

Judicial Decision-Making: Demographics, Neuroscience, Fairness, and Access to Justice

SPEAKERS:

*Hon. Brenda F. Harbin-Forte, Alameda County
Superior Court, Hayward, CA (PowerPoint)*

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Lecturer on Neuroscience, Decision-making, and
the Law, Oakland, CA (Other materials)*

Note:

*All Access and Fairness activities are funded solely through
voluntary contributions. No mandatory attorney dues are used
for these activities.*



NAWJ Program – October 18, 2014

Actual Justice Should Be Goal

- Access to Justice \neq Fairness
- Access to Justice \neq Actual Justice
- Fairness in Decision-making =
Actual Justice = True Access to
Justice
 - Strive to ensure outcomes not based on stereotypes or implicit or actual biases or political expediency



Why Value Judicial Diversity?

- “When you recognize that, in the United States, it is the ability to petition our courts for fairness that keeps people from seeking justice in the streets, then you understand that diversity in the legal profession is critical for democracy to survive.”

- Judge Dennis Archer (Ret.), Past ABA President



Why Value Judicial Diversity?

- “...Judges can and do influence each other. They exchange ideas on and off the bench. *A judiciary that is comprised of judges from differing backgrounds and experiences leads to an interplay and exchange of divergent viewpoints, which in turn prevents bias, and leads to better, more informed decision making.* Diversity of opinion among decision makers encourages debate and reflection, and fosters a deliberative process that leads to an end product that is greater than the sum of its parts.”

Editorial, American Judicature Society Magazine, March/April 2010 ed.



Judicial Diversity Better Ensures Actual Justice

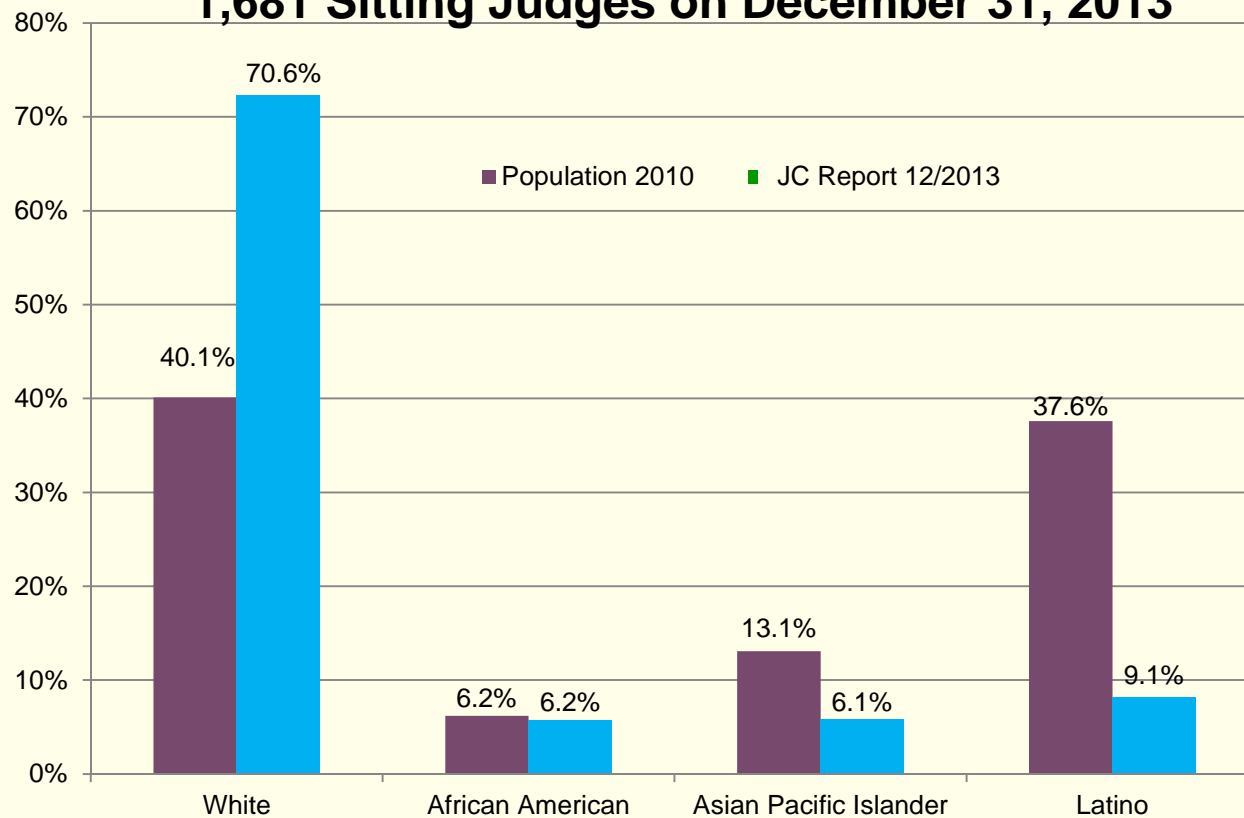
- Former Justice Thurgood Marshall, the first African-American U.S. Supreme Court Justice, “would tell us things that we knew but would rather forget; and he told us much that we did not know due to the limitations of our experience.”

- Former U.S. Supreme Court Justice Byron R. White,
- Byron R. White, *A Tribute to Justice Thurgood Marshall*, 44 Stan. L. Rev. 1215, 1216 (1992).



Diversity in the California Courts

**Population Compared to Judiciary Statewide
1,681 Sitting Judges on December 31, 2013**



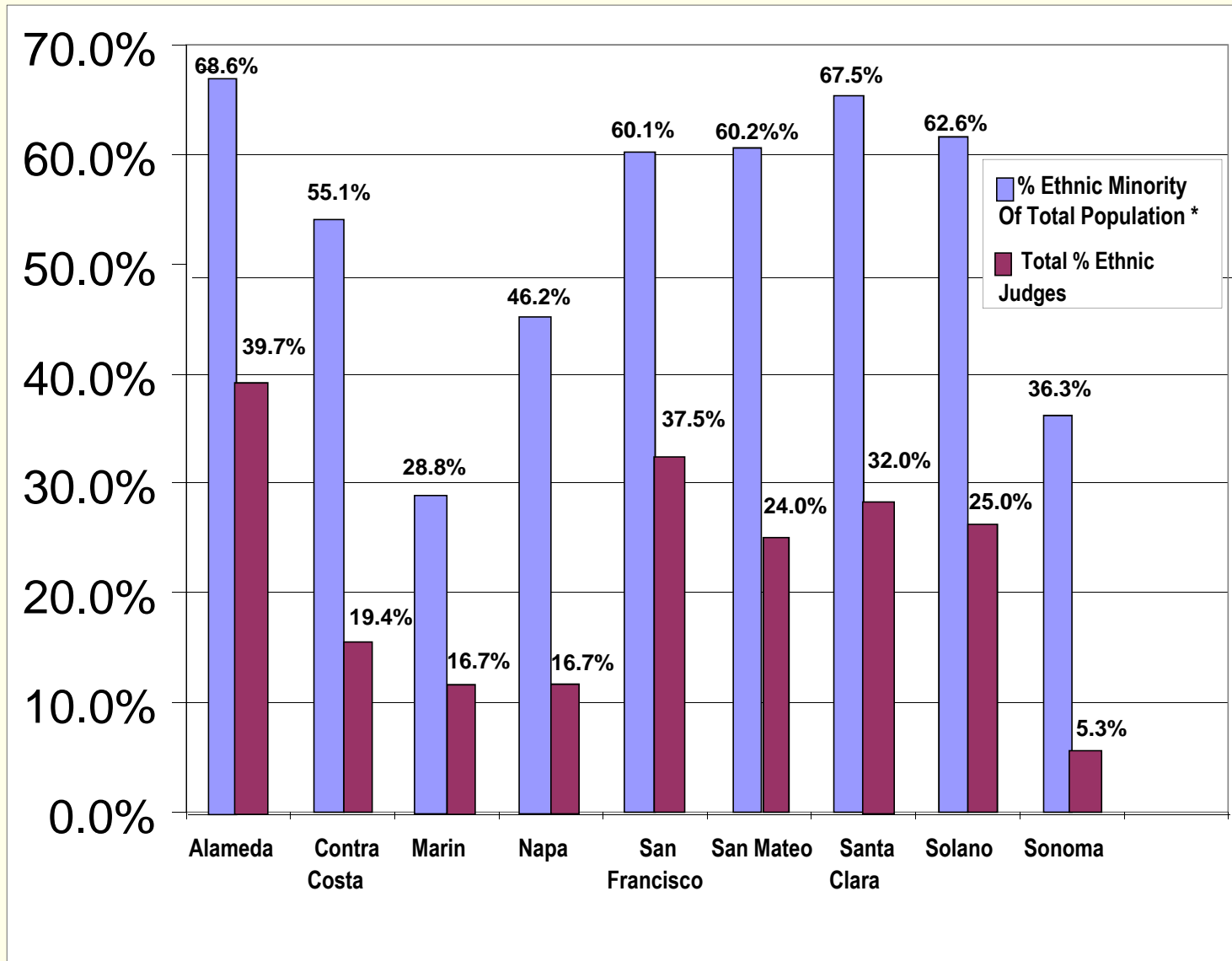
Data Sources: Judicial Council's 2013 annual SB56 report and 2010 Census report.

Why Population and Not Bar Membership

- Lawyers don't own cases, causes of actions, or claims – CLIENTS DO
- CLIENTS come from the general population
- Lawyers want fair results for CLIENTS
- Explosion of self-represented litigants who come from the general population
- “PUBLIC” trust and confidence = “general population’s” trust and confidence in our court system
- The Population Parity Goal IS Achievable!

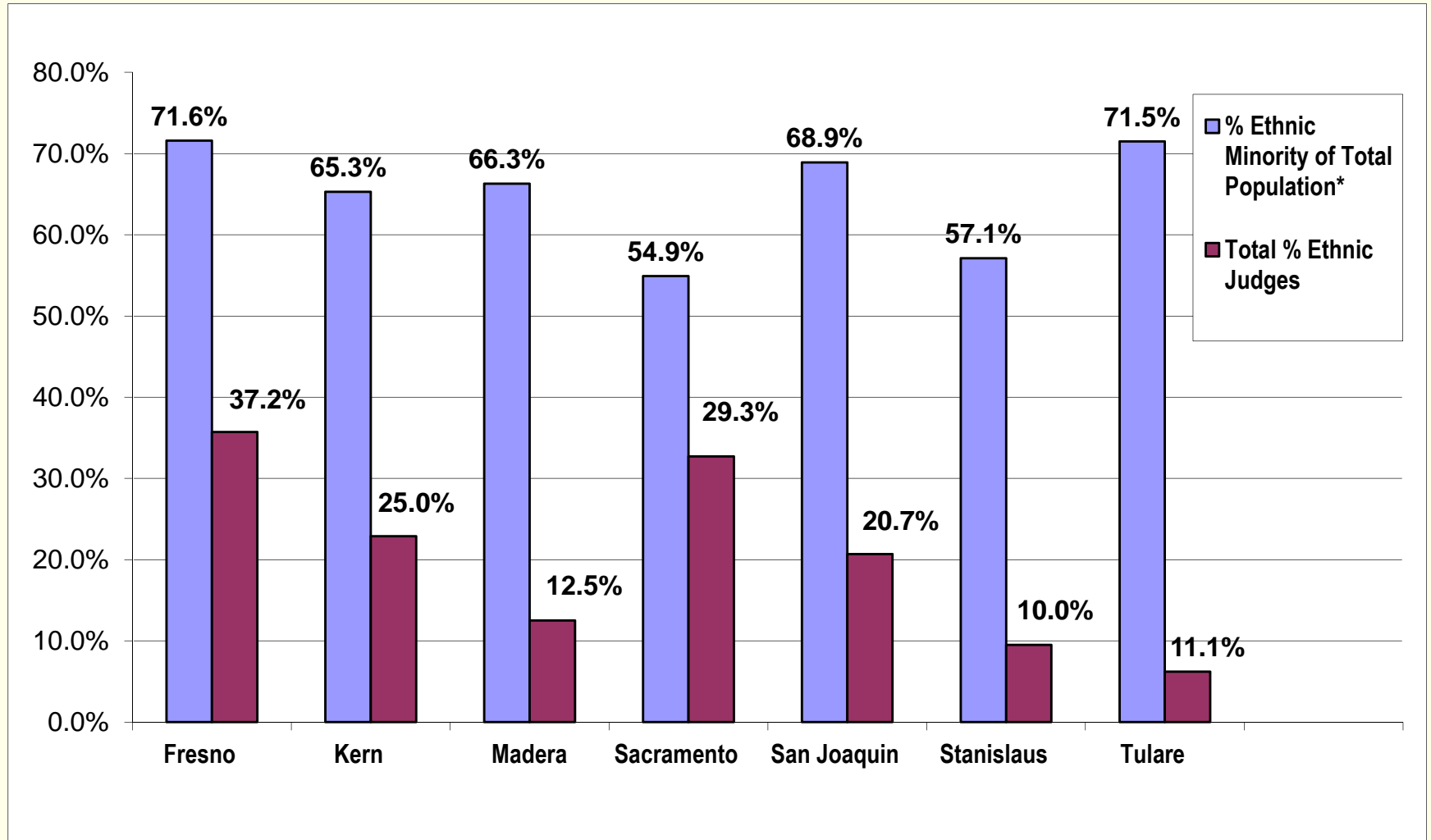


San Francisco Bay Area Dec 2013



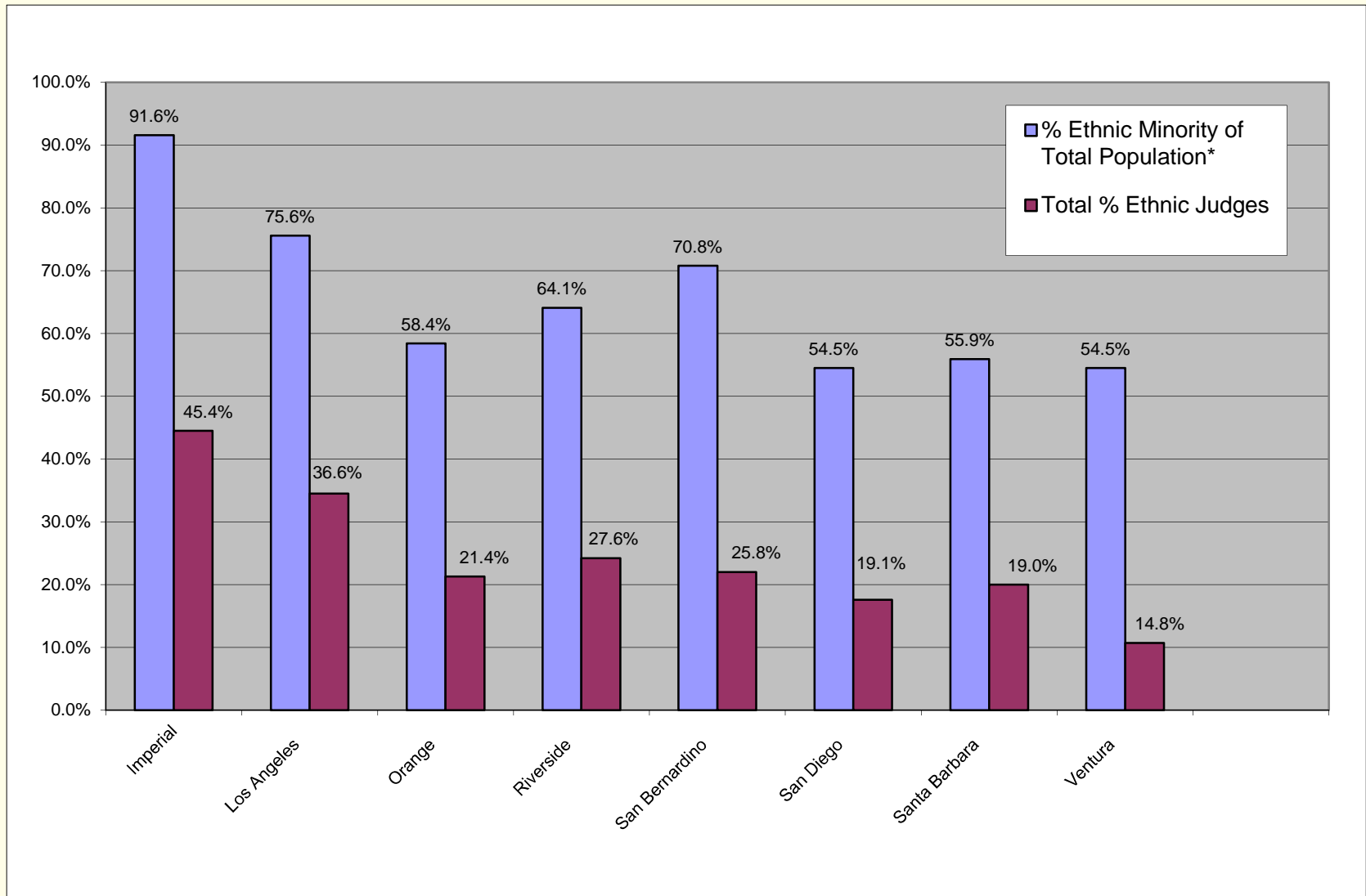
Sources: 2010 Census and Judicial Council Annual SB56 Report for 2013
(Note "Ethnic" = All Non-Caucasian Census Categories)

Central Valley - Dec 2013



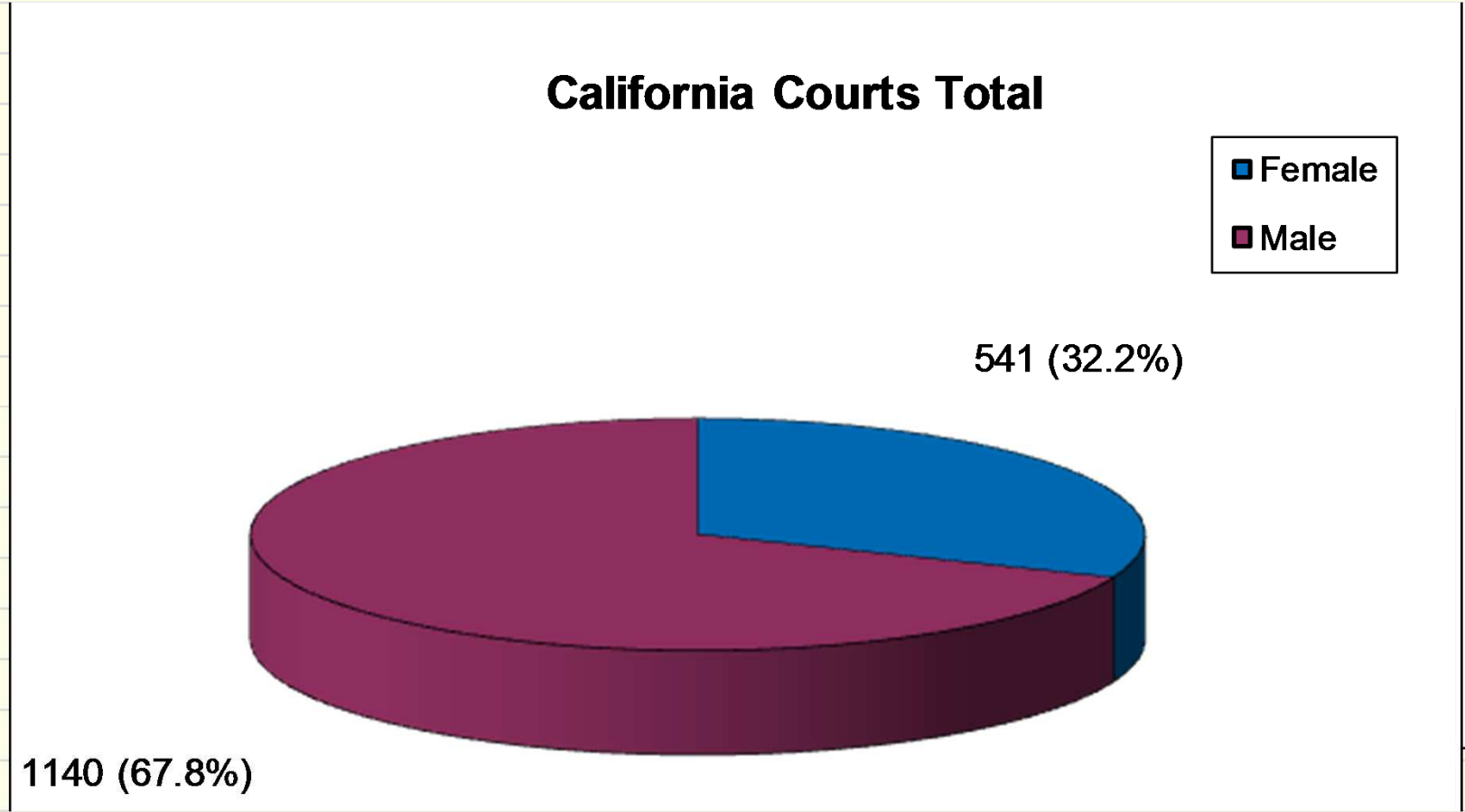
Sources: 2010 Census and Judicial Council Annual SB56 Report for 2013
(Note "Ethnic" = All Non-Caucasian Census Categories)

Southern California - Dec 2013



Sources: 2010 Census and Judicial Council Annual SB56 Report for 2013
(Note "Ethnic" = All Non-Caucasian Census Categories)

Gender – All Courts—YE 2013



Source: Judicial Council Annual SB56 Report for 2013

Other Diversity in the Courts YE 2013

Heterosexual	LGBT	No Info	Totals
60.4% (1015)	2.46% (41)	37.2% (625)	100.06%* (1681)

Source: Judicial Council Annual SB56 Report for YE 2013

*Judicial Council numbers reflect 100.06% of the bench

California's Efforts to Increase Judicial Diversity

June 2006:

- First statewide Judicial Diversity Summit presented by the Judicial Committee of the State Bar Diversity Task Force and co-sponsored by the Judicial Council and the State Bar of California
- Key Stakeholders at table: Chief Justice, Governor's Office, State Bar, Legislators, judges, bar associations, others
- Status of diversity in the judiciary and identify areas for improvement



California's Efforts to Increase Judicial Diversity

September 2011:

- Second Judicial Diversity Summit presented by the Judicial Council and State's Bar Council on Access & Fairness:
- Review current status of judicial diversity
- Evaluate accomplishments since 2006
- Best practices for increasing diversity
- New initiatives for increasing diversity
- 5-year Action Plan and recommendations
See Exec. Summary 2011 Judicial Summit

(note: next judicial summit scheduled for 2016)



Accomplishments Since 2006

- New Chief Justice in 2010 – Tani Cantil-Sakauye - woman of color
- Supreme Court- majority women (until 2014)
- Supreme Court - majority ethnic minorities (API)
- African American judges almost on par with population
- Judicial Mentoring Programs in Alameda, Contra Costa, Los Angeles, San Francisco, et al.
- Court-sponsored “How To” programs
- Last 3 nominees to Cal Supreme Court have been ethnic minorities (incl’g 2014 nominee)



Accomplishments Since 2006

- Slight increase in percentage of ethnic minority and women judges
- Judges from more diverse backgrounds
- Legislation (Gov't Code §12011.5) mandating annual demographic reports, etc
- State Bar Council on Access and Fairness-Diversity "Think Tank"
- Judicial Diversity Toolkit for Courts
- Transgender Judge elected in Alameda County
- Openly Gay & Lesbian Judicial Appointees



Accomplishments Since 2006

- Implicit Bias and “Broad Experience” Training for JNE Commissioners
- Changes to Appointment Application
- State Bar Online Tips on Applying
- “Road Show” Educational Program
- 2007 Governor named First Woman and First African-American Judicial Appointments Secretary (now San Diego judge herself!)
- All-Female Confirmation Panel for Last Supreme Court Justice
- Governor to Consider Candidates from Underrepresented Groups, incl’g veterans



Prior Governor's Gender Appointments

January 1, 2006 – December 31, 2010

TYPE OF COURT	NUMBER OF APPTS	GENDER DIVERSITY OF APPTS	
		Men *	Women *
Supreme Court	1	0	1
Courts of Appeal	28 *	18 *	10
Superior Courts	480	312	168
All Courts	509 * 65% men 35% women	330	179 (341 Q) (162 left)

* Excludes 1 male appt'd 2x as PJ of Ct of App.

* Diversity information compiled by COAF

Gender Diversity in the Courts

Current Governor's Total Appointments by Gender January 2011 through December 31, 2013

MEN	WOMEN
98 (60.9%)	63 (39.1%) of 172 qualified

Data Sources: Governor Brown's SB56 Report for 2013,
Governor's press releases

Prior Governor's Ethnic Appointments

January 1, 2006 – December 31, 2010

COURT	NUMBER OF APPTS	ETHNIC DIVERSITY OF APPOINTEES*			
		African American	Asian/Pacific Islander	Latino	Total Ethnic
		27.5%			
Supreme Court	1	N/A	1	N/A	1
Courts of Appeal	29	6	1	1	8
Superior Courts	479	41	36	54	131
All Courts	509	47 of 91 qualified	38 of 74 qualified	55 of 118 qualified	140 of 283 qualified

* Ethnic information compiled by COAF

Current Governor's Ethnic Appointments

January 1, 2011 – December 31, 2013

COURT	NUMBER OF APPTS	ETHNIC DIVERSITY OF APPOINTEES*			
		African American	Asian/Pacific Islander	Latino	Total Ethnic
		35.4%			
Supreme Court	1	0	1	0	1
Courts of Appeal	6	0	0	2	2
Superior Courts	154	18	13	23	54
All Courts	161	18 of 34 qualified	14 of 35 qualified	25 of 51 qualified	57 of 120 qualified

* Ethnic information compiled by COAF

Judicial Diversity Issues to be Addressed

- Filling existing judicial vacancies
- Increase diversity of applicant pool
- Mentoring re application process
- Bias and scope of diversity training for judicial screening committees
- Continued transparency re: numbers and process
- Making ethnic, gender, and other status diversity as comfortable a discussion topic and as desirable a goal as geographic diversity

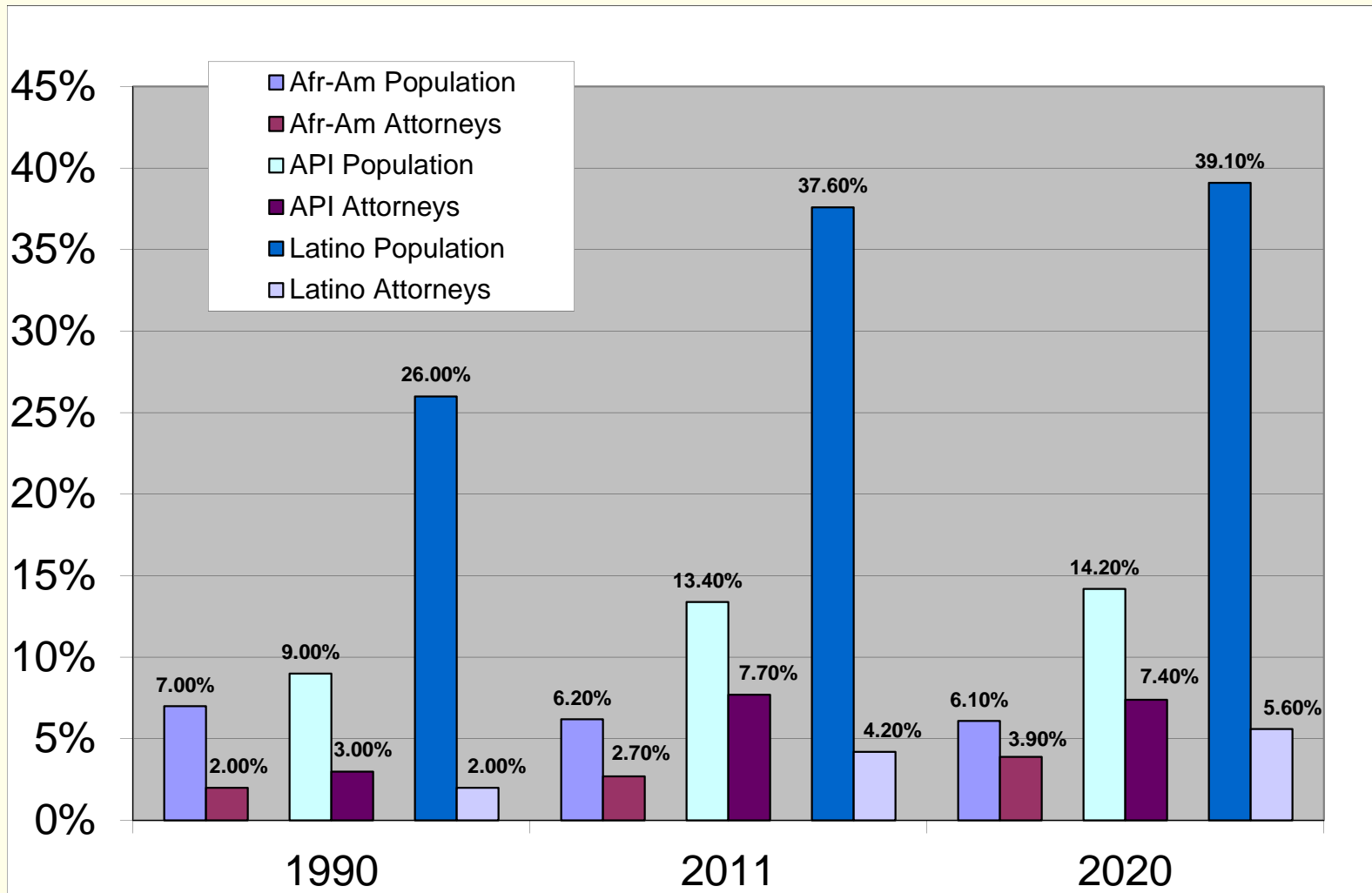


California State Bar Diversity

Categories	2006 Survey	2011 Survey	2010 CA Census
Active Bar Members	154,500	172,402	
Race/Ethnic Minorities			
African American	1.7%	2.7%	6.2%
Latino/Hispanic	3.8%	4.2%	37.6%
Asian/Pacific Is.	5.3%	7.7%	13.4%
Other/Mixed	4.8%	6.1%	2.7%
Total Minorities	15.6%	20.7%	59.9%
Women	34.0%	39.4%	50.7%
LGBT	5.2%	4.6%	3.2%
Disabilities	no data	No data	10.0%



2020 Projections for California

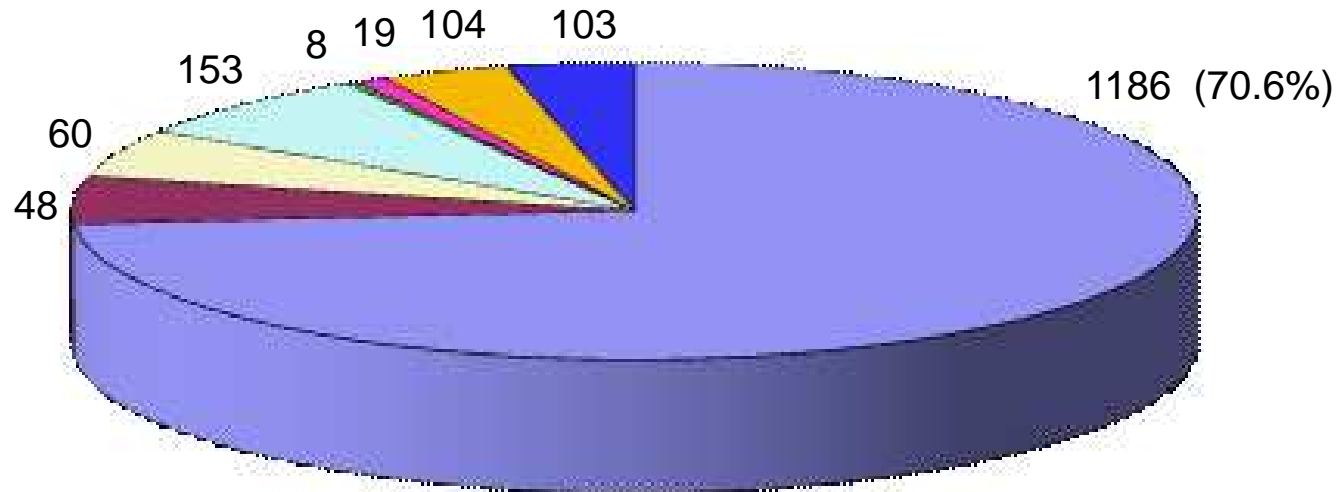


Ethnic Diversity – All Courts – YE 2013

California Courts Total

1681 Sitting Judges as of December 31, 2013

- | | | |
|--------------------|--------------------------|--------------|
| ■ Caucasian | ■ No info | □ Mixed Race |
| □ Hispanic/Latino | ■ Native American | ■ Other |
| ■ African American | ■ Asian Pacific Islander | |

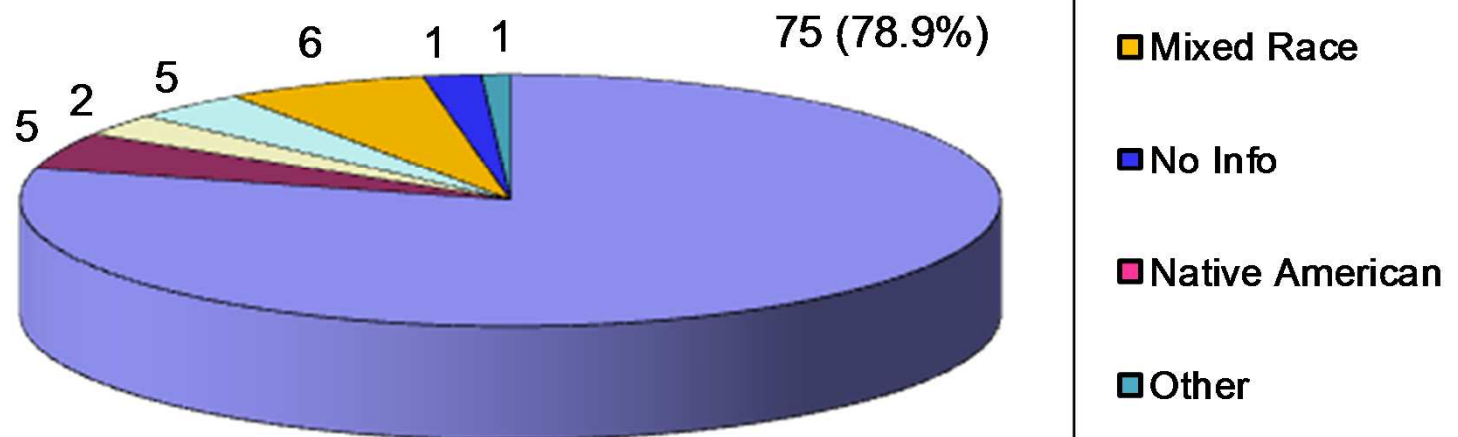


Source: Judicial Council Annual SB56 Report for 2013

Ethnic Diversity – District Courts of Appeal - YE 2013

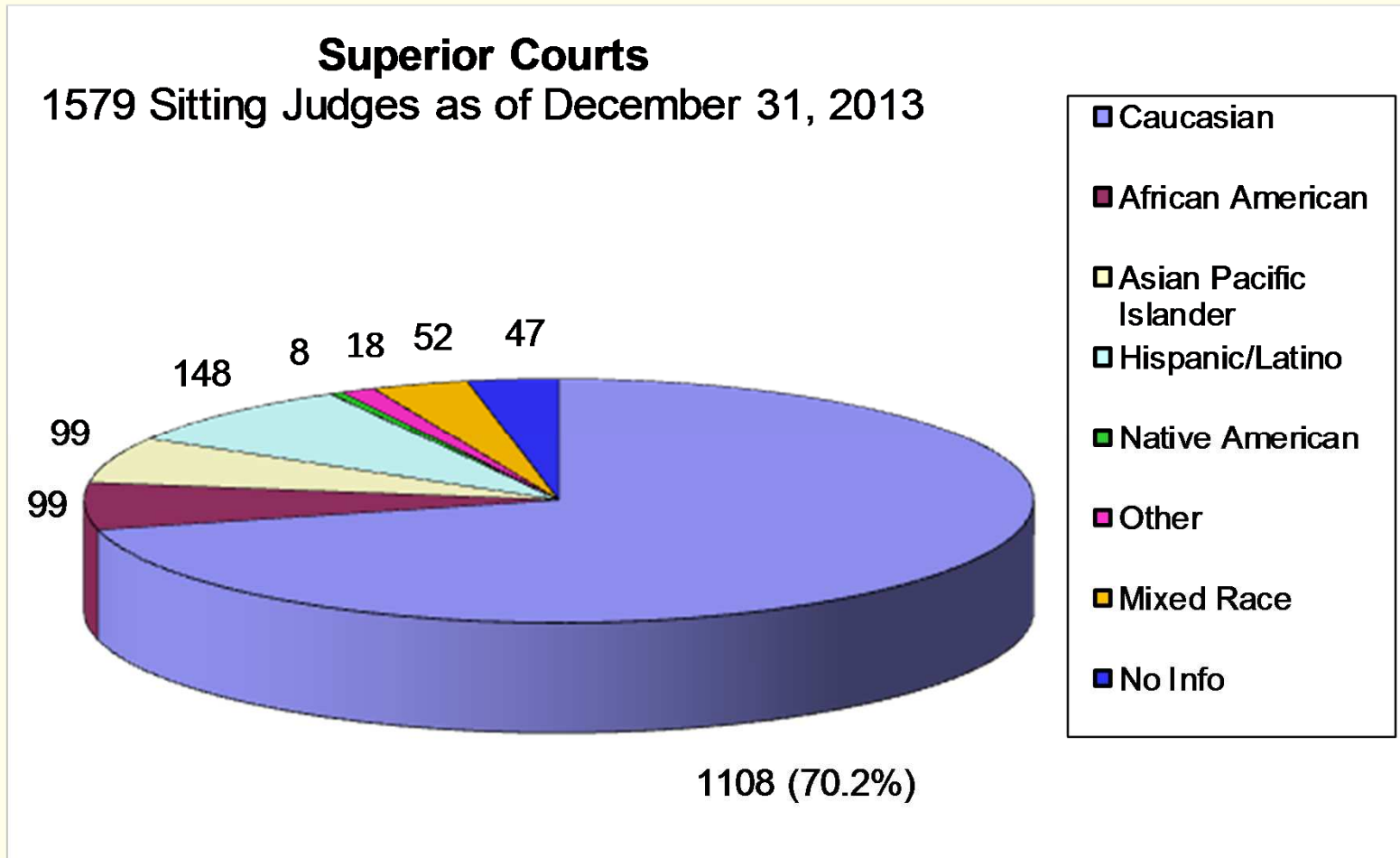
District Courts of Appeal

95 Sitting Justices as of December 31, 2013



Source: Judicial Council Annual SB56 Report for 2013

Ethnic - Superior Courts – YE 2013



Source: Judicial Council Annual SB56 Report for 2013

THE POTENTIAL POOL
Eligible for Judicial Appointment
(passed bar between 1979 and 2000)

Women	African American	Asian American	Latino	Other Minority
53,128	4,491	8,506	6,678	4,788

The Potential Pool – 2011 - 2013 JNE Ratings by Ethnicity

	EWQ	WQ	Q	TOTAL
African American	3	18	13	34
Asian/Pacific Islander	6	14	15	35
Hispanic	2	21	28	51
Total	11	53	56	120

Source: JNE Annual SB56 Reports for 2013

Potential Pool – Women Rated Qualified – 2011 to 2013

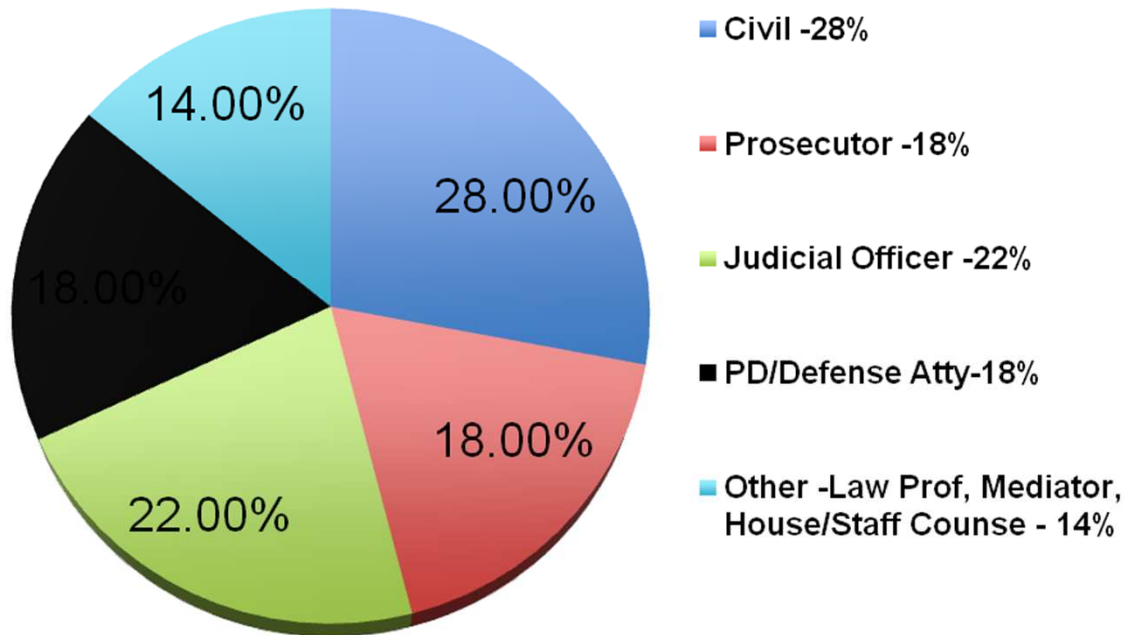
	2011	2012	2013	Totals
Eligible Pool	22	63	87	172

Source: JNE Annual SB56 Reports for 2011-2013

Diversity of Experience

Brown's Appointments by Practice Area 2011 - 2012

Civil	25
Prosecutor	16
Judicial Officer	20
PD/Defense Attorney	16
Other – Pub. Interest, Law Professor, Research Attorney, County Counsel, CA Bar	13



Source: Governor Brown's press announcements

Why Value Judicial Diversity

The Administration of Justice

A diverse profession creates greater public trust and confidence in the legal profession and the judicial system



A diverse legal profession will strengthen the quality of social justice and democracy.

- ❖ **Public trust and confidence in the courts**
- ❖ **The appearance of fairness in the legal system**

See Judicial Council Survey on Public Confidence

<http://www.courts.ca.gov/5275.htm>

THANK YOU!!!

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