firms. Item averages ranged from 2.3 to 3.3 on a six-point scale indicating low to moderate support of activities aimed at females. The most supported activities included: CLE programs geared to improve practice skills of solo and small firm female lawyers; programs to promote mentor relationships between non-ethnic minority lawyers and solo and small firm female practitioners; programs to identify outstanding female high school graduates and college undergraduates and encourage them to study law; and individual mentoring and counseling programs for female law and pre-law students by experienced lawyers.

**TABLE 26.
SUPPORT OF ACTIVITIES AIMED AT FEMALES**

Activity	1998 Rank & (Average)
CLE programs geared to improve practice skills of solo and small firm female lawyers	1 (3.3)
Programs to promote mentor relationships between non-ethnic minority lawyers and solo and small firm female practitioners	2 (3.2)
Program to identify outstanding female high school graduates and college undergraduates and encourage them to study law	3 (3.1)
Individual mentoring and counseling programs for female law and pre-law students by experienced lawyers	3 (3.1)
Training for recruitment interviewers to sensitize them to gender-biased questions and behavior	4 (3.0)
Programs to sensitize law firms to ethnic discrimination in the profession and to recommend changes in current methods used to recruit associates	4 (3.0)
Programs geared to assist law firms in referring matters to experienced female lawyers	5 (2.9)
Law firm programs, apart from recruitment, to provide clerkships and law-related summer employment for disadvantaged female law students	6 (2.8)
Establishment of permanent liaison arrangements between the State Bar and female bar associations	7 (2.7)
Law school scholarships, with living expenses, so that female students could pursue full-time study	10 (2.3)

Similar questions were asked of employers of attorneys other than law firms in the Task Force's "Survey of Employers of Attorneys Other than Law Firms." Of the responding 68 employers, 45% thought the State Bar should promote the recruitment of minority lawyers, 21% said the Bar should not, and 34% did not know. When asked about State Bar promotion of the recruitment of female lawyers, 40% of employers said the State Bar should promote the recruitment of female lawyers by the private sector, 24% said no, and 36% did not know.

B. Survey of New Mexico Employers of Attorneys Other than Law Firms

The following section summarizes the data collected from 68 surveys of New Mexico Employers of Attorneys Other than Law Firms. The survey asked respondents questions about hiring programs that target ethnic minority and female lawyers, problems that arise in attracting qualified ethnic minority and female attorneys, and barriers to employment for ethnic minority and female attorneys. Responding employers' opinions about whether the bar should promote the recruitment of ethnic minority and female lawyers are included in the preceding section, titled "State Bar Support of Recruitment of Ethnic Minority and Female Lawyers."

1. Hiring Programs for Ethnic Minority and Female Attorneys

According to data from the employer survey, just under one-quarter (**1/4**) of responding employers have a hiring program that targets ethnic minority lawyers that meets their expectations. Data collected in **1988** report a similar percentage of employers (**26%**) who reported having a hiring program that targets minority lawyers. Of those employers (in 1998) who have a hiring program that targets ethnic minority lawyers, 65% use ads in legal publications, 41% employ special recruitment efforts and 35% employ other efforts. A lower percentage (10%) of responding employers have a hiring program that targets female lawyers (compared to one quarter (1/4) of employers who have a program which targets ethnic minorities). Of the employers with programs targeting females, most frequently they use ads in legal publications, followed by special recruitment efforts at law schools (percentages not reported because response size was too small to be statistically significant).

2. Hiring and Retaining Ethnic Minority and Female Attorneys

The majority of responding employers (59%) have no problems attracting qualified minority lawyers to interview for employment; although 21% of responding employers report salary is a problem in attracting qualified ethnic minority lawyers. When asked about problems associated with attracting qualified female lawyers, about three-quarters (3/4) of responding employers said they have no problems. Salary was cited as a problem for attracting qualified female lawyers by 16% of responding firms.

The majority of responding employers (about 62%) have no problem hiring and retaining qualified minority lawyers; about one quarter (1/4) report that salary is a problem for hiring and retaining qualified ethnic minority lawyers. Similarly, about three-quarters (3/4) of responding employers have no problem hiring and retaining qualified female lawyers and about 20% cite salary as a problem in hiring and retaining qualified female lawyers.

When asked if ethnic minority lawyers face any barriers to employment and/or retention by non-law firm employers in New Mexico, **44%** said no, one-third (1/3) of respondents said they didn't know, and 22% said yes. In 1988, when employers were asked the same question, about the same percentage (21%) said minority lawyers face barriers to employment and retention not faced by non-minority lawyers. When asked the same question regarding the employment and/or retention of female lawyers, about half (1/2) of current responding employers said no, 24% did not know, and 24% said yes.

C. Conclusions on Employment Issues

There have been a few encouraging steps over the past ten years in the otherwise slow progression of integrating minority attorneys into the mainstream of private law firm practice. Ninety-three percent (93%) of all firms surveyed indicated they had referred matters to minority attorneys outside their firms. Seventy percent (70%) had utilized minority lawyers as co-counsel. While this is a positive indication of minorities networking with private firms, the survey results relating to the employment of minorities in private firms are not as encouraging.

In 1988, the percentage of firms who had employed or made formal offers of employment to ethnic minority attorneys within the past two years was 41%. Ten years later in 1998, that percentage is down to 35%. This is not a good sign for minority lawyers, who continue to be underrepresented in private law firm practice. The Task Force, however, did not have any data on the number of applications received from minorities by law firms.

Comparative data from the State Bar indicates that the percentage of minority attorneys in private law firms has increased only 3% (from 13% to 16%) in the last ten years, while the percentage of minority attorneys in solo practice has increased by 5% (from 21% to 26%), and in government practice by 5% (from 27% to 32%). Current data shows that minority attorneys are significantly underrepresented among private law firm practitioners. For example, Hispanics represent 17% of the membership of the State Bar, but only 11% of attorneys working in law firms, 20% of attorneys working in *solo* practice and 22% of attorneys in government practice.

As the original Task Force concluded in 1990, the State Bar and the minority bar associations must recognize this continuing disparity in employment statistics and must commit the energy and resources to promoting greater employment opportunities for minority attorneys in private firms. Only through such joint efforts and programs will minority attorneys achieve true integration into the mainstream of the legal profession in New Mexico.

The importance of effectively addressing this employment issue is clearly demonstrated in the following section on disciplinary proceedings and minority attorneys.

VI. DISCIPLINARY SANCTIONS AND MINORITY ATTORNEYS

A. *Solo* and Small Firm Practitioners – A High Disciplinary-Risk Practice

The original Task Force observed that **53%** of all attorneys sanctioned by the New Mexico Disciplinary Board in the late 1980s were *solo* practitioners, while **40%** were employed in firms having two to five attorneys, a combined total of **93%**. On the other hand, less than **2%** of the attorneys sanctioned were employed in firms with 10 or more lawyers. (Task Force Report, January 20, 1990, at 66-67).

At the time the 1990 Task Force Report was published, only **30%** of all active-instate attorneys in New Mexico were *solo* practitioners, while **27%** of active-instate attorneys were employed in firms having two to five members. Thus, *solo* and small firm practitioners were disproportionately represented among the group of attorneys sanctioned, while attorneys in the larger firms were seldom involved in disciplinary proceedings. *Id.*, at 67. Because guidance and mentoring by experienced attorneys is typically unavailable to *solo* and small firm practitioners, this group of attorneys is characteristically subject to a greater risk of disciplinary action than attorneys in larger firms where such guidance and mentoring are usually available.

When ethnicity was factored into the disciplinary action equation in the late 1980s, Hispanics were shown to be disproportionately represented among the active instate attorneys receiving sanctions¹¹:

TABLE 27
DISCIPLINARY SANCTIONS BY ETHNICITY — 1990 TASK FORCE REPORT

Disciplinary Sanctions by Ethnicity of Attorneys As Reported in 1990 Task Force Report		
	<u>Active Instate Ethnicity of the State Bar 1988</u>	<u>Ethnicity of all Attorneys Sanctioned in 1988</u>
White	81.9%	68.0%
Hispanic	14.0%	29.0%
African Am.	0.36%	1.6%
Native Am.	1.04%	0.80%

As shown in Table 27, in 1988 Hispanic attorneys were being disciplined at a highly disproportionate rate (**more than 2 to 1**) when compared with the percentage of Hispanic attorneys who were active instate members of the State Bar of New Mexico.

The most apparent reason for this disparity was that of the **256** Hispanic attorneys in **private** practice in 1988, 125 or **49%** were *solo* practitioners, and 78 or **30%** were employed in firms with two to five attorneys. (See Task Force Report, January 20, 1990, at 21). In other words, **79%** of Hispanic attorneys in private practice were engaged in the type of practice with the greatest risk of receiving sanctions, while only 53 Hispanic attorneys (**21%**) were employed in firms with six (6) or more attorneys with the lowest risk of receiving sanctions. *Id.*, at 21 and 67-68.

The 1990 Task Force Report made the following observations, most of which, as seen below, are appropriate observations in 1999 as well:

A large percentage of minority attorneys are in sole practice or in small firms. These attorneys are offered very little guidance or training and have no mentors or role models to pattern their behavior. Attorneys are not usually taught in law school how to handle trust accounts or their daily business affairs. They are left to learn their trade by trial and error.

* * *

Second, attorneys in sole practice or with small firms feel compelled, primarily for financial reasons, to accept almost every conceivable case that comes their way without giving sufficient thought to the fact that he or she may not be prepared (by experience or training) to properly handle the case. Accepting a case when an attorney has little or no experience in the area increases the risk of that attorney being the subject of disciplinary action when the case turns sour and the client becomes disgruntled.

1990 Task Force Report, at 68.

¹¹This data is reported in the Task Force Report, January 20, 1990, at 67.

B. The 1990s – Not Much Has Changed for *Solo* and Small Firm Minority Practitioners

In updating the incidence of disciplinary sanctions imposed on minority attorneys since 1988, the Task Force on Minorities in the Profession II asked the Disciplinary Board to provide annual statistical reports from 1989 to 1997. These comprehensive reports list the type of sanction imposed, the number of attorneys receiving each sanction, the ethnicity, age, gender and years of practice of the attorney being sanctioned, the size of firm the sanctioned attorney practices in, and the generic reason for the sanction. This data was analyzed by the Task Force to determine the impact of the disciplinary process on minority attorneys over the last ten years. The following findings are supported by the data.

1. Hispanic Attorneys Receive About 26% of all Major Disciplinary Sanctions

The Task Force limited its analysis to the most significant sanctions: (1) disbarment, (2) suspension (indefinite and time certain), (3) public censure, (4) formal reprimand, (5) informal admonition, (6) probation and (7) letter of caution. Because the number of minority attorneys receiving these sanctions, other than Hispanics, are too few to support any meaningful conclusions, the Task Force limited its comparative analysis to Hispanic attorneys, noting the percentage of attorneys in each group who were *solo* or small firm practitioners.

**TABLE 28.
DISCIPLINARY SANCTIONS AND HISPANIC ATTORNEYS – 1988-1997**

Disciplinary Sanctions 1988 to 1997 Hispanic Attorneys By Number and Percentage			
Type of Fir Sanction	Number of Sanctions	Hispanics Sanctioned	Solo/Small Firm Practitioners
Disbarment	24	6 (25%)	17 (71%) 7 (29%)
Suspension	63	17 (27%)	53 (84%) 8 (13%)
Public Censure	5	0 (0%)	3 (60%) 2 (40%)
Formal Rep.	29	4 (14%)	18 (62%) 9 (31%)
Informal. Admon.	176	40 (23%)	101 (57%) 55 (31%)
Probation	65	13 (20%)	40 (62%) 21 (32%)
Letter. Caution	405	82 (20%)	246 (61%) 126 (31%)
Totals	767	162 (21%)	478 (62%) 228 (30%)

2. Information Reported in 1990 about Minority Attorneys and Incidence of Disciplinary Sanctions Remains True in 1999

The most recent data provided by the Disciplinary Board, considered together with the demographics of the active-instate members of the State Bar of New Mexico, support the following conclusions. First, Hispanic attorneys received **26%** of all serious disciplinary sanctions imposed over the last decade even though Hispanic attorneys represented only between **14%** and **17%** of all active instate attorneys in New Mexico

during the same period. The incidence of serious disciplinary sanctions continues to impact Hispanics disproportionately in the 1990s.

Second, the overwhelming majority of attorneys sanctioned in New Mexico during the 1990s, including minority attorneys, continue to be *solo* practitioners (**62%**) and small firm practitioners (**30%**), a combined **92%**.

Third, according to 1998 State Bar data, **38%** of all active-instate Hispanic attorneys and **36%** of all active-instate minority attorneys are *solo* practitioners. Approximately **50%** of all active-instate minority attorneys fall within the *solo* practitioner and small firm practitioner groups. Because minority attorneys continue to be disproportionately represented among the practitioner groups with the greatest risk of incurring disciplinary sanctions, the incidence of disciplinary sanctions will logically continue to impact minority attorneys disproportionately. Finding a solution, then, lies in understanding and addressing the reasons why *solo* and small firm practitioners so frequently find themselves involved in the disciplinary process.

3. Reasons for Disproportionate Incidence of Disciplinary Sanctions for *Solo* and Small Firm Practitioners – Not Much Change in Ten Years

What are the principal reasons for the high incidence of sanctions for *solo* and small firm practitioners? In an interview with the Chief Disciplinary Counsel, Virginia L. Ferrara, the following opinions were expressed about why *solo* and small firm practitioners invariably find themselves in disciplinary problems:

- a. *Solo* and small firm practitioners commonly practice in the areas of criminal law, domestic relations, personal injury and bankruptcy. Delayed and/or unsuccessful results in these practice areas often-times lead to dissatisfied clients in an emotionally charged environment. These clients frequently file complaints with the Disciplinary Board.
- b. *Solo* and small firm practitioners often take on more work than they can handle or lack the experience in particular fields to handle a matter effectively or timely. Delays and/or poor results often produce complaints from clients to the Disciplinary Board. Failing to return telephone calls and keeping a client regularly informed about the matter being handled are a major cause of complaints with the Disciplinary Board.
- c. The lack of experienced attorneys to confer with on cases, strategy and law office management issues, or to model professional conduct after, pose significant disadvantages for both of these practice groups. Effective guidance and mentoring are often difficult to come by for many *solo* practitioners and small firm lawyers.
- d. A fundamental lack of training in accounting and law office organization and management, as well as the lack of controls for the operation of trust accounts are often factors leading to disciplinary problems stemming from the mishandling of client funds.

- e. The increasing supply of attorneys in our major communities can prompt *solo* and small firm practitioners to take on marginal cases which have a higher incidence of unsatisfactory results and disgruntled clients.

4. The Solutions: Training, Support and Guidance — It's Time for the Profession to Acknowledge and Carry Out Its Responsibility to Improve the Quality of Law Practice in New Mexico

The original Task Force recommended a “joint effort of the law schools, the State Bar, law firms and the individual attorney,” to provide the training, support and guidance necessary to effectively address the practice and management problems chronically encountered by *solo* and small firm practitioners. As described in the following, some progress has been made in this effort, but much more needs to be done and soon.

The University of New Mexico School of Law does not, as a general rule, incorporate practical law office management or training in accounting in its curriculum. Courses in management practices and accounting are available through the University of New Mexico Anderson School of Business, but few law students avail themselves of these educational opportunities. The State Bar provides Continuing Legal Education (CLE) in these areas, but attendance by lawyers is solely on a voluntary basis. Training in law office management, accounting and the handling of trust funds is essential if the profession is to effectively reduce the incidence of disciplinary problems for *solo* and small firm practitioners. The Law School must consider supplementing the legal education it provides for its students with basic training in the operation of a small law office and managing client funds. These subjects are simply too important to leave for trial and error in the real world.

The New Mexico Supreme Court should consider making law office management, trust fund accounting, and ethics mandatory CLE courses for newly admitted lawyers, *solo* and small firm practitioners. Furthermore, the Task Force recommends that the Board of Bar Examiners consider including law office management questions on the Bar Exam. The profession can no longer relegate the disciplinary problems encountered by *solo* and small firm practitioners to the inevitable consequences of that type of practice. The time has come for the profession to be proactive in this area, for the good of the public and the profession.

That being said, it is important to note that there has been some significant progress over the last ten years. The Bill Kitts Mentor Program has been redesigned and developed by the State Bar of New Mexico to match experienced lawyers with newly admitted lawyers to provide guidance, advice and networking essential to *solo* and small firm practitioners. The Program has, at times, been an effective vehicle for providing mentoring for those lawyers who seek it out. The Program has never reached its potential, however. Its management has been passed from the Young Lawyers Division of the State Bar to the New Mexico Bar Foundation (Center for Civic Values) and back to the State Bar. The State Bar **must** assume responsibility for managing this Program effectively, which means outreach to experienced attorneys to serve as mentors and aggressive marketing of the program to newly admitted attorneys and even to experienced attorneys who could benefit from interaction with an experienced mentor.

The Solo and Small Firm Practitioners Section of the State Bar of New Mexico has likewise been proactive and responsive in providing support, continuing legal education and law office management training for its members and other *solo* practitioners. This Section of the State Bar needs to assume a more aggressive role by expanding its membership statewide and effectively reaching practitioners not only in the larger cities of New Mexico, but in the outlying areas of the State as well. The Solo and Small Firm Practitioners Section is a critical source of information, training and networking for *solo* and small firm practitioners, and should expand the resources and support necessary to perform its functions statewide. One such function ought to be to design an ongoing curriculum of CLE courses for *solo* and small firm practitioners so that education and training are continually available for this large sector of the profession.

Finding the time and funds necessary to attend CLE programs regularly can be difficult for many *solo* and small practice lawyers. The State Bar's Continuing Legal Education Division should consider producing and marketing, on a cost-affordable basis, law office management and accounting courses for lawyers on video tape. The Task Force cannot overstate the importance of training, support and guidance in these areas if the profession is to effectively address the disciplinary matters too often faced by attorneys that lack basic training and resources.

The State Bar is also being responsive to the needs of solo and small firm practitioners through its 1997 creation of a Law Office Management Committee. In its first two years of existence, the Committee has developed a lending library, containing practical books and resources for loan to members of the Bar free of charge; a resource publication available on the Bar's Web site, entitled *Solo Handbook*. The *Solo Handbook* contains such chapters as "managing a trust account," "financing your practice," "client relations," as well as forms, sample engagement letters, etc; CLE programs for the Bar's Annual Convention and "Bridge the Gap;" and in the year 2000, the Committee and CLE of the State Bar will be sponsoring the first-ever two-day Solo Conference, specifically designed to provide practical tips, how-to's and numerous law office management resources to train the *solo* practitioner on the basics of managing a practice.

VII. INVOLVEMENT OF MINORITY ATTORNEYS IN THE ACTIVITIES AND LEADERSHIP OF THE STATE BAR OF NEW MEXICO

A. Participation by Minorities in State Bar Activities

Members of the State Bar were asked about their participation in New Mexico State Bar activities and barriers to involvement in State Bar programs/activities in the "Survey of Members of the State Bar." This section describes the responses from 152 members of the State Bar.

A significant number of respondents are members of professional associations in addition to the State Bar of New Mexico. Forty-eight percent (48%) are members of the New Mexico Trial Lawyers Association, 33% are members of the New Mexico Hispanic Bar Association, and 23% are members of the New Mexico Women's Bar Association. About the same amount of White non-Hispanics and Hispanics participate in national and local bar activities of any kind (approximately two-thirds (2/3) of each group do *not* participate). Participation in the activities of these professional associations will have some impact upon the time availability or interest of respondents in participating in the activities of the State Bar of New Mexico.

With respect to participation in the activities of the State Bar, White non-Hispanic respondents had slightly greater participation in Bar activities within the past three years, with 77% of White non-Hispanic respondents participating in Bar activities as compared to 71% of Hispanics. In 1988, 71% of minority attorneys said they had participated in a State Bar activity within the past three years. The average amount of participation in State Bar activities for both Hispanics and White non-Hispanics is about once per year. The following table highlights commonly reported reasons that affect participation in State Bar activities.

**TABLE 29.
REASONS AFFECTING PARTICIPATION
IN STATE BAR ACTIVITIES BY ETHNICITY**

Reason	White Non-Hispanic	Hispanic
Would participate more if they weren't so busy	57%	52%
Would participate more if they were asked to participate	23%	33%
Would participate if activities were geared more toward their practice	24%	29%
Would participate if it would make a difference to their careers	15%	26%
Would participate if it were less expensive	14%	22%

As the preceding table reports, most members of both groups would participate if they were not so busy and about one-third (1/3) of Hispanic respondents would participate more if they were asked. About one-quarter (1/4) of Hispanic respondents also reported that they would participate more if they thought it would make a difference to their career. About one in five Hispanic respondents said they would participate more if it were less expensive compared to 14% of White non-Hispanics. Survey responses also indicate that the principal reason for lack of participation is lack of time. When asked specifically about cultural, gender, social, or racial considerations which affect participation in activities, only 15% of respondents say these kinds of considerations affect their participation.

**B. State Bar Data on Participation by Minorities in State Bar Activities
(Committees, Sections, Divisions, and Pro Bono Programs)**

As reflected in Table 30, data collected by the State Bar staff on participation by minorities in State Bar Committees, Sections, Divisions, and pro bono and referral programs indicates a respectable increase in participation by minorities in these programs and activities over the decade. Since 1990, minority participation in State Bar Section Boards has increased 37.5%; Committee service by minorities increased 37.5%; and participation by minority members on State Bar Division (Young Lawyers Division and Senior Lawyers Division) Boards increased 25%. Total minority participation in Sections, Committees and Divisions increased 38.5% from 1990 to 1998.

While cumulative data for volunteer minority participation in the State Bar's pro bono and referral programs are not available, 1999 data reflect that 33.1% of the total minority membership volunteer for the Lawyers Care Pro Bono Program and Lawyer Referral for the Elderly Program. It is, therefore, encouraging that a significant number of minority members are actively and increasingly involved in State Bar activities and programs. The Table that follows illustrates minority involvement in State Bar activities.

**TABLE 30.
STATE BAR DATA OF PARTICIPATION BY MINORITIES IN
STATE BAR SECTIONS, COMMITTEES, DIVISIONS, AND PROGRAMS**

	1990	'91	'92	'93	'94	'95	'96	'97	'98	'99
Section Members										
Minority Members	25	30	35	40	45	39	34	39	40	
Total Members	147	183	195	221	204	198	180	190	175	
% Minority Participation	17%	16%	18%	18%	22%	20%	19%	21%	23%	
Committee & Task Force Members										
Minority Members	83	99	97	106	109	101	74	122	129	
Total Members	585	642	567	593	624	588	527	630	658	
% Minority Participation	14%	15%	17%	18%	17%	17%	14%	19%	20%	
Division Boards										
Minority Members	3	7	7	8	*8	7	5	6	4	
Total Members	13	12	12	13	30	28	30	31	30	
% Minority Participation	23%	58%	58%	62%	27%	25%	17%	19%	13%	
Pro Bono & Referral (Lawyers Cares)										
Minority Volunteers										383
Total Volunteers										1316
% Minority Participation										33.1%
Cummulative Totals										
Minority Total	111	136	139	154	162	147	113	167	173	
% Minority Participation	15%	16%	18%	19%	19%	18%	15%	20%	20%	

* 1994 was the year Senior Lawyers Division began. 1990-1993 data reflect Young Lawyers Division participation only.

C. Representation of Minority Interests in the State Bar

For all respondents combined, almost **70%** think the interests of minority lawyers are adequately represented in the State Bar. When Hispanic and White non-Hispanic responses are tallied separately, only half (**50%**) of Hispanic respondents and **92%** of White non-Hispanic respondents think the interests of minority lawyers are adequately represented in the State Bar. Almost **90%** overall think the interests of female lawyers are adequately represented by the State Bar (**93%** of male respondents and **63%** of female respondents). Data from **1988** indicate that **40%** of responding **minority** attorneys felt the interests of minority attorneys were adequately represented by the State Bar.

Just over half of all survey respondents said the State Bar should be involved in programs that promote the interests of minority members (**40%** of White non-Hispanic respondents and **75%** of Hispanic respondents). Also, about one half (50%) overall believe the State Bar should be involved in programs that promote the interests of female members (**39%** of White non-Hispanic respondents and **72%** of Hispanic respondents).

D. Interest by Minority Attorneys in Leadership Positions in the State Bar

A higher percentage of Hispanic survey respondents (**32%**) are interested in running for election to the Board of Bar Commissioners than White non-Hispanic respondents (**17%**). This response, together with the diverse composition of the Board of Bar Commissioners in recent years, described below, is highly encouraging given the traditional lack of minority representation in the leadership of the State Bar over its lengthy history. Outreach is critical. If the State Bar believes that diversity in its leadership is important to the organization, then minority attorneys must be encouraged to run for election to leadership positions.

E. Minority Representation in the Leadership of the State Bar from 1989 to 1999 – Slow But Sure Progress

In 1989, the Board of Bar Commissioners had one minority member, who also happened to be the Chair of the original Task Force on Minorities in the Profession, Arturo L. Jaramillo. Jaramillo ran for election to the Board of Bar Commissioners in part to determine what barriers might exist for minorities in achieving a leadership role in the organization. Four women were then members of the Board, one of whom, Amanda Ashford, went on to become the first woman President of the State Bar of New Mexico in 1991. In 1995, Ray Hamilton became the first African American to be elected to the Board. In 1994, Jaramillo became the first minority attorney to be elected President of the State Bar of New Mexico. Jaramillo concluded from his experience that the barriers that exist in achieving a leadership position in the State Bar are common to all candidates, irrespective of race or ethnicity. Those barriers are fundamentally the commitment of sufficient time to devote to the projects and business of the organization, and developing and maintaining a collegial relationship with fellow commissioners.

It was very clear to Jaramillo, however, that attorneys who are employed by law firms or government agencies that have sufficient resources (or policies) to permit one of its members to commit the time necessary to devote to the business of the State Bar are far more likely to assume leadership roles in the State Bar than *solo* or small firm practitioners

or many government lawyers who cannot devote the necessary time away from their practice. Because minorities are disproportionately represented among *solo* and small firm practitioners and those in government service, it is not surprising that few minorities had ever served on the Board of Bar Commissioners or as an officer of the State Bar. This is not to say that historically the perception of the State Bar as a white-male dominated organization had not contributed to the dearth of minorities in leadership positions, for surely it had. But by 1989, the Board of Bar Commissioners had firmly committed to the diversification of its leadership, and minorities were being widely recruited to serve as committee chairs, Section officers and ultimately members of the governing Board. Additionally, since 1989, several of the minority members of the Board of Bar Commissioners represented the *solo* and small firms.

The commitment of the Board of Bar Commissioners to diversity in its leadership was reasonably successful throughout the remainder of the 1990s, given that only three (3) minorities had ever served on the Board for the first 103 years of the organization's existence. From 1989 to 1999, minority representation on the 19-22 member Board was as follows:

**TABLE 31.
DIVERSITY OF BOARD OF BAR COMMISSIONERS 1989-1999**

Number of Minority Members/Women Members On the Board of Bar Commissioners 1989-1999										
1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
1/5	4/4	3/4	3/3	1/3	3/4	3/5	3/5	5/6	6/6	6/7

VIII. THE IMPACT OF THE JUDICIAL REFORM ACT – AN UPDATE

A. History and Context

The 1990 Task Force Report described the historical diversity of the judiciary in New Mexico and considered the potential impact of the 1988 Judicial Reform Amendment¹² upon minorities seeking appointment to judicial positions. (Task Force Report, January 20, 1990, at 84-96). A brief summary of that discussion provides an appropriate context for updating the impact of the Judicial Reform Amendment on the diversity of the Judiciary in New Mexico over the last ten years.

For many decades prior to the 1988 Judicial Reform Amendment, minority attorneys had been highly successful in obtaining appointments to judicial positions or in being elected to judicial office in partisan elections. By 1988, of the 81 justices and judges then comprising the New Mexico Supreme Court, Court of Appeals, District Court and Bernalillo County Metropolitan Court, 22 or **27%** were of minority descent. (Task Force Report, January 20, 1990, at 84, note 14). At that time, minorities represented only about **17%** of the State Bar of New Mexico. Under the electoral system, minority attorneys were very well represented in the State's judiciary.

¹² New Mexico Constitution, Article VI, Sections 35-37.

At the time the 1990 Task Force Report was written, the Judicial Reform Amendment had only been in effect for about a year and only ten vacancies had been filled. (Task Force Report, January 20, 1990, at 85). Minorities, at that point, had not fared well under the new system. Of the ten vacancies, three had been vacated by minority judges. No minority had been appointed, even though at least one minority attorney had been nominated and recommended to the governor for each position in which a minority applied. *Id.*

A number of observations and concerns were expressed by the original Task Force about the Judicial Reform Amendment. Included in that discussion were the following concerns:

1. Whether minority representation on nominating commissions would fairly reflect a cross-section of the New Mexico population.
2. Whether minority attorneys would be benefited by the one-time partisan election feature of the Judicial Reform Amendment in light of the success experienced by minorities in partisan elections prior to the adoption of the Amendment.
3. Whether minority attorneys would be disadvantaged by the Amendment in light of their demographics, which at the time showed lower experience levels when compared with non-minorities. In this regard, **70%** of all New Mexico's minority attorneys had been admitted to the Bar since 1980 and **66%** were then under age 40.
4. Whether the total lack of success by minorities in securing appointment to judicial positions under the new Amendment would continue. This concern principally addressed the level of commitment by the governor to appoint qualified minorities to judicial office.

(Task Force Report, January 20, 1990, at 87-88).

B. The Judicial Reform Amendment in the 1990s – Some Gains and Some Losses for Minorities

The “Fiscal Year 1996-1997 Report on Judicial Nomination,” prepared by Leo M. Romero, Chair of the Judicial Nominating Commissions, provides a recent and representative picture of the participation and success of minorities in the judicial selection process under the 1988 Amendment. This Report summarizes the decisions of various Judicial Nominating Commissions with respect to the 18 judicial vacancies occurring between July 1, 1996 and June 30, 1997.

Of those 18 vacancies, one was on the Court of Appeals, 13 were on the District Courts and four were on the Bernalillo County Metropolitan Court. A total of 189 candidates applied for the 18 vacancies and 63 were nominated. Nominations were made by 17 Judicial Nominating Commissions for 17 of the 18 vacancies (no nomination was made for a temporary vacancy in the Third Judicial District). Information regarding the ethnicity of the commissioners, applicants, nominees and appointees for this period is as follows:

1. **68%** of the **Commissioners** were White/Non-Hispanic and **32%** were Hispanic; there were no Asian American, African American or Native American commissioners.

2. **28%** of the **applicants** were Hispanic, African American or Native American.
3. **33%** of those **nominated** were Hispanic, African American or Native American.
4. **19%** of those **appointed** were Hispanic, African American or Native American.

In terms of appointees, it must be noted that actual numbers are relatively small and interpretation is limited. It is interesting to observe, however, that nearly **40%** of the Hispanic applicants were nominated (17 of the 43 who applied), compared to **31%** of the White non-Hispanic applicants (42 of the 135 who applied). Numbers for other racial groups are too small to allow much interpretation.

The statistics compiled for the entire period from 1989 to 1997 present a similar picture. The “Comprehensive Annual Report” of the Judicial Nominating Commission, prepared by the Chair of the Judicial Nominating Commissions, provided the Task Force with data for a nearly nine year period, from January 1989 to November 1997. That data is summarized in Tables 32 and 33:

**TABLE 32.
ETHNICITY JUDICIAL NOMINATING COMMISSIONS 1989-1997**

Ethnicity of Members of Judicial Nominating Commissions Applicants, Nominees and Appointees – 1989-1997								
<u>Ethnicity</u>	<u>Commissioners</u>		<u>Applicants</u>		<u>Nominees</u>		<u>Judges Appointed</u>	
White/Non-Hispanic	753	67.2%	668	73.6%	173	66.3%	62	73.8%
Hispanic	346	30.9%	215	23.7%	76	29.1%	17	20.2%
African American	5	0.4%	9	1.0%	5	1.9%	3	3.6%
Native American	13	1.2%	16	1.8%	7	2.7%	2	2.4%
Asian	3	0.3%	0		0		0	
Total	1120	100%	909	100%	261	100%	84	100%

**TABLE 33.
ETHNICITY OF APPLICANTS, NOMINEE AND JUDGES APPOINTED
1989-1997 AND 1996-1997**

<u>Ethnic Background</u>	<u>Applicants</u>		<u>Nominees</u>		<u>Judges Appointed</u>	
	89-97 %	96-97 %	89-97 %	96-97 %	89-97 %	96-97 %
White/Non-Hispanic	73.6	71.8	66.3	66.7	73.8	81.3
Hispanic	23.7	22.9	29.1	27.0	20.2	12.5
African American	1.1	1.1	1.9	1.6	3.6	6.3
Native American	1.8	4.3	2.7	4.8	2.4	0
Total Minorities	26.6	28.3	33.7	33.3	26.2	18.8

As seen in these data, while the rate of minority applicants and nominees is about the same in the 1996-1997 fiscal year as it has been over the entire nine year period, the rate of minorities appointed in the 1996-1997 fiscal year (**19%**) is significantly smaller than over the nine year period (**26%**), especially with respect to Hispanics (**20.2% vs 12.5%**). As pointed out in the 1990 Task Force Report, this differential will undoubtedly vary from administration to administration, depending upon the particular nominees and the level of commitment by each succeeding governor to appoint qualified minorities to judicial office.

On the other hand, minority applicants have been very successful over the last nine years in being **nominated** for judicial positions by the various nominating commissions. The ratio of minority applicants (**26.6%** of all applicants) compared with the percentage of minorities nominated for judicial positions (**33.7%** of all nominees) clearly suggests: (1) minorities fare very well in the application and interview process with the nominating commissions, and (2) there is no shortage of qualified minority candidates for judicial office. The intangible factor that impacts minorities most in the appointment process is the discretion of the governor.

C. One-Time Partisan Election — A Viable Alternative for Minorities

While applicants have little control over decision-making by the governor, the unique partisan election feature of New Mexico's Judicial Selection Amendment has proven to be highly advantageous to minority applicants seeking judicial office, including some candidates who had not been successful in seeking judicial appointment.

The 1990 Task Force Report stated the following about the partisan election alternative:

How will minorities fare in the future under the judicial reform amendment? Partisan appointments are a political reality that will undoubtedly continue to impact the appointment process. The outlook for minorities being appointed to judicial office in the future will therefore depend in part upon changes in the political arena.

The one-time partisan election process will be crucial for minority attorneys in the future. As was true under the prior system, this aspect of the new amendment can provide a viable alternative for qualified minorities who may have been unsuccessful in persuading nominating commissions or the governor that they are the best candidate for the particular judicial office. It is an advantageous political feature of the selection process that cannot be left unused if minorities are to maintain and increase their traditional role in the State's judiciary.

(Task Force Report, January 20, 1990, at 96).

Election results since 1990 demonstrate that several minority candidates have made highly advantageous use of the one-time partisan election alternative. Since 1990, two Hispanic attorneys were elected to the New Mexico Supreme Court in partisan elections: Justice Patricio M. Serna and Justice Petra Jimenez Maes. Several Hispanic District Judges have also been elected, including: Judge Eugenio S. Mathis in the Fourth Judicial District, Judge William A. Sanchez in the Thirteenth Judicial District, Judge Grace Duran in the Third Judicial District, Judge Lou Martinez in the Third Judicial District, Judge Ted Baca in the Second Judicial District, Judge Sam B. Sanchez in the Eighth Judicial District, Judge Carol J. Vigil, a Native American, in the First Judicial District, Judge Daniel A. Sanchez in the first Judicial District, Judge Neil Candelaria, Bernalillo County Metropolitan Court, and Judge Anna Martinez, Bernalillo County Metropolitan Court.

As the original Task Force anticipated in 1990, the one time partisan election component of the Judicial Selection Amendment has been an advantageous feature that has been effectively used by minority attorneys to maintain and increase their traditional role in the State's judiciary. The present Task Force has every reason to believe that minority attorneys will continue to benefit in the years ahead from this important aspect of the State's judicial selection process.

IX. PERSPECTIVES OF NEW MEXICO ATTORNEYS ON RACIAL AND ETHNIC FAIRNESS IN THE LEGAL SYSTEM

How do New Mexico attorneys perceive the racial and ethnic fairness of the legal system in New Mexico? As seen below, the answers vary significantly depending upon the race, ethnicity and gender of the survey respondents. This is new information not addressed in the 1990 Task Force Report, but significant in light of the widely diverse perspectives held by minority and non-minority attorneys.

The Task Force's "Survey of Members of the State Bar" included questions related to opinions about differential treatment of minorities and women in the legal system. This section highlights responses related to perceptions of differential treatment from these 152 survey respondents who are members of the State Bar, comparing Hispanic and White non-Hispanic respondents where relevant and female to male respondents where relevant. The numbers of respondents from other racial or ethnic groups (15 total) are too small to include in the comparison.

A. Differential Credibility of Ethnic Minority and Female Expert Witnesses

The following section reports the responses to two similar questions, "In your experience do judges appear to give less credibility to the testimony of **ethnic minority** experts than to those of non-minority experts?" and "In your experience, do judges appear to give less credibility to the testimony of **female** experts than to that of male experts."

It should be noted that about half (1/2) of respondents said they did not know if male, female, non-minority, or minority judges give less credibility to testimony of minority experts. However, Hispanic respondents are somewhat more likely to have observed less credibility given to minority experts and females are more likely to have observed less credibility given to female experts. The following table reports responses for all categories.

**TABLE 34.
DIFFERENTIAL CREDIBILITY GIVEN TO
ETHNIC MINORITY EXPERTS BY JUDGES**

Type of Judge	White Non-Hispanic Respondents			Hispanic Respondents			All Respondents		
	Yes	No	Don't Know	Yes	No	Don't Know	Yes	No	Don't Know
Male Judges	5%	53%	41%	9%	31%	60%	8%	41%	50%
Female Judges	0	50%	50%	7%	29%	64%	3%	39%	58%
Non-Minority Judges	3%	53%	44%	12%	29%	59%	9%	41%	51%
Minority Judges	0	49%	51%	5%	39%	56%	3%	44%	54%

**TABLE 35.
DIFFERENTIAL CREDIBILITY GIVEN TO FEMALE EXPERTS BY JUDGES**

Type of Judge	White Non-Hispanic Respondents			Hispanic Respondents			All Respondents		
	Yes	No	Don't Know	Yes	No	Don't Know	Yes	No	Don't Know
Male Judges	10%	49%	41%	17%	38%	45%	13%	45%	42%
Female Judges	4%	48%	48%	4%	41%	55%	4%	45%	51%
Non-Minority Judges	8%	46%	47%	15%	40%	45%	12%	43%	45%
Minority Judges	4%	42%	53%	7%	41%	52%	6%	42%	52%

Other survey questions also asked respondents about issues of credibility. When asked about credibility of ethnic minority and female experts, the majority of respondents (almost 90%) have not rejected retaining a minority or female expert because of concerns about credibility. In terms of retaining an ethnic minority expert, about 90% of White non-Hispanic respondents and about 90% of Hispanic respondents report they have not rejected retaining an ethnic minority expert because of concerns about credibility.

Similarly, 93% of male respondents and 89% of female respondents have not rejected retaining a female expert because of credibility concerns. Overall, the vast majority of responding members of the State Bar have not rejected ethnic minority or female experts because of their credibility.

B. Differential Treatment of Ethnic Minority and Female Attorneys

Members of the State Bar were asked about experiences in which settlement positions or factual assertions were devalued based on ethnicity or gender. In the case of discrimination based on ethnicity, about one-third (**1/3**) of respondents have experienced opposing counsel devaluing a position because of ethnicity. A higher percentage of Hispanic respondents (**41%**), compared to White non-Hispanic respondents (**27%**), reported experiencing opposing counsel devaluing a position based on ethnicity. Also, just over one-third (**1/3**) of respondents have experienced opposing counsel devaluing a position because of gender. Just over one quarter (**28%**) of male respondents had experienced opposing counsel devaluing a position because of gender (compared to **57%** of female respondents).

C. Demeaning Comments Based on Ethnicity and Gender

The following table reports survey responses to questions related to witnessing demeaning comments or actions in various settings in the legal system. Just over one-third (**1/3**) of respondents have witnessed demeaning behavior from opposing counsel based on ethnicity. Almost one half (**46%**) of Hispanic respondents witnessed demeaning behavior from opposing counsel compared to about a quarter (**26%**) of White non-Hispanic respondents. The following table reports the percentages of respondents who reported witnessing demeaning behavior by opposing counsel or magistrate judges based on ethnicity. One-third (**1/3**) of all respondents reported they had witnessed magistrate judges making demeaning behavior based on ethnicity. A slightly higher percentage of Hispanic respondents (**33%**) compared to White non-Hispanic respondents (**29%**) reported witnessing demeaning behavior by magistrate judges.

TABLE 36.
PERCENT OF RESPONDENTS WITNESSING DEMEANING COMMENTS OR ACTION BY OPPOSING COUNSEL, MAGISTRATE JUDGES, OR COURT STAFF MEMBERS BASED ON ETHNICITY

Comments or Actions by:	White Non-Hispanic	Hispanic	All Respondents
Opposing Counsel	26%	46%	37%
Magistrate Judges	29%	33%	33%
Court Staff Members	12%	27%	21%

The next table reports the percentages of male and female respondents who reported witnessing demeaning behavior by opposing counsel based on gender. Forty-six percent (**46%**) of all respondents reported they had witnessed opposing counsel making demeaning comments based on gender. A much higher percentage of female respondents (**73%**) compared to male respondents (**30%**) reported witnessing demeaning behavior by opposing counsel.

TABLE 37.
PERCENTAGE OF RESPONDENTS WITNESSING DEMEANING COMMENTS OR ACTIONS BASED ON GENDER

Experienced by:	Male	Female	All Respondents
Opposing Counsel	30%	73%	46%

D. Less Favorable Treatment of Minority Clients, Criminal Defendants, and Civil Defendants

Forty-four percent (**44%**) of respondents believe minority clients receive less favorable treatment in the judicial system compared to non-minority clients. A significantly larger percentage of Hispanic respondents (**68%**) believe minority clients receive less favorable treatment compared to White non-Hispanic respondents (**21%**). Forty-one percent (**41%**) of respondents believe that minority criminal defendants receive harsher sentences than do non-minority criminal defendants. Again, a larger percentage of

Hispanic respondents (more than half) believe that minority criminal defendants receive harsher sentences than non-minority criminal defendants, whereas only **18%** of White non-Hispanics believe minorities receive harsher sentences. The following table reports the percentages of responses for each category.

TABLE 38.
PERCENTAGE OF RESPONDENTS OBSERVING
LESS FAVORABLE TREATMENT OF MINORITY CLIENTS,
CRIMINAL DEFENDANTS, AND CIVIL DEFENDANTS

Question	White Non-Hispanic (% Yes)	Hispanic (% Yes)	All Respondents (% Yes)
Do you believe ethnic minority clients receive less favorable treatment in the judicial system compared to non-minority clients?	21%	68%	44%
Do you believe minority criminal defendants receive harsher sentences than do non-minority criminal defendants with similar criminal histories who are convicted of similar offenses?	18%	58%	41%
Do you believe minority civil defendants receive less preferential treatment than do non-minority defendants?	12%	44%	28%

E. Differential Treatment by Judges, Juries, and Court Staff

Several questions on the survey disseminated to Members of the State Bar asked respondents about their opinion on differential treatment of ethnic minorities by judges, juries, and court staff. Respondent answers are summarized in this section. Surprisingly, two-thirds (**2/3**) of respondents believe that judges are more likely to rule in favor of a defendant based on his/her race and the area of the state in which he/she is tried (**78%** of Hispanic respondents and **56%** of White non-Hispanic respondents). One quarter (1/4) of respondents believe that judges are more likely to rule in favor of a defendant based on his or her race/ethnicity. About one-third (**1/3**) of Hispanic respondents and **15%** of White non-Hispanic respondents believe that judges are more likely to rule in favor of defendants based on his or her ethnicity.

When respondents were asked if they believe judges respond differently to domestic violence cases based on the race/ethnicity of the victim and the defendant, one quarter (**1/4**) believe judges respond differently. About one-third (**1/3**) of Hispanic respondents and **15%** of White non-Hispanic respondents believe judges respond differently to these kinds of cases based on race/ethnicity. The following table reports the percentages of responses for each category.

TABLE 39.
PERCENTAGE OF RESPONDENTS WITNESSING
DIFFERENTIAL TREATMENT BY JUDGES, JURIES, AND COURT STAFF

Question	White Non-Hispanic (% Yes)	Hispanic (%Yes)	All Respondents (% Yes)
Do you believe that juries are more likely to rule in favor of a defendant depending on his/her race and ethnicity and the area of the state in which he/she is tried?	56%	78%	68%
Do you believe judges respond differently to domestic violence cases based on the race/ethnicity of the victim and the defendant?	15%	32%	25%
Is a jury likely to rule favorably toward minority clients in civil cases?	11%	38%	22%
Is a jury likely to rule less favorably toward minority clients in criminal cases?	17%	55%	38%
Do you believe court staff members treat lawyers differently based on their race/ethnicity?	5%	22%	15%

When respondents were asked about differential treatment based on ethnicity by juries, almost one-quarter (**1/4**) of respondents believe that juries are likely to rule less favorably toward minorities in civil cases. A larger percentage of Hispanic respondents than White non-Hispanic respondents believe that juries are likely to rule less favorably toward minorities in civil cases (**38%** of Hispanic respondents and **11%** for White non-Hispanic respondents). For criminal cases, over one-third (1/3) of respondents believe that juries are likely to rule less favorably toward minorities (**55%** of Hispanic respondents and **17%** of White non-Hispanic respondents).

One question in the “Survey of Members of the State Bar” asked about differential treatment by court staff members. The question specifically asked if court staff treated **lawyers** differently based on their race/ethnicity. About **15%** of respondents believe that court staff treat lawyers differently based on their ethnicity (**22%** of Hispanic respondents and **5%** of White non-Hispanic respondents).

F. Discrimination in the Workplace

Several questions on the Survey of Members of the State Bar asked respondents about their own experience with discrimination based on ethnicity and gender. When respondents were asked if they had ever left a position because of perceived discrimination, **16%** of respondents said they had left a position because of perceived discrimination. When asked a similar question about professional opportunities in the workplace, **43%** of respondents feel that professional opportunities as an attorney were limited because of discrimination. More than half (**1/2**) of Hispanic respondents felt that professional opportunities were limited because of discrimination, and only **32%** of White non-Hispanic respondents felt that opportunities were limited. The bases for discrimination in these cases were primarily related to gender and ethnicity.

Survey respondents were asked if they personally experienced specific kinds of discrimination in their work environment during the past three years. The following table reports the percentage of respondents experiencing discrimination.

TABLE 40.
PERCENTAGE OF RESPONDENTS OBSERVING
DISCRIMINATION IN THE WORKPLACE ENVIRONMENT

	White Non-Hispanic	Hispanics	All Respondents
Uncomfortable/hostile environment	26%	36%	33%
Inequitable work assignments	13%	29%	21%
Restricted opportunities for advancement	13%	29%	22%
Exclusion from firm social activities	6%	15%	9%
Salary not comparable with those of similar experience, abilities and qualifications	24%	29%	28%
Exclusion from social activities involving clients	12%	13%	11%
Other	15%	29%	18%

One-third (**1/3**) of all respondents said they had personally experienced an uncomfortable/hostile work environment. Just over one-quarter (**1/4**) of respondents said they had salary not comparable with those of similar experience, abilities, and qualifications. About one-third (**1/3**) of Hispanic respondents reported that they had personally experienced an “uncomfortable/hostile environment,” “inequitable work assignments,” “restricted opportunities for advancement,” and “salaries not comparable with those of similar experience, abilities, and qualifications” and other unspecified differential treatment. In comparison, White non-Hispanic respondents did not report these experiences as frequently as Hispanic respondents.

Survey respondents were also asked if they believed male attorneys have more opportunities to participate in office management than female attorneys. About one-third (**1/3**) of respondents said there were more opportunities for male attorneys to participate in office management. Also, when respondents were asked if there were more opportunities for non-minority attorneys to participate in office management than ethnic minority attorneys, **20%** of respondents affirmatively agreed, there were more opportunities for non-ethnic minorities. About one-third (**1/3**) of Hispanic respondents believed that there were more opportunities for non-ethnic minority attorneys in office management compared to only **5%** of White non-Hispanic respondents who believed there were more opportunities for non-ethnic minority attorneys.

G. Discrimination in the Courts

The following table reports the percentage of respondents who reported experiencing different kinds of differential treatment based on race/ethnicity by judges, opposing counsel, and court staff.

TABLE 41.
PERCENTAGE OF RESPONDENTS WITNESSING
EXPERIENCES OF UNFAIR TREATMENT BASED ON RACE/ETHNICITY

Have you experienced, or witnessed any of the following, in formal or informal court proceedings, that you believe were the result of the race/ethnicity of the participants?			
Experience	White Non-Hispanic	Hispanics	All Respondents
Unfair treatment by a judge of you, a client or a witness	22%	40%	31%
Unfair treatment by court staff of you, a client, or a witness	5%	19%	11%
Unfair treatment by opposing counsel of you, a client or a witness	25%	42%	36%
Failure of a judge to appropriately control or sanction such conduct in his/her court	19%	27%	25%

As reported in the Table 26 above, about one-third (**1/3**) of all respondents report experiencing unfair treatment based on race/ethnicity by a judge and about one-third (**1/3**) report unfair treatment by opposing counsel. Also, one-quarter (**1/4**) of all respondents have witnessed a judge not appropriately controlling or sanctioning unfair treatment based on race/ethnicity in his/her court. About **10%** of respondents reported experiencing unfair treatment by court staff. According to the data, Hispanic respondents report experiencing unfair treatment by judges, court staff, and opposing counsel more frequently than White non-Hispanic respondents. Forty percent (**40%**) of Hispanic respondents report unfair treatment by judges based on race/ethnicity compared to only **22%** of White non-Hispanic respondents. About **20%** of Hispanic respondents and **5%** of White non-Hispanic respondents report unfair treatment by court staff.

H. Differential Treatment of Work Based on Ethnicity and Gender

Members of the State Bar were asked if they believed the work of female and ethnic minority attorneys was judged differently than the work of male and non-ethnic minority attorneys respectively. When asked about differential treatment of work by female attorneys, survey results indicate that about one-third (**1/3**) of respondents did not know if work was judged differently by clients and judges (about one-quarter (**1/4**) of respondents did not know if colleagues judged work differently). About one-third (**1/3**) of respondents believe that clients and colleagues in the legal profession judge the work of female attorneys differently than that of male attorneys. Also, about one-quarter (**1/4**) of respondents feel that judges regard the work of female attorneys differently than the work of male attorneys. In general female respondents were more likely to report that the work of female attorneys was judged differently from the work of male attorneys.

**TABLE 42.
PERCENTAGE OF RESPONDENTS WITNESSING
DIFFERENTIAL TREATMENT OF WORK BASED ON GENDER**

Is the work of female attorneys judged differently from the work of male attorneys by...?	Male Respondents (% Yes)	Female Respondents (% Yes)	All Respondents (% Yes)
Clients	24%	56%	35%
Judges	12%	40%	22%
Colleagues	19%	57%	32%

The table below reports the percentage of respondents who believe the work of ethnic minority attorneys is judged differently from the work of non-minority attorneys. When asked about differential treatment of work by ethnic minority attorneys, survey results indicate that about one-third (**1/3**) of respondents did not know if work was judged differently by colleagues and judges (about one-quarter (**1/4**) of respondents did not know if clients judged work differently). Twenty percent (**20%**) of respondents believe that judges regard the work of ethnic minority attorneys differently than that of non-minority attorneys. Also, about one-quarter (**1/4**) of respondents feel that clients judge the work of ethnic minority attorneys differently than that of non-minority attorneys and about one-quarter of respondents feel that colleagues in the legal profession judge the work of ethnic minority attorneys differently.

**TABLE 43.
JUDGMENT OF WORK BY ETHNIC MINORITY ATTORNEYS**

Work judged Differently by:	Yes	No	Don't know
Clients	24%	31%	24%
Judges	20%	41%	39%
Colleagues	24%	43%	33%

I. Judicial Selection for Ethnic Minorities and Females

According to data collected on the “Survey of Members of the State Bar,” **39%** of respondents said the Judicial Selection Amendment had been fair to female applicants. About half (**1/2**) of male respondents and only one quarter (**1/4**) of female respondents felt the new judicial selection system has been fair to female applicants. When asked about fairness towards ethnic minority applicants, **40%** of respondents said they thought the judicial selection system had been fair to ethnic minority applicants. About half (**1/2**) of White non-Hispanic respondents and about a third (**1/3**) of Hispanics respondents reported that they thought the new selection system was fair for ethnic minority applicants.

J. Attaining Partnership for Ethnic Minorities and Females

According to data from the “Survey of Members of the State Bar,” **23%** of respondents report male attorneys attain partnership faster than female attorneys. About **41%** of female respondents, as compared to only **13%** of male respondents, believe that male attorneys attain partnership faster than female attorneys. In the case of ethnic minority attorneys, **16%** of respondents believe non-ethnic minority attorneys obtain partnership

faster than minority attorneys. Twenty-two percent (**22%**) of Hispanic respondents and **5%** of White non-Hispanic respondents believe that non-ethnic minority attorneys achieve partnership faster than minority attorneys.

K. Assignment of Choice Cases and Achievement of Respect for Ethnic Minority and Female Attorneys

About **25%** of respondents to the “Survey of Members of the State Bar” said male attorneys are more likely to be assigned choice cases in a law firm setting. Forty-one percent (**41%**) of female respondents and **13%** of male respondents felt male attorneys are more likely to be assigned choice cases. When asked about the assignment of cases for ethnic minority attorneys, **15%** of respondents said non-minority attorneys are more likely to be assigned choice cases in law firm settings. Nineteen percent (**19%**) of Hispanic respondents and **5%** of White non-Hispanic respondents believed that non-minority attorneys are more likely to be assigned choice cases in law firm settings.

In the case of achieving more respect, about **50%** of respondents felt that male attorneys are more likely to achieve respect and status than female attorneys. About **75%** of female respondents, compared to only **40%** of male respondents, believe that male attorneys tend to achieve more respect/status than female attorneys. About one-third (**1/3**) of all respondents felt that non-minority attorneys were more likely to achieve respect and status than minority attorneys. Also, **58%** of Hispanic respondents and **15%** of White non-Hispanic respondents believe non-minority attorneys are more likely to achieve respect and status than minority attorneys.

L. Likelihood of Obtaining Mentors

Two questions on the “Survey of Members of the State Bar” assessed respondent opinions about the acquisition of mentors by female and ethnic minority attorneys. Members of the State Bar were asked if they thought male attorneys are more likely than female attorneys to have mentors who help their professional advancement. Almost one-third (**1/3**) of respondents felt that male attorneys are more likely to have mentors than female attorneys. As for ethnic minorities, about **20%** of respondents felt that non-minority attorneys are more likely to have mentors who aid their professional advancement. Forty-one percent (**41%**) of Hispanic respondents and **4%** of White non-Hispanic respondents felt that non-minorities are more likely to have mentors who help their professional advancement.

Over **50%** of all respondents have had a mentor in their practice of law. Of those who have mentors, most respondents have had no difficulty securing a mentor and **80%** of mentors are male and **20%** are female. Most White non-Hispanic respondents (**91%**) had White non-Hispanic mentors and **61%** of Hispanic respondents had White non-Hispanic mentors. Also, **36%** of Hispanic respondents had Hispanic mentors and **4%** of White non-Hispanic respondents had Hispanic mentors.

M. Observations on the Divergent Perspectives of New Mexico Attorneys

The minority and non-minority attorneys, and male and female attorneys who responded to the Task Force survey expressed widely divergent perspectives on issues relating to racial, ethnic and gender fairness in the legal profession. In 1990, the fairness issue prompted the original Task Force on Minorities in the Profession to

recommend the adoption of a rule of professional conduct prohibiting the expression or manifestation of bias or prejudice by a lawyer on the basis of race, gender, religion or national origin. (1990 Task Force Report, at 98, Recommendation No. 20). As noted above, the New Mexico Supreme Court on January 1, 1994, adopted Rule 16-300, NMRA 1999, prohibiting an attorney from intentionally manifesting, by words or conduct, bias or prejudice based on race, gender, religion, national origin, disability, age, or sexual orientation against the judge, court personnel, parties, witnesses, counsel or others.

While the survey responses addressing differential treatment of attorneys, witnesses, clients and others on the basis of race, ethnicity and gender may suggest cause for concern, the good news is that only two (2) disciplinary complaints have ever been brought under Rule 16-300. Disciplinary counsel reported that one resulted in sanctions and the other was dismissed for lack of substance. Nevertheless, the divergent views of the responding attorneys should remind us all of the value of tolerance and civility in the practice of our profession.

X. RECOMMENDATIONS OF THE TASK FORCE ON MINORITIES IN THE PROFESSION II

The Task Force recommends that the following matters be considered by the Board of Bar Commissioners of the State Bar of New Mexico in addressing the issues described in this Report, and particularly, in improving the involvement of minority attorneys in the activities and leadership of the State Bar of New Mexico and promoting equal opportunities in the profession for minorities and women.

1. The Board of Bar Commissioners should create a standing committee of the Board for leadership development, charged with designing and implementing strategies for improving the quality, quantity and diversity of leadership for bar-related activities. The Committee should have, as part of its mission, cultivating closer ties among the State Bar, voluntary and student bar associations, and other law-related organizations and outreach to those members who typically do not actively participate in the activities and leadership of the State Bar, with the goal of increasing interest and participation in, commitment to, and greater strength of, the State Bar and all bar-related organizations.
2. The Board of Bar Commissioners should reorganize the Standing Committee on Minorities in the Profession to include active participation by Commissioners, officers of each voluntary bar association and other law-related organizations with the goal of developing a community of interest and developing the resources necessary to address the many issues and concerns impacting minority members of the State Bar, as detailed in this Report.
3. The New Mexico Board of Bar Examiners should be commended for the innovative action it has taken over the years to study and implement changes designed to assure fairness in the administration of the New Mexico Bar Examination. Essential to its continuing mission, however, is adequate statistical and demographic information about its applicants and passage rates. Only if this information is properly compiled and regularly evaluated

can the Board be confident that it is administering a fair and unbiased examination. Accordingly, the Board of Bar Commissioners should consider recommending to the New Mexico Supreme Court and the Board of Bar Examiners the continued compilation and reporting of accurate records on applicants' race, ethnicity and passage rates to assist this effort.

4. The Task Force believes that bar examination preparation courses and mentoring can have a significant impact on bar passage rates. Not all bar review courses are affordable to applicants with limited means. Accordingly, the Board of Bar Commissioners, as well as all minority bar associations, should investigate the potential of developing a bar review program on a cost affordable basis, including, providing mentoring by experienced attorneys on a volunteer basis on strategies for taking the Bar Examination. The project proposed by the Young Lawyers Division should be assessed in this regard.
5. Training in law office management, accounting and the handling of client trust funds is absolutely essential if the profession is to effectively reduce the incidence of disciplinary problems for *solo* and small firm practitioners. The Board of Bar Commissioners should consider:
 - (1) recommending to the Law School that it supplement the legal education it provides its students with basic training in the administration and economic operation of a small law office and the management of client funds;
 - (2) recommending to the New Mexico Supreme Court that courses in law office management, trust fund accounting, and ethics be mandatory CLE courses for newly admitted lawyers and *solo* and small firm practitioners;
 - (3) recommending that the new Law Office Management Committee, in cooperation with the Solo Section and CLE of the State Bar establish a formal curriculum for solo and small firm practitioners addressing the common and unexpected facets of practicing law and managing a law business as a solo or small firm practitioner. The proposed Solo Conference for debut in 2000 may well meet this need.
 - (4) recommending to the Board of Bar Examiners that issues on law office management and ethics be included as part of the Bar Exam.
6. The Board of Bar Commissioners should assess the effectiveness of the Bill Kitts Mentor Program and make such modifications to the administration of the program as will substantially increase the number of participants and enhance the learning and networking experience intended by the program.
7. The Task Force continues to believe that the State Bar of New Mexico can and should play a role in promoting and increasing equal employment opportunities for minority attorneys in the private sector. The Board of Bar Commissioners should consider strategies and programs designed to increase and diversify the pool of applicants for these positions by, among other things, continuing the Summer Law Clerk Program and promoting job fairs

and other projects designed to interest minorities and other members in private firm practice.

8. The State Bar, sections of the State Bar, the law school, and voluntary and minority bar associations must undertake responsibility for encouraging minority and women lawyers and law students to seek employment opportunities in those areas of the profession where minorities and women have historically been under-represented.
9. The Task Force recommends that the Board of Bar Commissioners consider amending Article 1 of the State Bar's bylaws to add the following as an expressed purpose of the State Bar: "It is in the enlightened self-interest of the State Bar to promote full and equal participation in the legal profession by minorities and women." In addition, the Task Force recommends that the New Mexico Supreme Court consider including this language as an amendment to the Rules Governing the State Bar (Rule 24-101) .
10. To assist minority attorneys in maintaining and increasing their traditional role in the State's judiciary, the Task Force recommends that the Board of Bar Commissioners direct the Standing Committee on Minorities in the Profession to develop and organize programs that will encourage diversity in the judiciary.
11. The Task Force recommends that the Board of Bar Commissioners consider recommending to the Disciplinary Board and the Judicial Standards Commission the development of a procedure for receiving and addressing complaints of discriminatory conduct by lawyers and judges.