

RACIAL AND ETHNIC FAIRNESS:

REPORT ON THE STATE OF THE CRIMINAL AND JUVENILE JUSTICE SYSTEM

by the Utah Judicial Council's Task Force on Racial and Ethnic Fairness in the Legal System

September 2000

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The following entities were instrumental in their financial support to the Task Force:

Title II Formula Grant and Byrne Grant

PREPARATION AND PRINTING OF THIS DOCUMENT FINANCED BY THE U.S. BUREAU OF JUSTICE ASSISTANCE AND THE UTAH COMMISSION ON CRIMINAL AND JUVENILE JUSTICE GRANT NUMBERS: 98-DB-MU-0049, 98-JF-FX-0049, and 99-JF-FX-0049.

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This Report was developed under grant numbers SJI-97-N-077-C99-I and SJI-97-I2A-A-077 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.



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"I used hands because a lot of people use their hands to communicate sign language, or just to express themselves. I made one black and one white to show friendship and equality between all kinds of people. I have the hands holding the gavel of justice to symbolize justice for all people."

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"This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy ... now is time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood."

- Martin Luther King

"Utah and its judiciary are at a crossroads in the State's history. The decisions we make now will affect the quality of life for future generations — we must not be timid in our examination of alternatives if those alternatives are better than what now exists ... For us to be successful it will be necessary to create an awareness on the part of the public and our legislators of the profound effect the courts have on all our lives. We must not, through inaction, compromise the quality of justice which you in the judiciary continue to provide and which our citizens have a right to expect."

- Governor Scott M. Matheson

"Good words do not last long unless they amount to something."

- Chief Joseph

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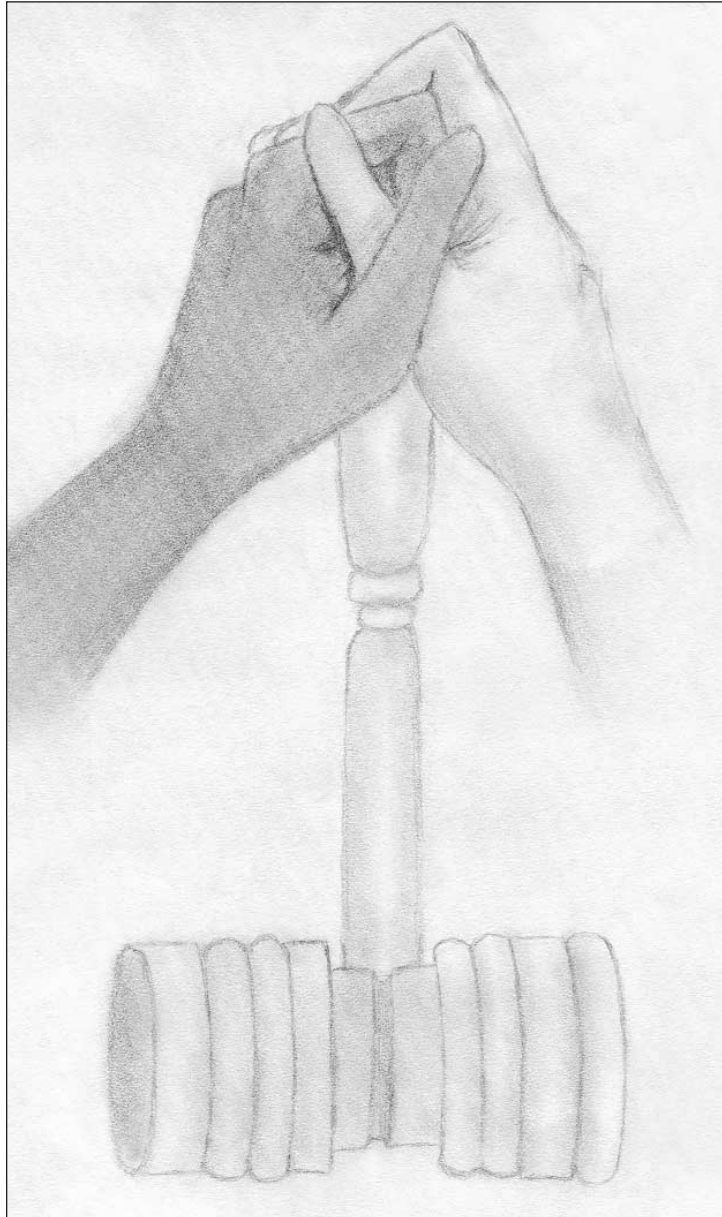


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August 11, 2000

Honorable Richard C. Howe, Chief Justice
Utah Supreme Court
Chair, Utah Judicial Council
450 South State Street
Salt Lake City, Utah 84114

Dear Chief Justice Howe:

I am pleased to present you with this report of the Utah Judicial Council's Task Force on Racial and Ethnic Fairness in the Legal System ("Task Force"). Although this report constitutes the culmination of work begun in March of 1996, it does not purport to present a roadmap for "solution" of the problem of racial and ethnic bias in the justice system. The task of ensuring racial and ethnic fairness in the justice system is never done. It requires ongoing, conscious effort by all the players in the justice system, including the affected minority communities. The report of the Task Force proposes an ongoing, conscious, and coordinated effort across the entire criminal and juvenile justice system, with the Judicial Council and the Administrative Office of the Courts continuing to take a leading role. The plan proposes the transformation of the Task Force from a Judicial Council commissioned body to a true private-public partnership between multiple entities and perspectives which will commit to bringing about real change in Utah.

This proposal has broad support from the affected constituencies, not only the minority communities, but also the leadership of the justice system. The Utah judiciary has a tradition of demonstrated willingness to tackle difficult and uncomfortable issues of fairness within the system. This willingness has earned the judiciary wide respect. For example, the Council and the Administrative Office of the Courts tackled the difficult issue of gender bias in a systematic way. I ask that the Council and the Administrative Office of the Courts continue to support efforts to assure that the legal system operates without bias by taking a similar leadership role in the area of racial and ethnic fairness and by helping to secure the necessary funding to make these efforts a reality.

The Executive Summary provides an overview of the Task Force process and its conclusions. I will not attempt to duplicate that summary here. Instead, I want to take this opportunity to comment on the Task Force process and generally on the issue of racial and ethnic fairness in the justice system.

I first want to note the difficulty of the assignment given the Task Force. Its mission was to address racial and ethnic bias in the justice system. This is the most sensitive and yet intractable issue with which I have ever dealt, on or off the bench. Talking about bias in America with people of different ethnic and racial characteristics is always very difficult. It was no less challenging for the Task Force. The fact that each of us brought radically different life experiences to the table made it hard to find common ground. This problem was compounded in the Task Force context, where we were attempting to address how race and ethnicity affect the operation of the justice system, because those

who run the system are disproportionately Caucasian and those who are charged, convicted, and incarcerated in the system are disproportionately minority. While the entire Task Force acknowledged that minorities are over represented at every stage of the criminal justice system, and that their over representation increases the farther along the system one goes, there was no consensus as to the cause. Some see it as a result of conscious bias; others, as a result of unconscious bias; while for yet others, it is a consequence of socio-economic factors alone. This made reaching consensus difficult at times.

In addition, the process brought unique pressures to bear on the individual members of the Task Force. We struggled in the early days, learning how to talk about bias openly and coming to accept that every member of the task force was operating in good faith. And because each Task Force member was selected from a justice system institution or minority community, to a greater or lesser degree each felt pressures from that institution or community to represent a particular perspective from within that group. At points, these pressures threatened the very operation of the Task Force. However, in the end, the good faith efforts of the members, and the process of working together on a common problem, overcame the divisive tendencies. The result is the unanimous report and recommendations presented to you today.

Second, I think it is worth noting how the Task Force's sense of its mission has evolved. When it began, I think most members hoped we could determine from objective data whether bias against people of color exists in Utah's criminal and juvenile justice system by comparing groups of similarly situated people as they moved through the system. However, as we studied the problem, the severe limitations of the available data collection systems, and the complexity of the required analysis, became apparent. This made it impossible to perform such an objective analysis on any wide scale. The Task Force still pursued evidence of disparate treatment where information was available. But we also shifted our emphasis to address more deeply the question of how minorities see the system, a perspective that furthered our evaluation of the system's racial and ethnic fairness without a comprehensive statistical analysis of its operation.

Fairness is the basic premise of our system of justice. The goal is a fair process that produces a fair result, a system that treats similarly situated people similarly, and does not distinguish among persons because of irrelevant factors. Those of us in the system believe that we accomplish this. But the reality of the justice system in action in the community depends not only on what the system thinks it is doing, but on what the public perceives it to be doing. If any significant portion of the public perceives the system to be unfair in process or outcome, if it perceives it as treating people differently because of race or ethnicity, if it thinks that the system's claim to fairness is illegitimate, then the efficacy of the system is compromised. The practical working of the law in the community depends in large part on voluntary compliance. And voluntary compliance depends, in turn, on how the public perceives the system. This insight led the Task Force to recognize that an important part of its role was to determine the public's perception of the system, for perception matters.

Third, the Task Force's encounter with the issue of racial and ethnic fairness revealed ways in which Utah mirrors the rest of the nation, and others in which Utah has its own unique aspects. The uniqueness comes from the reality that systems are composed of individual players. The players in Utah's justice system that the Task Force encountered have, for the most part, been constructive in building the

necessary dialogue to address the problems associated with racial and ethnic bias. I have been encouraged at the willingness of officials to listen and respond to thoughts as to how they could better do business. Initial resistance to suggestions that the system operates in a biased fashion was encountered, but I was favorably impressed with how readily most were prepared to move on to the merits and to listen. This bodes well for the future.

To the extent that the Task Force found Utah to reflect national trends, I believe we can take no particular comfort in that fact. For example, we have found no evidence that Utahns are any less racially or ethnically biased than those elsewhere, nor did we find that the system is any less insensitive than most to the needs of linguistic minorities, to the cultural characteristics of ethnic groups, to the need for a workforce that is reflective of the diversity of the clientele of the system, or to the impact racial and ethnic factors can have on the administration of justice.

Fourth, a lesson I have drawn from the Task Force process is that the components of the justice system, like most components of government, do a relatively poor job in making themselves readily understood by the public. This characteristic means that many who come into contact with justice agencies do not understand what they have to do to get the agencies to respond to their legitimate needs. For minorities, and particularly for non-native speakers and immigrants, this presents particularly acute problems. While the Task Force recommends that justice agencies engage in better outreach, my experience with government is that over time, this outreach will never adequately address the problem. There will never be enough public money for the task, and the task will inevitably be given a relatively low priority because it is not seen as the agency's primary mission. I think organizations within the various minority communities need to accept some responsibility for educating their members about the justice system, including what the public can legitimately expect by way of service and responsiveness to complaints.

In closing, I would like to stress the importance of advocacy to ensure the future progress of the Task Force's work. While I certainly believe that it should be incumbent upon the justice system to improve itself and to ensure fairness, in reality, it is often persistent, external pressure that continues to motivate change. The support of judges, the legal community and others within the criminal and juvenile justice system is critical to maintaining a continued commitment to implementation of this task force's recommendations. However, it is ultimately the public, particularly our minority communities, that must help push the system to respond. In sum, we must work together to build the partnerships necessary to address this extremely difficult issue. As Andrew Sarris, internationally known film critic has said, "It doesn't take a conspiracy to be racist in America. It takes a conspiracy not to be." We must succeed in our efforts because we cannot afford to fail.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael D. Zimmerman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael D. Zimmerman

Forward by Judge Tyrone E. Medley

The opportunity to serve as Co-Chair of the Utah Judicial Council's Task Force on Racial and Ethnic Fairness in the Legal System has been rewarding, memorable and enlightening. We owe a tremendous debt of gratitude to the Judicial Council, Task Force members, Administrative Office of the Courts, other public officials, contributors, volunteers, members of our minority communities and public who participated in the process. The contributions and commitment to this project by Executive Director Jennifer M.J. Yim have been extraordinary and immeasurable.

The guarantee of equal justice under the law is the fundamental foundation of our criminal justice system. The criminal justice system, its institutions, practices and policies must forever be scrutinized and evaluated in an effort to ferret out unequal treatment and to increase the awareness of leaders in all segments of our criminal justice system in appreciating and understanding how personal and institutional ethnic bias and stereotypes can erode the guarantee of equal justice under the law.

The Task Force's search for the existence and extent of ethnic bias in our criminal justice system has been difficult and complex. It can be reasonably argued that old-fashioned overt intentional discrimination is the exception and not the general rule. On these issues, in my opinion, the jury is still out. This report contains findings and more important, recommendations designed to improve our ability to measure the existence and extent of ethnic bias, enhance the sensitivity and cultural competency of key decision makers in the criminal justice system and for diversifying the criminal justice work force all in an effort to guarantee that equal justice under the law is a reality for all of the citizens of Utah without regard to race or ethnicity.

One of the most compelling and important aspects of this report were the 27 public hearings conducted by the Task Force across the state. The public hearing reports and experiences shared were enlightening. For me, it was like seeing my own life flash before my eyes. In my life experience I have been stopped by law enforcement under very questionable circumstances, followed and accosted in retail stores and treated disrespectfully. I believe in good faith that race was a substantial fact in these experiences. I challenge you to talk to most people of color in this community; you will be amazed by the consistency of their life experience on matters of race. The results of the public hearings have been criticized and are controversial. It has been suggested that the public hearings lack validity because the Task Force did not investigate each presentation and that the public hearings at best only suggest the perception of ethnic bias in the criminal justice system. The perception of fairness is nearly as important as actual fairness. The perception of race or ethnic inequality erodes public confidence in the criminal justice system. The majority's perception of the fairness of our criminal justice system is not generally shared by our minority communities. Adherence to the recommendations in this report will encourage understanding of these differences and cultivate resolution.

I am guardedly optimistic and hopeful about the future of Utah's criminal justice system. It is clear there still remains divergent views on the existence and extent of race and ethnic bias in the criminal justice system. Despite this divergence, the members of the Task Force and other participants are unified and have demonstrated a commitment to utilize and employ the recommendations in this report to assure equal justice under the law. We all should have zero tolerance for race or ethnic unfairness whether born from intentional misconduct or cultural ignorance.

I want to extend my personal heartfelt gratitude to everyone that participated in this process. The final test of our service, hard work and commitment will lie in our success in the implementation phase and our ability to accomplish institutional change.

Forward by John T. Nielsen

It has been my great personal pleasure and privilege to participate as a member of this Task Force. Although I have spent the better part of my career in the public policy arena, the experience gained, as a result of participation in this Task Force, has been a significant experience of personal introspection.

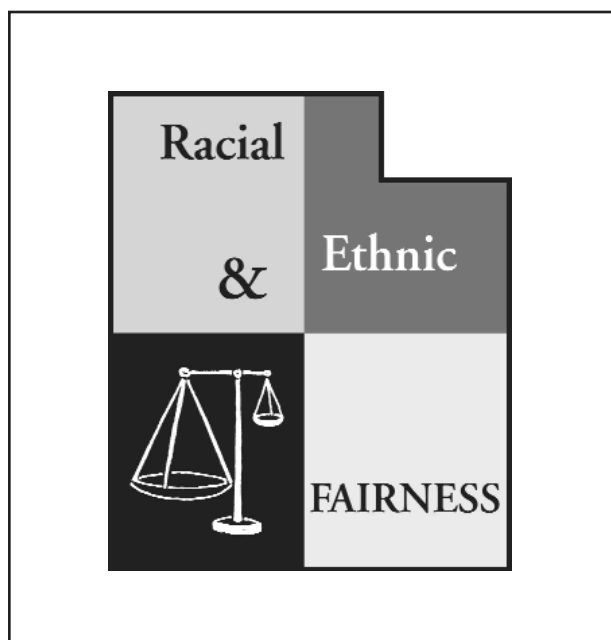
While it has been heartening to observe the commitment of so many public officials and others in both the public and private sector to greater cultural sensitivity, it has been equally disheartening to realize that so many individuals in our minority communities feel distrustful, disheartened, disenchanted with the criminal justice system in this state.

Notwithstanding these feelings and perceptions, I believe the findings and conclusions of the Task Force reveal that, with some exceptions, problems experienced by the minority populations in our state rarely stemmed from overt acts of prejudice or disrespect. The findings also indicate that no explicit manifestations of conscious or overt racial bias pervade the system. It seems clear to me, however, that our findings also reveal that there is considerable need for introspection at all levels, greater cultural sensitivity with respect to minority issues, and increased and enhanced communication and understanding.

As a former law enforcement executive, I was particularly interested in the perception of many in the minority communities that the police indiscriminately and without justification stop or make other police contacts with minorities. This procedure was commonly referred to as “racial profiling.” If such procedures are based solely upon race or ethnicity and conducted for the no other reason than to harass and mistreat, then they must stop immediately. On the other hand, police have a legitimate obligation to be proactive in their investigative techniques. Recognizing the sensitivity and the obvious fine line between legitimate police procedure and harassment, law enforcement agencies must exercise the appropriate amount of oversight with respect to police procedure and have the facts to justify the legitimacy of such procedures. Similarly, the minority community must appreciate the duties, obligations and responsibilities of law enforcement in protecting our communities and investigating suspicious conduct and crime.

It is my hope that this report will foster an atmosphere of mutual cooperation and understanding. Where deficiencies exist in cultural sensitivity, they must be immediately addressed. Individuals and institutions must identify and eliminate all vestiges of bias.

This report is only a start. It is not self executing. An ongoing effort must be instituted at both the government and individual levels to realize a society committed to racial and ethnic fairness.



DEFINITION OF TERMS

Dimensions of Diversity

Diversity is the representation and inclusion of the unique contributions of multiple groups and/or individuals who differ in various dimensions, such as age, gender, ethnic heritage, race, sexual orientation, and mental and physical abilities and characteristics.

Diversity is also the unique perspectives of individual and group cultural dimensions that further describe populations — first language, education, religion, family status, geographic location, communication style, socioeconomic status, behavioral norms, patterns of thinking, and cultural conditioning.

Cultural Sensitivity

Cultural sensitivity is an awareness that the dimensions of an individual's or population's diversity, their cultural, community and societal environment significantly affect his or her quality of life. These factors also impact the way in which individuals and populations interact cross-culturally with each other, their community and the community at large. The culturally sensitive individual recognizes and accepts with respect the validity of the cultural differences he or she encounters.

Diversity/Cultural Competency

Diversity and Cultural Competency is a deeper knowledge/understanding of the dimensions of diversity that enable individuals to build and implement necessary skills to be more effective in a culturally diverse environment. Ideally, culturally competent individuals not only accept, appreciate, and accommodate cultural difference but develop skills to seek knowledge and actively educate others to interact effectively in multicultural settings.

A culturally competent individual is aware of his/her own cultural values and biases, and how these affect his/her interactions with others. The individual has culture-specific knowledge, is flexible, able to adapt to diversity, and able to be an ally to and be comfortable with individuals who are different from his/herself. He/she communicates effectively across the diverse populations with which he/she may come in contact.

Perception

A theoretical definition used in psychology is the mental process by which sensory or social information is organized and interpreted. As it pertains to this report, the interpretation of information received through personal encounters and experience with the justice system may result in a perception that bias exists.

Race/Ethnicity Terminology

The words that people choose to identify themselves and others represent their culture, traditions, self identity, and their views of others. Utah residents use a wide variety of terms to identify their racial and ethnic backgrounds. The Task Force adopted terminology currently in general use and modeled after U.S. Census 2000 definitions to identify the main racial and ethnic groups discussed in this report. The term used to identify each racial and ethnic group applies to any person of that group regardless of citizenship status. Individuals may choose to use more than one group name to identify themselves fully. However, to provide uniformity, the following identity names, in alphabetical order, have been adopted for this report.

African American A person having origins in any of the black racial groups of Africa.

American Indian A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition. This term is adopted to include Alaskan Natives.

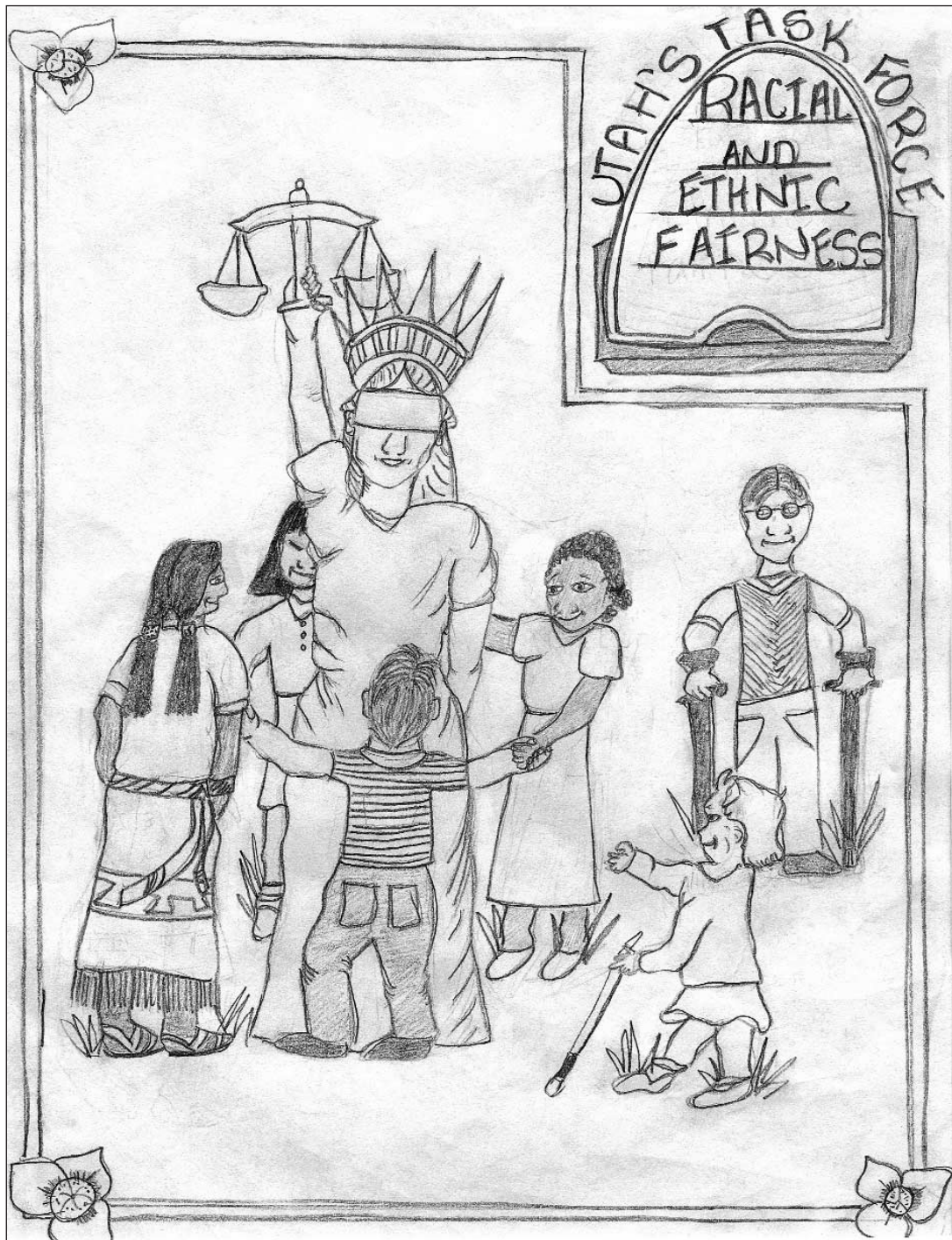
Asian American A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent. This area includes, for example, China, India, Japan, Korea and the Philippine Islands.

Hispanic A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

Pacific Islander A person having Polynesian, Melanesian and Micronesian ethnic origin. Polynesians include persons from Tonga, Samoa, Hawaii, New Zealand, and Tahiti. Melanesians include persons from Fiji, Solomons, Vanuatu, New Caledonia, and Papua New Guinea. Micronesians include persons from Guam, Marshall, Federated States of Micronesia, Marianas, and Palau.

White A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Minority For the purposes of this report, a person whose predominant racial and ethnic origins do not fall within the term White, as defined above. The term is adopted to include only racial and ethnic minorities and people of color.



Artist: Regina Neilson, Age 14, Mantua

Executive Summary

TASK FORCE STRUCTURE AND HISTORY

The Task Force was commissioned by the Judicial Council on March 6, 1996 to examine issues of racial and ethnic fairness within Utah's criminal and juvenile justice system. The Judicial Council appointed a diverse membership to reflect the perspectives of both those who administer the criminal and juvenile justice systems as well as the various minority communities. Membership included judges, law enforcement officials, prosecution and defense attorneys, corrections officials, juvenile corrections officials, and members of many of Utah's minority communities. The Task Force was chaired by then Chief Justice Michael D. Zimmerman. Day-to-day operational management was in the hands of Third District Court Judge Tyrone E. Medley and John T. Nielsen, senior counsel to Intermountain Health Care and chairperson of the Utah Sentencing Commission, who co-chaired the effort.

The mission statement of the Task Force was developed by its members through an involved process of consensus building. A premise fact accepted by the Task Force was that minorities are disproportionately overrepresented at virtually all stages of the criminal and juvenile justice systems. The reason for this overrepresentation was a principal concern of the task force. Because of the diverse perspectives the members brought to their assignment, there was considerable difference of opinion as to whether racial and ethnic bias exists within our criminal justice system, and the role any such bias has in the disproportionate representation of minorities in the system. Consequently, the Task Force's mission statement, adopted on September 25, 1997, is set forth below.

The Utah Task Force on Racial and Ethnic Fairness exists to organize and lead the effort to honestly examine and address real and perceived bias toward racial and ethnic minorities within Utah's criminal justice system. The Task Force shall conduct necessary research, develop and disseminate findings and recommendations, advancing and advocating in all quarters for the implementation of those recommendations.

The primary activities of the Task Force shall include:

- 1. Research: The identification and utilization of appropriate research methods, the collection and evaluation of the data to determine the extent to which race and ethnicity affect the dispensation of justice through explicit bias and implicit institutional practices. Methods may include, but are not limited to, the utilization of prior studies, surveys, public hearings, focus groups, and the evaluation of existing policies.*
- 2. Findings: The publishing of findings of the data gathered as a result of the Task Force's assessment. Findings will be published in a final report to the Judicial Council, with preliminary findings available via interim progress reports to the Judicial Council.*
- 3. Recommendations: The creation and publishing of recommendations for all aspects of the legal system, including appropriate agencies, community groups, and private citizens to ensure equal access to justice. Recommendations shall include appropriate strategies for implementation as recommended by the Task Force.*
- 4. Partnerships: The development of partnerships both in the legal system and in the broader community to assist in the efforts of the Task Force to include a broad cross-section of Utah's communities, particularly its ethnic minority communities, both in the fulfillment of its mission and in ensuring the implementation of its findings.*

Partnerships

The creation and maintenance of partnerships was not only an express part of the Task Force's mission statement but also critical to its ability to have an impact on the justice system in Utah. Different types of partnerships emerged in the Task Force's work. The first critical partnership was the creation of a solid working task force, despite members' differing perspectives and approaches. A second type of partnership involved the collaboration of agencies and individuals to produce the data samples and research protocols that made the Task Force's research possible. A third and perhaps the most significant partnership created by this effort has been between the Task Force and the community. An obvious example of this partnership is the public hearing effort. Public hearings were hosted by community based organizations, tribes, multi-ethnic committees, ethnic community groups, and even individuals. The process of working together to stage the hearings was both a learning experience for the Task Force as well as a positive experience of building bridges between various perspectives. Ongoing efforts to communicate with our partners continue to nourish these established partnerships.

All of the partnerships established by the Task Force are vital to future efforts to ensure racial and ethnic fairness. Without the support of both of these segments of society, the Task Force cannot hope to succeed. To achieve equal justice, we must work together, challenging current paradigms and practices and providing the necessary education to both system professionals and community members.

STATEMENT OF THE PROBLEM

While the Task Force's efforts have focused attention on the need to assure racial and ethnic fairness in the criminal and juvenile justice system, Task Force members recognize that this is only one step on the road toward equal justice. Perceptions of inequity and minority distrust of the system, along with reported incidents of cultural insensitivity by those administering the system, combine with the fact that a disproportionate number of minorities are represented at almost every stage of the criminal and juvenile justice system to present challenges to both the justice system and society at large. Task Force members believe that by providing a plan of action to which its diverse membership is committed, and to which it is hoped members of the broader public can subscribe, Utah will make further progress toward the goal of both perceived and real equal justice for all.

Perception Versus Reality

A significant part of the Task Force's deliberations involved the discussion of the perception of bias versus the reality of bias.

On the perception front, Task Force members were told that many in the minority community believe that there is widespread racial and ethnic discrimination within the justice system, and that this is a deeply held belief. This raised several questions for the Task Force. First, how widespread and deeply held is this perception? Second, how does its mere existence affect the justice system? And finally, can the truth of the perception be determined?

On the reality front, the Task Force started with the fact that minorities are disproportionately represented at each stage of the justice system. Importantly, overrepresentation increases incrementally as one progresses through the system, resulting in greater disproportionality at incarceration than at arrest. An aim of the Task Force was to determine whether the cause of this overrepresentation can be ascertained with certainty. One hypothesis is that crime is driven primarily by socio-economic factors, with criminal conduct being linked to low socio-economic status. Because minorities have historically tended to be overrepresented in the lower end of this spectrum, it should be expected that minorities will be overrepresented in the criminal justice system. Actual bias in the administration of justice is not the cause of this overrepresentation. An alternative hypothesis is that whatever linkage may exist between socio-economic status and crime, that linkage is insufficient to explain the degree of disproportionality present in the system, and particularly the fact that minorities tend to increase in concentration the farther into the system one looks. Moreover, this theory is inconsistent with the common experience of individual members of minority communities of what appear to be specific instances of unequal treatment by those running the justice system. In this view, actual bias is present in the justice system just as it is present in society at large. The Task Force hoped to determine which of these hypotheses was true.

Perceptions of Bias

There is an ongoing public debate about whether perceptions of bias are significant. The Task Force maintains that perceptions of bias are significant and worthy of direct attention. First, individual perceptions, to the extent that they are based on personal encounters with the system, may provide significant anecdotal evidence of actual bias in the administration of the system. Second, even if actual

bias cannot be shown to exist, the perception of bias in Utah's criminal and juvenile justice system constitutes a public relations problem, where the system's efforts to provide equal justice are at best unacknowledged, and at worst, subverted by inaccurate perceptions. This is because the justice system depends in large part on public acquiescence in its claims of legitimacy. This claim depends in significant part upon the system operating fairly, treating those with similar situations in a similar manner. Therefore the system's efficacy is undermined when any significant portion of the public rejects those claims of fairness and legitimacy. Administering the criminal justice system within that portion of the public is at risk of becoming primarily a matter of asserting power rather than earning the public's respect.

Real Bias

The Task Force looked for evidence of real bias by an examination of the system for statistically significant outcomes that varied by race and ethnicity. Such an effort requires analysis of the experience of large numbers of Utahns with the justice system. To do this, the Task Force had to examine database samples to attempt to establish the existence and extent of any real bias. This focus on systemic disparities of treatment between minorities and non-minorities was not intended to dismiss the importance of individual instances of intentionally discriminatory treatment, as well as cultural insensitivity. However, the Task Force considered at least as important the question of whether the system as a whole operates so as to discriminate against minorities, even if many individual decision makers within the system do not appear to be acting with an intent to discriminate. A primary aim of the Task Force is to find ways to make the system more able to administer equal justice for all regardless of race and ethnicity.

Data Challenges

One of the largest challenges facing the Task Force has been the limitations of data for the purposes of research and examination. Throughout its work, the Task Force encountered one or more of the following barriers to doing adequate research.

- *Low frequency with which race data is entered in database fields.*
- *Questionable reliability of race data in existing databases.*
- *Low frequency with which race data is collected.*
- *Policy changes.*
- *Utah population size.*
- *Challenges of coordination between segments of the system.*

Taken together, the data challenges made aspects of the Task Force's research, particularly its statistical research, difficult, time consuming, and at times, ultimately frustrating. One of the specific goals of the Task Force was to attempt to determine those points in the process where decisions are made that sort out minorities for harsher treatment and to look closely at data about those decisions. Unfortunately, the lack of consistently collected comparable and relevant data made any such analysis very difficult. This meant that the Task Force was unable to answer with any certainty the question of

why minorities are increasingly represented the further one proceeds through the system. Because this question is at the core of the differing perceptions held by various groups and individuals about the presence of racial and ethnic bias in the justice system, the Task Force firmly believes that there must be a strong ongoing commitment to look into the issue. To do that, a much better job of data collection must be done throughout the system. The importance of this effort cannot be overstated. Ultimately, the ability to conduct meaningful research and to gain some clear empirical understanding of what is happening within the system to racial and ethnic minorities depends upon the system's willingness and dedication to collect these data in a usable, consistent, researchable fashion. Finally, Task Force members also underscore that the mere process of tracking data itself sensitizes those who are making decisions in the system, often resulting in less disparity over a period of time.

Needs Assessment

The Task Force conducted a number of different research projects regarding real and perceived racial and ethnic bias. While individually the studies have interesting aspects, what is most significant to the work of the Task Force is how the studies interrelate and combine to yield a needs assessment of the criminal and juvenile justice system as it relates to racial and ethnic fairness. This needs assessment is presented in the following thematic sections: Workforce: Recruiting/Hiring, Training, Interpreting, Community Resources/Outreach, Complaint Processes, Administration, Data, Research, and Media. Please refer to the full report for detailed information about the supporting research results as well as individual recommendations targeted at specific entities. Also contained in the main body of the report are *What's Being Done* sections, which acknowledge some current efforts to address issues of racial and ethnic fairness in the criminal and juvenile justice system in Utah.

The Task Force's research projects are listed below:

- *Adult System Research*, by Social Research Institute, University of Utah (SRI)
- *Community Resources Committee Report*
- *Courts Committee Report*
- *Disproportionate Minority Confinement Committee Report on the Juvenile Justice System*
- *Research Proposal Outlines for Further Study*, by SRI
- *Interviews with Women of Color in the Legal Profession on Racial and Ethnic Fairness in the Legal System*, by Nicholas Woolf, M.A.
- *Law Enforcement Data Collection Proposals*, by SRI
- *Minority Overrepresentation in the Utah Juvenile Justice System*, by SRI
- *The Perceptions and Experiences of Female Attorneys of Color in Utah's Judicial System*, by Yvette Donosso Diaz, J.D.
- *Perceptions of Racial and Ethnic Fairness in the Criminal Justice System: Listening to Utahns, A Client Committee Report on the Public Hearings*
- *Pre-Adjudication Committee Report*
- *Post-Adjudication Committee Report*

- *Representation Committee Report*
- *Report on Interviews with Attorneys and Judges on Racial and Ethnic Fairness in the Legal System*, by Nicholas Woolf, M.A.
- *Report on the Public Hearings of the Utah Task Force on Racial and Ethnic Fairness in the Legal System*, by Nicholas Woolf, M.A. and SRI
- *Salt Lake County Jail bookings data analysis*, by John Collette, Ph.D and Terry Allen, Ph.D.
- *Victims research*, by Professors Linda F. Smith and Paul G. Cassell, University of Utah College of Law

Workforce: Recruiting/Hiring

A number of factors make workforce diversity a complex issue. First, comparison numbers are problematic. The Task Force considered several possible comparison data sets, including comparing workforce composition to the general population, to the eligible workforce, and to the composition of the client base. Second, even when the best comparison numbers are determined, accurate data are often difficult to locate. Data are not necessarily kept and thus create a problem in determining baselines as well as progress in this area. Third, employment issues can make it difficult for some agencies to maintain adequate employment levels let alone achieve racial and ethnic diversity. At the same time, the Task Force believes that there is much that agencies can do to broaden their recruitment efforts to minority communities in ways that might help overcome other employment issues.

Given these challenges, the Task Force still attempted to collect workforce composition data. While results from individual segments of the justice segment vary in their inclusion of minorities (see main report), the criminal and juvenile justice system workforce as a whole is not representative of the Utah population nor of the population served. Perception data corroborates this need as well, showing that both the public and participants within the system (e.g., judges, attorneys, community program staff) believe that increased workforce diversity would help alleviate problems and potential problems related to racial and ethnic bias.

In addition to workforce composition, there is the issue of recruitment of minorities. In most instances, the criminal and juvenile justice system as a whole does not make an active, concerted effort to recruit, hire, retain, and promote minorities. A common response to Task Force inquiries was simply that minorities choose not to apply for positions. Task Force members believe that most entities, governmental and private, could become more proactive in this area, and its recommendations encourage agencies to begin collaborating with communities to increase their abilities to recruit a diverse applicant pool.

One Task Force sponsored analysis of the public hearing transcripts states that, “[s]trong and frequent requests were expressed for increased minority participation in all facets of the justice system: police, attorneys, judges, review boards, and administration. Representation came closest to being seen as the silver bullet that would ease unfairness system-wide, a single solution to the varied problems expressed.”¹ While it is doubtful that any singular change will have such a great impact, this issue of workforce diversity and recruiting of minorities to full participation in the criminal and juvenile justice system is a significant one for the full Task Force.

THEME Recommendation: To assist the criminal and juvenile system in ensuring that the system is responsive to the culture and language needs of minorities and is accessible to those who utilize it, all entities should have a workforce that includes minorities within their job groups. Recruiting and hiring should be based on requisite skills. All entities should assure nondiscrimination in all conditions of their employment practices.

Training

Much of the Task Force's work led it to make training recommendations. Members viewed the lack of cultural competency training as a problem in and of itself. In addition, training became a potential remedy for other problems noted in the system (e.g., insensitive comments, stereotyping, workforce diversity inadequacies). Not all of this section's recommendations are for cultural competency training (see main report). Some relate to the appropriate use of interpreters, immigration matters, and psychological evaluations. However the bulk are about the issue of culture.

As mentioned in the Definitions section of this report, cultural competency is defined as a "deeper knowledge/understanding of the dimensions of diversity that enable individuals to build and implement necessary skills to be more effective in a culturally diverse environment." Culturally competent individuals appreciate differences, are aware of their own cultural values and biases, and can communicate effectively across diverse populations. The Task Force expressly does not advocate a singular position in terms of culture or political outlook. *Training should provide exposure to different perspectives, backgrounds and cultures, not advocating or mandating certain thoughts, but rather providing skills with which to work effectively within increasingly diverse environments. The goal is not to have all people in the workplace agree on lifestyle, culture or political thought, but rather to provide exposure to different approaches and skills regardless of personal values and lifestyles.*

The Task Force finds that while many segments of the justice system offer diversity training, either as a part of initial training or as an occasional subject for elective training, few if any, offer ongoing, mandatory training aimed at providing cultural competency skills. The need for this training can be found in the Task Force's research results.

For example, the report analyzing the public hearing transcripts notes that "the overall sense of the stories is that unfair and oppressive treatment is pervasive, long standing, and getting worse."² The report found that "[e]ducation and training were repeatedly proposed as the way to bring about change. Two separate themes emerged: transformation, that is, education to transform the values, attitudes, and behavior of both discriminators and discriminatees; and information, to level the playing field that is currently heavily tilted against minorities who do not have the necessary knowledge about the justice system to act in their own self interest."³

A similar report based on interviews with Utah attorneys and judges found that the attorneys tended to believe that "racism is pervasive in the justice system, and is often subtle, denied, or hidden," whereas the judges revealed the stated ethos that "courts are fair to minorities, and the contradictory views of various other groups are only perceptions and alternative perspectives that may be understandable, but contrast with reality as they see it."⁴ Nonetheless, comments from a judge and an attorney proposing judicial training to address issues related to cultural sensitivity are included in the

report. A final example is a survey of administrators of community resource programs that yielded comments demonstrating training needs. When asked if respondents had personally observed racial bias in the last three years, several comments cited the behavior of individual judges.

THEME Recommendation: Every segment of the criminal and juvenile justice system should have appropriate and continuous training aimed at achieving cultural competency to help ensure racial and ethnic fairness. Existing resources, such as the joint council chairs of the State Offices of Ethnic Affairs and other diversity and multi-cultural programs throughout the state, should be utilized in the development of such training.

Interpreting

In the area of interpreting, the Task Force has relied on the findings of several subcommittees.

- The Pre-Adjudication Committee found that, “[a]t present, law enforcement agencies are not prepared for or capable of taking care of non-English speaking citizens adequately,” and “[t]he problem of competent interpreters as it now exists will be compounded by the continued growth of non-English speaking minorities.”⁵
- The Representation Committee found that the lack of interpreters and the quality of interpreting result in injustice for some limited-English proficient minorities.⁶
- The Courts Committee report had a section on Translation/Interpretation/Language Barriers. They found that “the Administrative Office of the Courts has been very active in the court interpreter field.” The Committee noted a lack of interpreters available in a sufficient number of languages outside of the Salt Lake area and no Utah certification program for spoken languages other than Spanish. The committee also noted a lack of court employee appreciation for the role of court interpreters.⁷
- The Juvenile Disproportionate Minority Confinement Committee found that interpreters are often not available to law enforcement and other agencies outside of the court system.⁸ In addition, they found that “non-English speaking parents who don’t receive adequate understanding of the charges and/or sentencing are hampered in helping their child be successful either through the court process or post-adjudication.”⁹ The SRI research on the juvenile justice system report found that in staff focus groups, juvenile justice professionals “asserted that bias occurs due to language barriers. That is, when staff are not able to speak the language of the youth and their families, youth do not receive fair treatment.”¹⁰
- The Community Resources Committee found that language barriers impede access to services, as in-patient treatment programs do not exist in Utah for individuals who do not speak English.¹¹

Other Task Force research further supports the need for improved interpreting services. For example, the public hearing transcript analysis notes categories of participant statements such as “experiences of lack of access due to language barriers included the critical role of interpreters in communicating effectively with the justice system,” and “general experiences of lack of access caused by

language barriers.”¹² Major concerns regarding interpreters included the distinction between bilingual and bicultural interpreters, the lack of qualified interpreters, and the reluctance of police and courts to make special accommodations for those with language barriers.

The report on the attorney and judges interviews echoes this language barrier problem. Judges were very concerned about issues of interpreters and interpretation mentioning “the impossibility of fully compensating for a lack of English speaking skills; the need for interpreters to understand the culture as well as the language; the varying quality of interpretation; and the difficulties of reliably providing interpretation.”¹³ One report on interviews with women of color attorneys found that “language barriers were a big concern of the participants. The participants felt that judges ‘shut down’ and are disrespectful to people who are obviously of different ethnic or racial background, especially when there is a language barrier.”¹⁴

Finally, the Pre-Sentencing process report by SRI found that interpreters used by Adult Probation & Parole are from the same pool of interpreters used by the courts. While investigators expressed confidence in the quality of interpretation, they acknowledged that interpreters are often not of the same cultural background as the defendant which could cause “misrepresentation of information to an investigator.”¹⁵ Investigators also acknowledged that pre-sentence reports written via an interpreter are often shorter and with fewer “collateral contacts” than those where an interpreter is not needed.¹⁶ For example, the report states, “it is often the case that an interpreter will hear several paragraphs of dialogue from a defendant, and then respond to the investigator with a few short sentences.”¹⁷ Ultimately, the report recommends that “services for interpreters should continue to be a top priority for AP&P. Language barriers are recognized, but only sufficient numbers of interpreters can reduce the language barrier.”¹⁸

THEME Recommendation: All criminal and juvenile justice system entities should provide quality interpreting to those with limited English proficiency.

Community Resources/Outreach

A major focus of the Task Force’s work, both in its research and its work to build partnerships, has been related to Community Resources and Outreach. Much of the research has pointed to a serious “disconnect” between communities of color and the justice system. The need for better communication and information flow between these groups constitute a significant portion of the recommendations of this report. The recommendations below address three major categories of Task Force findings.

- There is a significant need for public education about the criminal and juvenile justice system.
- There is a lack of mechanisms in the justice system to encourage full participation by racial and ethnic minorities.
- There tends to be inconsistent and often inadequate cooperation and collaboration between system and community entities.

THEME Recommendation: Educational and informational efforts by all are needed to ensure racial and ethnic fairness and representation in the criminal and juvenile justice system.

Complaint Processes

Research related to complaint processes significant to the Task Force emerged as a result of the public hearing process. The Task Force then conducted research into the complaint processes of law enforcement agencies.

Public hearing participants raised multiple concerns about law enforcement complaint processes at numerous hearings. Participants expressed concerns that ranged from a lack of feedback or inadequate feedback from agencies after filing a complaint, to a concern about never being contacted to provide testimony, to concerns about a lack of meaningful civilian or public input into the process, to feelings of intimidation and fear of harassment that kept individuals from filing complaints. While the purpose of the hearings was not to establish fact but rather perceptions, the frequency of the comments raised the concern of several Task Force members both about the public's knowledge of how complaint processes work as well as the actual process itself.

The Task Force also collected information on complaint processes via its comment period. The Task Force received written comment from several law enforcement entities in the state. Some of these agencies submitted their views regarding the complaint processes, both expressing concern about some of the proposed Task Force recommendations and providing information about its current process. Factual information about the current practices of law enforcement, submitted during the comment period, are included in the *What's Being Done* sections in the main body of this report.

The Task Force faced a number of challenges in making constructive recommendations in this area. Part of the difficulty stems from the fact that law enforcement agencies fall under almost as many sources of authority as there are different agencies. Municipal police departments, county sheriff's offices and statewide law enforcement are all independent from one another and have a vast range of sizes, resources, and jurisdictions. These variations in law enforcement are compounded by rural versus urban differences and ultimately make it difficult to recommend improvements that will be both viable and helpful. For instance, while a recommended solution may work well in an urban environment, it may be less cost effective, or even less constructive to implement in a rural setting. The Task Force believes that complaint processes can be improved despite these variations. And its members felt strongly enough about this issue that it chose to address it directly with the recommendations below.

Finally, the Task Force acknowledges that the goal of this section's recommendations, as stated in its overall theme is to make the complaint process user-friendly, allowing individuals to be free from harassment, intimidation and retaliation. The Task Force hopes that reaching this goal will address the perception of little or no confidence that complaints will be adequately addressed and that it will provide law enforcement agencies with a productive mechanism for investigating potential problems.

THEME Recommendation: Complaint processes should be user-friendly, allowing individuals to file complaints in a non-intimidating environment and free of harassment, retaliation and retribution.

Administration

Many of the Task Force's recommendations are administrative in nature, that is, they require policy changes and decisions by management to effect change. Specific recommendations in the main

body of the report address groups such as the Utah Legislature, county and local governments, criminal and juvenile justice system agencies, and the Utah State Bar. As noted by one of its subcommittees, “certain aspects of racial and ethnic fairness in the criminal justice system are best affected by the decisions, attitudes and examples of leadership.”¹⁹

Hate Crimes

As a result of its sponsorship of the *Changing Face of Hate*, a statewide symposium on hate crimes (see *Task Force Structure and History* section for more details), the Task Force received a significant amount of input on this issue, from community groups, individuals, professionals, and national experts. This two-day educational dialogue session revealed an unmet need for a safe and central location for hate crimes prevention and education.

Racial Profiling

Racial profiling by law enforcement has been a major issue for the Task Force. The first mention of racial profiling came during the public hearings. Task Force members are clear that these public hearings were not meant to establish fact, but instead, as the Woolf report states, the public hearings were “explicitly intended to gather and understand people’s perspectives and interpretations of their experience of racial and ethnic bias, rather than to attempt to establish in any objective way whether such bias does or does not occur.”²⁰ While the Task Force has received criticism for relying on this type of research, it should be noted that the report identifies only consistent themes expressed by many people at many hearings.

The public hearing analysis report contains a section specifically addressing profiling as a theme of unfair treatment mentioned during the public hearings. The report states,

Profiling is a term used by many respondents to describe experiences of being stopped, followed, harassed, or singled out of a group by a police officer, on the basis of appearance, without any suggestion that a specific wrongdoing has occurred. Profiling is described as part of the normal, everyday experience of minority life, regardless of social standing or position. Many people indicate that profiling has increased in recent years, and most have accepted profiling as a part of life that must be endured.²¹

In addition to comments made at public hearings, other qualitative Task Force research reveals that attorneys, judges, and juvenile justice system personnel also believe that racial profiling occurs. Due to this preponderance of qualitative input, the Task Force attempted to determine if indeed the existence of racial profiling could be established in Utah.

While many groups and individuals from a variety of different perspectives have attempted to prove whether racial profiling exists, no one has been able to provide conclusive results. The Task Force worked with law enforcement data specialists and chiefs of police from several major urban enforcement agencies in the state to attempt to analyze databases for profiling. A large number of data challenges served as major obstacles that ultimately precluded the Task Force from determining if racial profiling exists.

The Task Force did ask its research consultants to formulate an assessment of each of these agency databases and to determine what data fields would need to be collected in order to conduct a future study of racial profiling in Utah. Consultants also completed an analysis of the Utah Highway Patrol database to determine what data would need to be collected and which of these fields are already being collected.

The topic of racial profiling exists nationwide. It is also a controversial, divisive topic. The existence of racial profiling in Utah is still hotly debated among Task Force members. However, all Task Force members agree that law enforcement administrators and directors should not tolerate police conduct in decision making that is based solely on race or ethnicity. Task Force recommendations on this issue are aimed at helping to ensure that racial profiling does not have the sanction to exist here in Utah.

Legal Representation

The quality of legal representation was raised repeatedly in the research. The public hearings noted a “lack of professional standards of representation” as well as an “unavailability to minorities of private attorneys due to unaffordability, and the unavailability of interest and concern from public defenders. Two separate forms of unfairness were thus coupled and intensified: unfairness due to low economic status, and unfairness due to the apparent lack of interest in the fate of minorities in the current public defender system.”²²

In the juvenile justice study by SRI, system personnel concurred, saying that “because minority youth are often from lower-income families, they may have inadequate representation in court. According to staff, such legal representation results in more severe dispositions for minority youth.”²³ While the Representation Committee’s survey of attorneys regarding caseloads did not yield strong feelings of negative impact upon minorities, the Committee did find that the “impact of a lack of resources on rural public defenders points to a disparate impact upon the adequate representation of racial and ethnic minorities because the percentage of minorities in several rural counties is higher than that of the state as a whole.”²⁴

Adjudication

The sentencing process received considerable attention by the Task Force. The Social Research Institute (SRI) assessed the pre-sentence investigation (PSI) process. The report established areas of the process that had potential for bias: first, the lack of adequate workforce diversity of pre-sentence investigators yields the potential for less cross cultural experience and thus the possibility of bias, and second, the lack of cultural competency training for contract pre-sentence investigators. Additionally, the report noted that feelings of mistrust for the investigator, feelings that may result from cultural difference, could cause a defendant to be reluctant to reveal personal history information that could in turn hurt the defendant’s sentencing outcome to a certain degree.

Since judges tend to follow the recommendations of the pre-sentence report approximately 90 percent of the time,²⁵ the Task Force sees this process as critical to ensuring racial and ethnic fairness in sentencing. An analysis comparing pre-sentence investigation recommendations to Utah sentencing

guidelines and to the actual sentence imposed formed a focal point of the research on sentencing. One of the challenges of this analysis was the small sample size. When controlling for the effect of criminal history and types of offense, the resulting numbers for comparison were often too small to draw statistically reliable results. However, there were some instances that allowed for analysis. The analysis looked for agreement and disagreement between the pre-sentence recommendation, the sentencing guidelines, and actual sentences and found the following:

- *When comparing the three largest offense categories: property, drug, and sex crimes for the least severe 3rd degree crime and the least serious criminal history, very little difference existed between the pre-sentence investigation recommendation and the actual sentence. Almost all of the individuals, regardless of race, received probation.*
- *There appears to be a high level of agreement between the PSI recommendations and the actual sentence for both minorities and Whites (89.2% and 93.0%).*
- *There is significantly less agreement between the pre-sentence recommendations, sentencing guidelines, and the actual sentence for minorities than Whites.*
- *In the Third Judicial District, judges tend more often than in other locations to depart from the pre-sentence recommendation made by Adult Probation & Parole (AP&P) for minorities.*

In light of these findings, however preliminary, the importance of a non-biased pre-sentence investigation process becomes paramount.

Juvenile Justice

Recommendations related to the administration of juvenile justice in Utah have their origins in issues raised at public hearings and in research conducted by the Social Research Institute (SRI). Statements at public hearings included those that expressed “the improper bypassing of parents in juvenile situations,”²⁶ “despair at not being heard by the system,”²⁷ and “extreme powerlessness in the face of a justice system they did not understand, that did not understand them, and in which the power differences between themselves and those in authority were so great that resignation and inertia seemed to be the only rational responses.”²⁸

THEME Recommendation: All components of the criminal and juvenile justice system should not tolerate racial or ethnic bias or discrimination in their agency. All such agencies should evaluate their policies and procedures for any disparate impact upon minority populations.

DATA

The recommendations contained in this section of the report respond primarily to research obstacles that the Task Force encountered in the course of its work.

Discussions of Data Need

The Task Force held extensive discussions on the need for racial and ethnic data in the criminal and juvenile justice system. It must be acknowledged that there are risks inherent to collecting such data.

The collection of such data can potentially be misused in situations that could result in increased racial bias. The collection of data can sometimes serve to inflame situations of contact between staff and clients (i.e., police - citizen contacts), or at least draw attention to issues of race where none may exist. Task Force members were acutely aware of these risks in their discussions. In addition, some criminal and juvenile justice system members of the Task Force stated their reluctance to collect such data based on their understanding that it was improper to do so. The discussions yielded the following agreements about the collection of race data.

1. Members reached the agreement that *the need to collect the data outweighs the risks associated with collection*. Minority Task Force members stated the importance of understanding the problem at the same time as they urged that necessary precautions be taken to guard against improper use of the data.
2. The group agreed that *race and ethnic data should be kept separate from the decision making process*. For example, race data should be kept on hiring applications but should be separated from the application prior to review by the supervisor. Therefore, data is kept for tracking and research purposes, not staff decision making purposes.
3. *Racial and ethnic community leaders stated their desire that this data be collected and expressed their ongoing interest in knowing what the information yields about the status of race and ethnic fairness.*
4. *The tracking of data often results in increased sensitivity by decision makers in the system, as it raises the consciousness level about the issue. This increased awareness can result in changed behaviors over time.*

With community leaders participating in the Task Force process and the ongoing tracking and interpretation of the data, the Task Force agreed that the collection of race and ethnic data was worth pursuing.

THEME Recommendation: Data collection of race and ethnicity is necessary for accurate understanding of racial and ethnic fairness in the criminal and juvenile justice system. The entire criminal and juvenile justice system must make a commitment to the proper collection of racial and ethnic data for the sole purpose of system-wide research. All efforts to collect race and ethnicity data should be kept for data purposes alone, and necessary precautions should be taken to ensure against improper use of the data.

Research

The research recommendations contained in this report are designed to promote future studies in the area of racial and ethnic fairness. Some studies require changes to data collection practices before completion, as noted in the *Data* section of this report. Other studies can be done immediately and are recommended as follow-up to Task Force research. In several instances, the lead agencies of the recommendations have already indicated their willingness to conduct such research. In a few other instances, actions are already being taken. In such cases, that progress is noted in a *What's Being Done* sidebar.

The main body of the report outlines specific studies that it recommends be conducted. In addition, the Social Research Institute created research protocols and outlines for potential future studies to determine if racial and ethnic bias is present in segments of the system.

THEME Recommendation: Further research in the criminal and juvenile justice system is necessary for a full understanding of the existence or extent of racial and ethnic bias.

Media

While none of the research expressly requested information related to the impact of the media on racial and ethnic fairness in the criminal and juvenile justice system, two studies contained segments that mentioned the media specifically. In the report on the attorney and judges interviews, “[t]he most common explanation for the lack of will in eliminating racial unfairness was the effect of selective media coverage of crime.”²⁹ And in the SRI research report on the juvenile justice system, the focus groups of system professionals indicated that participants “felt that media create negative attitudes toward minority individuals because of the tendency to exaggerate the crimes committed by minorities.”

Task Force members have also discussed the impact of the media on its own work. Members expressed concern regarding the superficial coverage that tends to be given to issues of race and ethnic fairness versus the seriousness and complexity of the issues at hand. The tendency of this issue to yield tantalizing but unproductive sound bites renders sincere efforts vulnerable to misunderstanding. For these reasons and given these research results, the Task Force makes the following recommendation to the media.

THEME Recommendation: Media representatives should exercise care so that their reporting does not perpetuate divisions, increase tensions and create misunderstanding about issues related to race and ethnicity in the criminal and juvenile justice system.

PLAN OF ACTION

The members of the Task Force believe that while its work has been successful at raising the level of awareness in Utah about the importance of the issues under examination, the key to success is the implementation of its many recommendations. Crucial to that implementation is the creation and support of an implementation process that has the participation and support of the entire criminal and juvenile justice system in Utah and, equally important, support by Utah’s ethnic communities. By unanimous vote, the Task Force has chosen to support the implementation proposal outlined below.

Implementation Recommendation

The Task Force proposes the creation of a Commission on Racial and Ethnic Fairness in the Criminal and Juvenile Justice System. This body would no longer be solely commissioned by the Judicial Council but would be a collaborative partnership among criminal and juvenile justice system entities and community based organizations in Utah. The Commission would require funding from the Utah Legislature and would have the following elements:

- The Commission would be a stand-alone entity, sponsored by the Judicial Council for the purpose of administrative support by the Administrative Office of the Courts, but would report to the Council just as it would report to any of the other participating entities.

- Membership would include representatives from the entities responsible for implementation (i.e., criminal and juvenile justice system agencies, community based organizations).
- A resolution would be signed by all member agencies to ensure ongoing participation.
- The Commission would publish an annual report to update the public on its progress toward implementation of the Task Force's recommendations.
- Each member agency would be responsible for implementing its own recommendations from this Task Force report.
- Ethnic community organizations would elect members of their choice to represent them on the Commission.
- The Commission would have subcommittees to oversee implementation of system-wide efforts (i.e., cultural competency training, data coordination, public outreach).
- The Commission would conduct an annual evaluation of its efforts including ongoing modifications for improvement and the viability of community sponsorship in 3-5 years.

The above proposal has both participation from key participants in the system and representation from Utah's ethnic communities. Public accountability of the Commission has been written into the proposal by the publication of an annual report that will enable Utahns to assess the level of energy put toward the system changes and provide a tool for continued advocacy by concerned citizens.

CONCLUDING REMARKS

The Task Force recognizes the importance of continued commitment by all segments of society to ensure that these recommendations become institutionalized and equal justice is assured. In fact, the Task Force encourages and requests both its members and those who are watching its work and progress to continue the encouragement necessary to help ensure successful implementation. Systems of government can and should continue to improve, with issues of fairness being of paramount importance. Much of this report addresses the importance of government action and recommends specific action. Indeed, some of these issues are already in the process of positive change. However, the impetus for continued improvement is often generated by consistent public feedback. The voice of Utah's minority communities is essential in this ongoing dialogue. The Task Force hopes that the public, through a variety of means, including community based organizations, private individuals, community groups, churches, tribes, law firms and professional associations, continue to hold this effort toward racial and ethnic fairness in the public light where it belongs.

Task Force Structure and History

The Task Force was commissioned by the Judicial Council on March 6, 1996 to examine issues of racial and ethnic fairness within Utah's criminal and juvenile justice system. The Judicial Council appointed a diverse membership to reflect the perspectives of both those who administer the criminal and juvenile justice systems as well as the various minority communities. Membership included judges, law enforcement officials, prosecution and defense attorneys, corrections officials, juvenile corrections officials, and members of many of Utah's communities of color. The Task Force was chaired by then Chief Justice Michael D. Zimmerman. Day-to-day operational management was in the hands of Third District Court Judge Tyrone E. Medley and John T. Nielsen, senior counsel to Intermountain Health Care and chairperson of the Utah Sentencing Commission, who co-chaired the effort.

The mission statement of the Task Force was developed by its members through an involved process of consensus building. A premise fact accepted by the Task Force was that minorities are disproportionately overrepresented at virtually all stages of the criminal and juvenile justice systems. The reason for this overrepresentation was a principal concern of the task force. Because of the diverse perspectives the members brought to their assignment, there was considerable difference of opinion as to whether racial and ethnic bias exists within our criminal justice system and the role any such bias has in the disproportionate representation of minorities in the system. Consequently, the Task Force's mission statement, adopted on September 25, 1997, is set forth below.

The Utah Task Force on Racial and Ethnic Fairness exists to organize and lead the effort to honestly examine and address real and perceived bias toward racial and ethnic minorities within Utah's criminal justice system. The Task Force shall conduct necessary research, develop and disseminate findings and recommendations, advancing and advocating in all quarters for the implementation of those recommendations.

The primary activities of the Task Force shall include:

1. *Research:* *The identification and utilization of appropriate research methods, the collection and evaluation of the data to determine the extent to which race and ethnicity affect the dispensation of justice through explicit bias and implicit institutional practices. Methods may include, but are not limited to, the utilization of prior studies, surveys, public hearings, focus groups, and the evaluation of existing policies.*
2. *Findings:* *The publishing of findings of the data gathered as a result of the Task Force's assessment. Findings will be published in a final report to the Judicial Council, with preliminary findings available via interim progress reports to the Judicial Council.*

3. *Recommendations:* The creation and publishing of recommendations for all aspects of the legal system, including appropriate agencies, community groups, and private citizens to ensure equal access to justice. Recommendations shall include appropriate strategies for implementation as recommended by the Task Force.
4. *Partnerships:* The development of partnerships both in the legal system and in the broader community to assist in the efforts of the Task Force to include a broad cross-section of Utah's communities, particularly its ethnic minority communities, both in the fulfillment of its mission and in ensuring the implementation of its findings.

Subcommittee Structure

In order to complete its research mission, the Task Force relied in part upon the work of its subcommittees. These subcommittees were created in an effort to bring a larger and more diverse group of perspectives to the issues and to bring particular expertise to bear on discrete parts of the system. The Task Force chose a subcommittee structure that was departmentalized along the procedural stages of the justice system. There were seven subcommittees, plus an Operations Committee which provided oversight and coordination to the full Task Force. Operations Committee members were: Daniel J. Becker, Susan V. Burke, Judge Tyrone E. Medley, John T. Nielsen, Lee E. Teitelbaum (resigned), and Judge William A. Thorne. The subcommittees with their respective charges are:

- Pre-Adjudication Committee: to examine those segments of the criminal justice system that occur prior to any appearance in court, with a primary focus on law enforcement;
- Representation Committee: to examine the criminal justice system after arrest, from charging through disposition, with a primary focus on prosecution and defense;
- Courts Committee: to examine aspects of the criminal justice system that relate specifically to the adjudication process;
- Post-Adjudication Committee: to examine the criminal justice system after sentencing, with a primary focus on probation, parole, prisons and jails;
- Client Committee: to examine and evaluate the experiences and perceptions of offenders, victims and their families regarding racial and ethnic fairness in the criminal justice system;
- Community Resources Committee: to examine referrals to community programs, community resources, with a focus on quality and effect of programs on racial and ethnic minorities; and
- Juvenile Disproportionate Minority Confinement Committee: to examine the juvenile justice system for real and perceived bias due to race or ethnicity.

Subcommittees were generally co-chaired by two Task Force members and included about 15 others selected by the co-chairs and approved by the Operations Committee. Subcommittees assisted the full Task Force in detailing its overall research agenda. They also completed their own research and published reports that included their findings and recommendations. These reports were then submitted to the full Task Force during the fall of 1999 for its review and consideration in putting together the Task Force's findings and recommendations. For a copy of these reports, see website <http://courtlink.utcourts.gov>.

Continuing Education

The Task Force's first efforts focused upon ensuring its members all had common baseline information about the criminal and juvenile justice system and about race and ethnicity issues. Most of these educational efforts consisted of workshops and training sessions for members, staff and, on occasion, subcommittee members. While these educational efforts were concentrated in the early months of the Task Force, ongoing education, particularly through the attendance at national conferences, have continued. A list of major educational efforts by the Task Force follows:

May 1997:	Annual Meeting of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts (select Task Force members and staff)
May/June 1997:	Cultural Sensitivity Training (Task Force members)
December 1997:	Review of Other States' Task Forces (Task Force members)
January 1998:	Introduction to Research Methods (Task Force and Subcommittee members)
January 1998:	Racial Data in Existing Utah Justice System Databases (Task Force members)
March 1998:	Criminal Law and Procedure (Task Force and Subcommittee members)
April 1998:	Annual Meeting of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts (select Task Force members and staff)
April 1999:	Annual Meeting of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts (Task Force staff)
May 2000:	Annual Meeting of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts (select Task Force members)

Hate Crimes Conference and other Task Force sponsored events

The Task Force was involved with various conferences and events designed to raise awareness of its mission and of the broader question of ethnic and racial fairness in the community at large. One of its major efforts was to collaborate with the U.S. Attorney's Office for the District of Utah, Weber State University, and the Simon Wiesenthal Center to offer a statewide conference that educated community members and legal system professionals about hate crimes, hate groups, and hate on the Internet. The two-day conference, called the *Changing Face of Hate: A National Symposium*, was held on May 17-18, 1999

at the Ogden Eccles Conference Center. The second day was devoted entirely to issues related to bias motivated crimes specifically affecting Utah.

In addition to the hate crimes conference, Task Force representatives spoke to numerous groups including the Utah Minority Bar Association, the J. Reuben Clark Law Society, the State Ethnic Affairs Advisory Councils, Utah's Boards of Judges, the Minority Law Student Association at Brigham Young University, and Law Enforcement Administrators and Directors (LEADS). Task Force representatives also participated in the following conferences: Utah State Courts employee conferences, the Tri-State NAACP conference, the annual Utah Correctional Association conference, the Western Bar Association Conference, Corporate Women Lawyers conference, and the Administrative Office of the Courts annual management retreat. Finally, the Task Force sponsored educational opportunities, largely at judicial education conferences, on topics such as racial and ethnic diversity and immigration.

Task Force Research

The Task Force's research efforts had several components. First, the subcommittees conducted their own examinations of the segments of the system around which they were constituted. Second, subcommittees suggested topics for research by the entire Task Force. Finally, the Task Force itself contracted with the University of Utah to conduct research both suggested by the subcommittees and proposed by the Task Force. There were separate contracts for research on juvenile and adult justice system topics.

Juvenile justice research was funded by Title II monies received from the Utah Board of Juvenile Justice and the Commission on Criminal and Juvenile Justice. That research was contracted to Russell K. Van Vleet, M.S.W. of the Social Research Institute (SRI) at the University of Utah. With the input and advice of the Juvenile Disproportionate Minority Confinement Committee (DMC Committee), SRI completed an extensive study that replicated and expanded an earlier study conducted by Jeffery M. Jensen, Ph.D., et al.³⁰ The Jensen study, completed in 1995 for the Utah Board of Juvenile Justice, examined the extensiveness and perceived causes of disproportionality and constituted the first major study of minority overrepresentation in the Utah juvenile justice system. The report included research findings and recommendations for system improvement and for further research. SRI replicated this study to provide a longitudinal analysis and to answer an expanded list of research questions that developed from the prior study. Results were provided to the DMC Committee, from which it then wrote its subcommittee report to the Task Force.

The adult criminal justice system research was contracted to the University of Utah via a competitive bidding process. The research was contracted initially to the Research and Evaluation Program. In June of 1999, the contract was transferred to the Social Research Institute. Russell K. Van Vleet, M.S.W. became the primary investigator and worked with the Task Force to create a reasonable research agenda, given the financial and time constraints of the Task Force, which had an initial target completion date of early 2000. Mr. Van Vleet and his research team then proceeded with its work, with a deadline of late November 1999 for results to be submitted to the Task Force. After the Task Force retreat in December (see below), the Task Force contracted subsequent research with SRI to address additional areas of focus. That expanded research was completed in June 2000.

Retreat

In December 1999, the Task Force held a two-day retreat at Calvary Baptist Church in Salt Lake City. The purpose of the retreat was to hear preliminary research results from the Social Research Institute (SRI) and to discuss the findings and recommendations of the subcommittees to the Task Force. Steve Harrison, Ph.D., reported on the statistical research completed by SRI on the criminal justice system. Bruce Parsons, Ph.D., provided an overview of the qualitative research conducted using the transcripts from the public hearings. And Lynn Holley, Ph.D. presented an overview of the juvenile justice research report completed by SRI. The Task Force also discussed the over 300 findings and recommendations made by the subcommittees. Over the two-day retreat, members eliminated duplications, refined the wording of recommendations, and discussed the merits of conflicting recommendations. Approximately 125 recommendations were approved at the retreat.

Comment Period

At its retreat, the Task Force chose to create a comment period in order to give those entities to which draft recommendations were addressed the opportunity to respond to the Task Force's proposed recommendations. The purpose of this comment period was to ensure as much as possible that the findings and recommendations were factually accurate, struck an appropriate balance between the ideal and the reasonably attainable, and took account of actual practices within the relevant agencies and communities. In February 2000, the Task Force distributed approximately 500 copies of its proposed recommendations along with a request for written comment. Recipients included the Judicial Council, boards of judges, leadership of the Utah Legislature, Task Force subcommittees, state agency heads, community based organizations, law enforcement administrators and directors, media representatives, interested individuals, and others. The addressees were asked to comment on the following:

- 1. The factual accuracy of the premises of the recommendations,**
- 2. The feasibility of implementation of the recommendations, and**
- 3. The current status of implementation of the recommendations.**

By April, the Task Force had received approximately 25 responses to its request, primarily from criminal and juvenile justice system agencies throughout the state. In addition, three individuals addressed the Task Force directly at its March 28, 2000 meeting. The written responses were furnished to all Task Force members and were taken into account during the process of revision of the Task Force's initial recommendations. Final modifications to recommendations were approved by the Task Force on June 22, 2000.

Partnerships

The creation and maintenance of partnerships was not only an express part of the Task Force's mission statement but also critical to its ability to have an impact on the justice system in Utah. Partnerships have enabled the Task Force to engage in its research efforts and are viewed by Task Force members as essential to success in the upcoming implementation phase of its work. Different types of partnerships emerged in the Task Force's work.

The first critical partnership was the creation of a solid working task force. Members come from

many different perspectives and backgrounds, posing challenges of communication and style between and among them. Ongoing additions of new members also posed challenges to developing and sustaining rapport among members. In the summer of 1998, the Task Force added two new members. Occasional resignations due to job changes (e.g., Salt Lake District Attorney, the University of Utah College of Law) also necessitated new appointments. In February 2000, the Task Force again added three new members. Notably, these changes have not appeared to hamper the Task Force's working relationships, as recent votes on the recommendations contained in this report and the implementation plan were unanimous in nature.

A second type of partnership occurred surrounding research efforts. Agencies and individuals collaborated to produce data samples and research protocols that made the Task Force's data collection efforts possible. Despite the data collection and analysis obstacles listed in the sections above, considerable progress was made to bring agencies and groups together to look at issues of racial and ethnic fairness.

A third and perhaps the most significant partnership created by this effort has been between the Task Force and the community. An obvious example of this partnership is the public hearing effort (see *Methods* section). Public hearings were hosted by community based organizations, tribes, multi- ethnic committees, ethnic community groups, and even individuals. The process of working together to stage the hearings was both a learning experience for the Task Force as well as a positive experience of building bridges between various perspectives. Public hearing hosts were the experts on the communities they represent, and the Task Force had, and continues to have, much to learn from these groups. Ongoing efforts to communicate with our partners, by special speaking engagements, by working jointly on specific cases of concern, and by ensuring consistent information flow from the Task Force to our partners continue to nourish these established partnerships.

All of the partnerships established by the Task Force are vital to future efforts to ensure racial and ethnic fairness. Many recommendations in this report refer to ongoing and needed efforts both in the system and in the community. Without the support of both of these segments of society, the Task Force cannot hope to succeed. To achieve equal justice, we must work together, challenging current notions and practices and providing the necessary education to both system professionals and community members.

Statement of the Problem

While the Task Force's efforts have focused attention on the need to assure racial and ethnic fairness in the criminal and juvenile justice system, Task Force members recognize that this is only one step on the road toward equal justice. Perceptions of inequity and minority distrust of the system, along with reported incidents of cultural insensitivity by those administering the system, combine with the fact that a disproportionate number of minorities are represented at almost every stage of the criminal and juvenile justice system to present challenges to both the justice system and society at large. Task Force members believe that by providing a plan of action to which its diverse membership is committed, and to which it is hoped members of the broader public can subscribe, Utah will make further progress toward the goal of both perceived and real equal justice for all.

Perception Versus Reality

A significant part of the Task Force's discussions involved the perception of bias versus the reality of bias.

On the perception front, Task Force members were told that many in the minority community believe that there is widespread racial and ethnic discrimination within the justice system, and that this is a deeply held belief. This raised several questions for the Task Force. First, how widespread and deeply held is this perception? Second, how does its mere existence affect the justice system? And finally, can the truth of the perception be determined?

On the reality front, the Task Force started with the fact that minorities are disproportionately represented at each stage of the justice system. Importantly, overrepresentation increases incrementally as one progresses through the system, resulting in greater disproportionality at incarceration than at arrest. An aim of the Task Force was to determine whether the cause of this overrepresentation can be ascertained with certainty. One hypothesis is that crime is driven primarily by socio-economic factors, with criminal conduct being linked to low socio-economic status. Because minorities have historically tended to be overrepresented in the lower end of this spectrum, at least in part because of racial and ethnic bias in society at large, it should be expected that minorities will be overrepresented in the criminal justice system. Actual bias in the administration of justice is not the cause of this overrepresentation. An alternative hypothesis is that whatever linkage may exist between socio-economic status and crime, that linkage is insufficient to explain the degree of disproportionality present in the system, and particularly the fact that minorities tend to increase in concentration the farther into the system one looks. Moreover, it is inconsistent with the common experience of individual members of minority communities of what appear to be specific instances of unequal treatment by those running the justice system. In this view, actual bias is present in the justice system just as it is present in society at large. The Task Force hoped to determine which of these hypotheses was true.

Perceptions of Bias

There is an ongoing public debate about whether perceptions of bias are significant. *The Task Force maintains that perceptions of bias are significant and worthy of direct attention.* First, individual perceptions, to the extent that they are based on personal encounters with the system, may provide significant anecdotal evidence of actual bias in the administration of the system. Second, even if actual bias cannot be shown to exist, the perception of bias in Utah's criminal and juvenile justice system constitutes a public relations problem, where the system's efforts to provide equal justice are at best unacknowledged, and at worst, subverted by inaccurate perceptions. This is because the justice system depends in large part on public acquiescence in its claims of legitimacy. This claim depends in significant part upon the system's operating fairly, treating those similarly situated similarly. Therefore the system's efficacy is undermined when any significant portion of the public rejects those claims of fairness and legitimacy. Administering the criminal justice system within that segment of the public is at risk of becoming primarily a matter of asserting power.

Real Bias

The Task Force looked for evidence of real bias by an examination of the system for statistically significant outcomes that varied by race and ethnicity. Such an effort requires analysis of the experience of large numbers of Utahns with the justice system. To do this, the Task Force had to examine database samples to attempt to establish the existence and extent of any real bias. This focus on systemic disparities of treatment between minorities and non-minorities was not intended to dismiss the importance of individual instances of intentionally discriminatory treatment, as well as cultural insensitivity. However, the Task Force considered at least as important the question of whether the system as a whole operates so as to discriminate against minorities, even if many individual decision makers within the system do not appear to be acting with an intent to discriminate. A primary aim of the Task Force is to find ways to make the system more able to administer equal justice for all regardless of race and ethnicity.

Literature Review

The Task Force conducted a limited literature review. Staff and Task Force members reviewed the research of task forces from other states. This included an examination of survey instruments and data collection techniques, as well as their findings and recommendations. Subcommittees also looked at relevant research completed by other entities, such as the Sentencing Project, the American Bar Association, RAND,³¹ and the National Judicial Education Program to Promote Equality for Women and Men in the Courts. The Task Force examined past local studies, such as the Equal Administration of Justice report to the Utah Board of Bar Commissioners, and considered current complementary efforts, such as the Tribal/State/Federal Court Forum in Utah. In addition, the Task Force's juvenile justice research included a review of literature and a supplementary review of program responses that addressed the causes and extent of minority disproportionality in the juvenile system, other studies of racial bias, prior research on youth-related risk factors, existing policy responses, existing program responses, and theoretical frameworks from scholars across the nation.

Demographics / Target Population

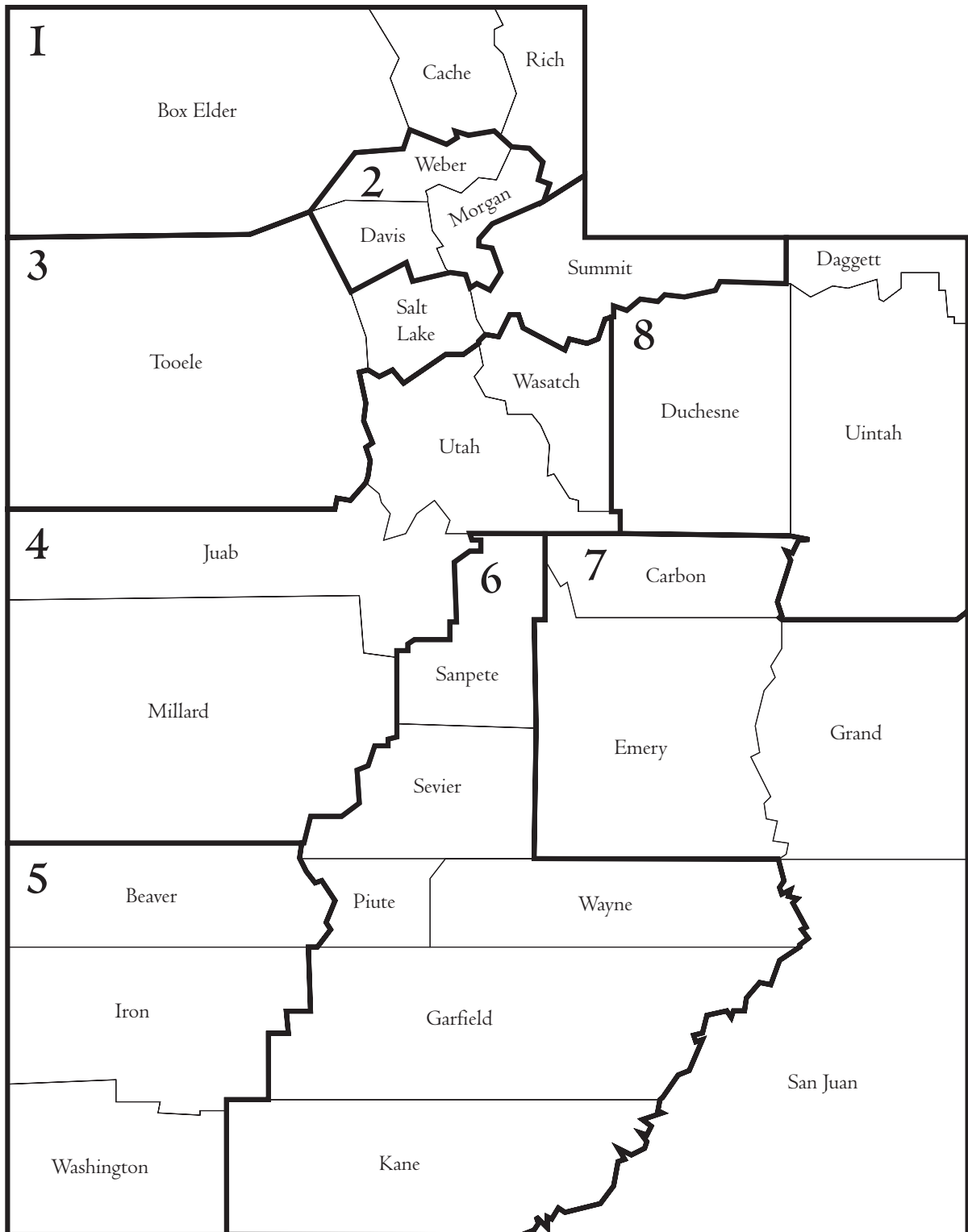
The Task Force focused its efforts on the largest minority groups in Utah, specifically African Americans, Asian Americans, Hispanics, Native Americans, and Pacific Islanders. These populations are all counted by the U.S. Census. Data for the purposes of comparison are provided here. While the data contained in the chart below is the most current available, the Task Force has been in existence since 1996 and has often looked at older population estimates for the purposes of comparison.

Racial and Ethnic Population Estimate for the State of Utah 1997

Source: Population Estimates Program. Population Division, U.S. Census Bureau

	Total Population	White Non-Hispanic	Total Black	Total American Indian	Total Asian & Pacific Islander	Total Hispanic
UTAH	2,065,001	89%	0.86%	1.41%	2.48%	6.44%
Beaver County	5,868	95.10%	0.12%	0.80%	0.54%	3.50%
Box Elder County	41,090	91.70%	0.066%	1.14%	1.50%	5.90%
Cache County	85,690	92.20%	0.38%	0.75%	3.50%	3.40%
Carbon County	20,916	83.70%	0.52%	0.86%	0.79%	14.70%
Daggett County	755	95.36%	0%	1.70%	0.93%	3%
Davis County	226,974	91%	1.43%	0.60%	2.28%	5.18%
Duchesne County	14,265	91%	0.15%	5.45%	0.43%	3.71%
Emery County	10,892	96.35%	0.09%	0.50%	0.43%	2.84%
Garfield County	4,202	96.80%	0%	1.88%	0.31%	1.19%
Grand County	8,103	90.80%	0.26%	2.80%	0.43%	6.05%
Iron County	27,783	94.05%	0.27%	2.95%	0.66%	2.39%
Juab County	7,256	96.75%	0.04%	1.45%	0.23%	1.63%
Kane County	6,068	95.15%	0.08%	1.52%	0.60%	2.69%
Millard County	12,259	92.57%	0.02%	1.79%	1.18%	4.74%
Morgan County	6,909	97.38%	0.16%	0.16%	0.40%	1.95%
Piute County	1,396	97.70%	0%	0.79%	0.072%	1.43%
Rich County	1,814	97.91%	0%	0.06%	0.44%	1.59%
Salt Lake County	841,477	87.020%	1.08%	0.91%	3.56%	8.04%
San Juan County	13,572	42.30%	0.20%	53.36%	0.42%	4.68%
Sanpete County	20,826	91.90%	0.33%	1.22%	1.70%	5.38%
Sevier County	18,015	95.29%	0.07%	2%	0.24%	2.50%
Summit County	25,619	95.99%	0.12%	0.46%	0.66%	2.82%
Tooele County	31,465	82.50%	0.98%	1.59%	1.08%	14.40%
Uintah County	25,441	85.40%	0.06%	10.56%	0.50%	4.10%
Utah County	329,333	93.10%	0.18%	0.74%	1.95%	4.27%
Wasatch County	12,774	95.94%	0.03%	0.70%	0.24%	3.20%
Washington County	79,436	95.39%	0.16%	1.44%	0.79%	2.40%
Wayne County	2,400	96.04%	0.29%	1.67%	0.13%	2.17%
Weber County	182,403	86.74%	1.99%	0.78%	1.89%	9.30%

Utah Counties and Judicial Districts



Data Challenges

One of the largest challenges facing the Task Force has been the limitations of data for the purposes of research and examination. Throughout its work, the Task Force encountered one or more of the following barriers to doing adequate research.

- *The frequency with which race data is entered in database fields.*

In the criminal and juvenile justice system, race and ethnicity data are frequently not contained in electronic databases. Typically, this occurs for one of two reasons. First, as in the case of the Utah State Courts database, race and ethnic data are provided fields for data entry, but those fields are not routinely entered into the database. For that reason, in a number of potential Task Force studies, the use of courts data became problematic because it either necessitated reference to paper files, which is laborious, costly and time consuming, or because it produced data runs with very large “unknown” categories, making the results of the analysis questionable. Therefore the Task Force was required to look elsewhere for more reliable data sets. Second, some databases do not record race or ethnicity, even though the data may in fact be collected in paper files. For example, this is true for segments of the Utah Highway Patrol’s data collection efforts.

- *The reliability of race data in existing databases.*

The reliability of race and ethnic data in existing electronic databases is another problem. For example, in attempting to follow individuals as their cases proceeded through the system, staff and researchers noted that on occasion the race/ethnicity code for a given individual was recorded differently by different segments of the system. The most likely reason for this difference is that in certain instances, race/ethnicity data is “observed” versus “self reported.” In other words, race data is entered by a clerk or staff person who does not ask the individual his/her racial or ethnic identity but simply enters the code that most reflects that clerk’s perception of the individual’s race or ethnicity. If, for example, the jail intake clerk and the court clerk perceive the defendant’s race differently, the race code may be recorded differently as the person proceeds through the justice system. Even when race data remain constant, if collected through observation, they may in fact be wrong. Accordingly, the Task Force often had no way to determine which race code was correct, which seriously called research results into question.

- *The frequency with which race data is collected.*

In many instances, race data are simply not recorded. The lack of this data precludes any meaningful use of information regarding matters to which it pertains without contacting former clients of the system and requesting that they provide race data to researchers. In every such instance, the Task Force was unable to afford the cost of obtaining this data if they were not recorded in either the paper files or the electronic databases. Confidentiality issues also affect collection of these data.

- *Policy changes.*

Major changes in policy have also affected the Task Force's research. For example, the Task Force's attempt to examine sentencing issues was affected by changes in adult sentencing guidelines that took effect in October 1998. Researchers determined that guideline changes were significant enough to call into question the validity of comparing pre-October 1998 cases with those processed after that date. Therefore, the Task Force was limited to approximately one year's worth of data, resulting in a smaller than optimal sample.

- *Utah population size.*

The relatively low number of racial and ethnic minorities living in Utah has also affected the Task Force's data collection and analysis efforts. This fact has made analysis of particular issues by specific racial or ethnic groups unreliable as well as potentially risking confidentiality breaches by identifying individual people of color (e.g. referring to judges from particular minority racial and ethnic backgrounds usually reveals the specific judge in question). At times, the paucity of data for specific minority groups has required the Task Force to only look at comparisons between treatment accorded minorities versus non-minorities because attempting to break the minority category down into racial or ethnic subgroups decreased the sample sizes to levels where statistical reliability was hard to achieve (i.e., the number of Asian Americans convicted of a certain category of crime with a certain criminal history rating produced numbers too small, even over a period of years, to be statistically useful).

Second, the numbers of Utahns of minority backgrounds is likely undercounted by the U.S. Census and other groups, due to the lack of full inclusion of migrant and undocumented populations. These populations can significantly increase the numbers of minorities living in sections of Utah and make accurate data collection even more difficult.

Finally, the overall population size of Utah makes it such that it can take years to gather enough individual cases for analyses of the type attempted by the Task Force. While theoretically possible to use as many years of data necessary to conduct these analyses, policy changes and other social changes make it unreliable to consider too many years of historical data as an indicator of current trends. Thus, the challenges of a relatively sparsely populated state can pose inherent limitations for analyses.

- *Challenges of coordination between segments of the system.*

The Task Force has encountered many data collection and analysis challenges that result from the fact that data is collected and maintained differently by many of the various agencies that constitute the criminal and juvenile justice system. For example, law enforcement agencies across the state have varying practices concerning the collection of racial and ethnic data, and they also have varying ways of categorizing and maintaining that data, including incompatible software systems. Together, these differences often made impossible any detailed compilation and analysis of the information on a statewide basis. Moreover, some smaller agencies do not

have the staff necessary to enter data that may have been collected into electronic storage so that meaningful research can be conducted.

The obstacles these data problems presented were of both a fiscal and temporal nature. Even where the data could theoretically be brought together in a way that would make it useful, the Task Force and the relevant agencies lacked the resources and the time to perform the necessary manipulations. In other instances, the steps needed to put the data in categories that would permit comparison required that it all be reduced to such a low common denominator that it would have been incapable of yielding much useful information. Finally, there was the persistent fact that in many instances, racial and ethnic data were not consistently entered by some agencies in their data bases, making what was there less reliable.

Taken together, the data challenges made aspects of the Task Force's research, particularly its statistical research, difficult, time consuming, and at times, ultimately frustrating. One of the specific goals of the Task Force was to attempt to determine those points in the process where decisions are made that sort out minorities for harsher treatment and to look closely at data about those decisions. Unfortunately, the lack of consistently collected comparable and relevant data made any such analysis very difficult. This meant that the Task Force was unable to answer with any certainty the question of why minorities are increasingly represented the further one proceeds through the system. Because this question is at the core of the differing perceptions held by various groups and individuals about the presence of racial and ethnic bias in the justice system, the Task Force firmly believes that there must be a strong ongoing commitment to explore the issue further. To do that, a much better job of data collection must be done throughout the system. The importance of this effort cannot be overstated. For that reason, the reader will note that many of the recommendations contained in this report refer to the ongoing collection of racial/ethnic data. Ultimately, the ability to conduct meaningful research and to gain some clear empirical understanding of what is happening within the system to racial and ethnic minorities depends upon the system's willingness and dedication to collect these data in a usable, consistent, researchable fashion. Finally, Task Force members also underscore that the mere process of tracking data itself sensitizes those who are making decisions in the system, often resulting in less disparity over a period of time.

Methods

The Task Force's mission to examine and address real and perceived bias toward racial and ethnic minorities in the criminal and juvenile justice system necessitated multiple research efforts. Those research efforts included public hearings as well as research related to both adult and juvenile justice issues.

Public Hearings

The Task Force's public hearing process was coordinated by the Client Committee and staff. The Committee held twenty-seven separate events across the state, the purpose of which was to listen to experiences and perceptions about racial and ethnic fairness. In other words, the public hearings were conducted to gain a greater understanding of perceptions of racial and ethnic fairness issues in Utah

utilizing qualitative research methods. There were no requests that participants provide evidence to support their statements. Thus, where the factual basis for comments remains unknown, the comments have been utilized to establish the perceptions of bias from the hearing participants.

Twenty-one of the events were full public hearings. Three were called “mini-public hearings” because they reached out to a smaller audience. Three were called “focus groups” because they attempted primarily to provide information about the Task Force along with an invitation to relay stories and concerns. All meetings were open to the public (except for the Utah State Prison hearing), and everyone was invited to comment. Each hearing was hosted by at least one group, selected for their knowledge about a particular community and for their willingness to work with the Task Force to coordinate the event.

Each full public hearing included a court reporter, who created a verbatim transcript of the hearing. Some hearings had one or several interpreters for languages such as Khmer, Lao, Navajo, Samoan, Spanish, Tongan, and Vietnamese. Hearings focused on groups by geography or by ethnicity. Comments were made by members of minority groups and by non-minorities. Some hearings had up to 200 people in attendance. Methods to publicize the hearings depended upon location, guidance by hearing hosts, and the ethnic group(s) targeted. They included public service announcements and informational interviews, flyers at ethnic markets, stores, churches, and media, and other written materials. English and other languages were used as necessary to reach the appropriate audience. A full list of public hearings is provided (see below).

The Client Committee published its report on the public hearings, entitled *Perceptions of Racial and Ethnic Fairness in the Criminal Justice System: Listening to Utahns*, in October 1999 (see <http://courtlink.utcourts.gov>). In addition, research consultants on contract through the University of Utah Social Research Institute conducted a thorough qualitative data analysis of the public hearing transcripts using the ALTAS.ti software program (see below for more information about this study. Also see *Appendices* for Executive Summary of report).

Hearing Location	Hearing Date	Estimated Attendance	Hearing Hosts
Taylorsville City Hall <i>mini-hearing</i>	May 14, 1998	25	Pacific Islander Advisory Council
Migrant JTPA Program for Farm workers, Ogden	July 16, 1998	30	Migrant JTPA Program for Farm workers
St. Mary's Catholic Church, Park City	July 19, 1998	45	St. Mary's Catholic Church, St Olaf's Catholic Church, Carolyn Webber
Sorenson Multi-Purpose Center, SLC	August 15, 1998	50	Sorenson Multi-Purpose Center, Centro de la Familia de Utah, Division of Indian Affairs, Offices of Ethnic Affairs
Centro Civico Mexicano, SLC	August 16, 1998	30	Mexican Civic Center, Mexican Consulate
Centro Civico Mexicano, SLC	August 20, 1998	30	Mexican Civic Center, Mexican Consulate
Logan City Hall	September 2, 1998	70	Office of Hispanic Affairs, Utah State University Multicultural Student Services
Vai-Ko Latai Restaurant & Pool Hall, <i>mini-hearing</i> for Polynesian community, SLC	September 15, 1998	25	Salt Lake City Multicultural Advisory Committee

Central City Community Center, SLC	September 25, 1998	30	Salt Lake Branch NAACP
Sam Smith's home, <i>mini-bearing</i> , SLC	September 26, 1998	25	Salt Lake City Multicultural Advisory Committee
San Felipe's Catholic Church, Wendover	October 7, 1998	0	Salt Lake Community Action Program
Indian Walk-In Center, SLC	October 17, 1998	20	Indian Walk-In Center, Salt Lake City Multicultural Advisory Committee
Centro de la Familia de Utah, <i>focus group</i> , SLC	October 20, 1998	25	Centro de la Familia de Utah
Horizonte Training Center, SLC	October 29, 1998	100	Salt Lake City Multicultural Advisory Committee
West Valley City Hall	November 4, 1998	20	Office of Pacific Islander Affairs
Ogden Community Action Agency	November 5, 1998	150	Ogden Community Action Agency/CSBG, Image de Utah
Utah State Prison, Draper facility	November 18, 1998	25	Utah State Prison
San Juan School District, Blanding	November 23, 1999	40	Navajo Utah Commission, White Mesa Ute Council, San Juan School District
New Hope Refugee Center, SLC	January 23, 1999	25	Vietnamese Volunteer Youth Association
Davis County Library, Layton	January 30, 1999	20	Image de Utah
University of Utah, SLC	February 18, 1999	35	Center for Ethnic Student Affairs
Wat Muni Siratana Ram Lao Temple, <i>focus group</i> , Sandy	February 21, 1999	100	Lao Buddhist Temple, Office of Asian Affairs
Orem High School, Utah County Information Fair & Community Meeting	February 27, 1999	150	Hispanic Advisory Council, Ethnic Minority Interagency Council, Mexican Consulate
Paiute Tribal Office, Cedar City	March 5, 1999	70	Paiute Indian Tribe of Utah
Opera House, St. George	March 6, 1999	200	Southern Utah Hispanic Committee, St. George Police Chief Robert Flowers
Ute Tribal Auditorium, Ft. Duchesne	March 26, 1999	75	Ute Tribe
Cambodian Buddhist Temple, <i>focus group</i> , WVC	April 10, 1999	150	Cambodian Buddhist Temple, Office of Asian Affairs

Adult System Research

Research related to the adult criminal justice system was conducted using several methods:

1. Subcommittee research and reports,
2. Statistical research by the Social Research Institute, and
3. Perception research by the Social Research Institute.

Subcommittee research was conducted and coordinated by staff and subcommittee members, with occasional assistance and guidance by the Social Research Institute. Examples of subcommittee research include the following: an evaluation of cultural diversity training by Peace Officers Standards and Training, a survey of select law enforcement agency's complaint processes, focus groups of female

attorneys of color, an analysis of disciplinary rates in the Utah State Prison by minority status from 1990-1998, and a survey of judges to determine the community resource programs to which they most often order defendants. This research was submitted to the Task Force via subcommittee reports and, on occasion, was utilized for further analysis by the Task Force's research consultants.

Statistical research was conducted via contract with the University of Utah's Social Research Institute (SRI). Principal investigator, Russell K. Van Vleet, M.S.W., submitted a research work plan to the Task Force that covered several procedural components of the criminal justice system. For example, SRI conducted a statistical analysis in an attempt to determine to what extent pre-sentence reports might reflect racial/ethnic bias and to what extent disparities in sentencing guidelines, pre-sentence report recommendations, and actual sentences might reflect racial/ethnic bias. Data for this study were obtained from the Utah Department of Corrections, as these data appeared the most complete and reliable source of information. Accompanying this analysis was a study of the pre-sentencing process completed by SRI research staff. Another example of statistical research was a survey of administrators of community programs in two judicial districts in Utah. Originally this survey was completed for the Community Resources Committee.

In December 1999, SRI reported its initial findings to the Task Force. The Task Force then contracted for additional SRI research, including an analysis of law enforcement data collection fields and a development of future research study proposals to create an action plan for future analysis of issues that the Task Force was not able to address. These reports and proposals are discussed in further detail in the Needs Assessment section of the report.

Perception research was also conducted by SRI, often in conjunction with the statistical research outlined above. For example, in addition to describing the Pre-Sentence Process, SRI staff also interviewed a sample of pre-sentence investigators for their perceptions of the pre-sentence investigation process and its impact on racial and ethnic fairness.

Other perception-related research included three focus groups that were held for criminal defense attorneys and prosecutors, two focus groups with women of color in the legal profession, interviews with approximately 20 judges across Utah, and focus groups for participants and staff at community resource programs. These research segments were analyzed by SRI either as component parts of statistical research studies or through data analysis using the ATLAS.ti software program.

A note about the ATLAS.ti research is warranted. In each of these three studies (public hearing report, interviews with attorneys and judges, and interviews with women of color in the legal profession), Nicholas Woolf, M.A. of the University of Iowa collaborated with the Social Research Institute to conduct the analyses. Data collection was completed by research staff. Transcripts were then prepared and coded, and a conceptual framework developed that was grounded in the data rather than in a priori categories from prior phases of the Task Force's work. This resulted in the creation of an interpretive report designed "to describe the experiences of the respondents in their own terms, without drawing conclusions, proposing theories, or making recommendations."³² The report therefore includes many direct quotations of respondents. More details about the findings of these and other adult system research studies can be located in the *Needs Assessment* section of this report.

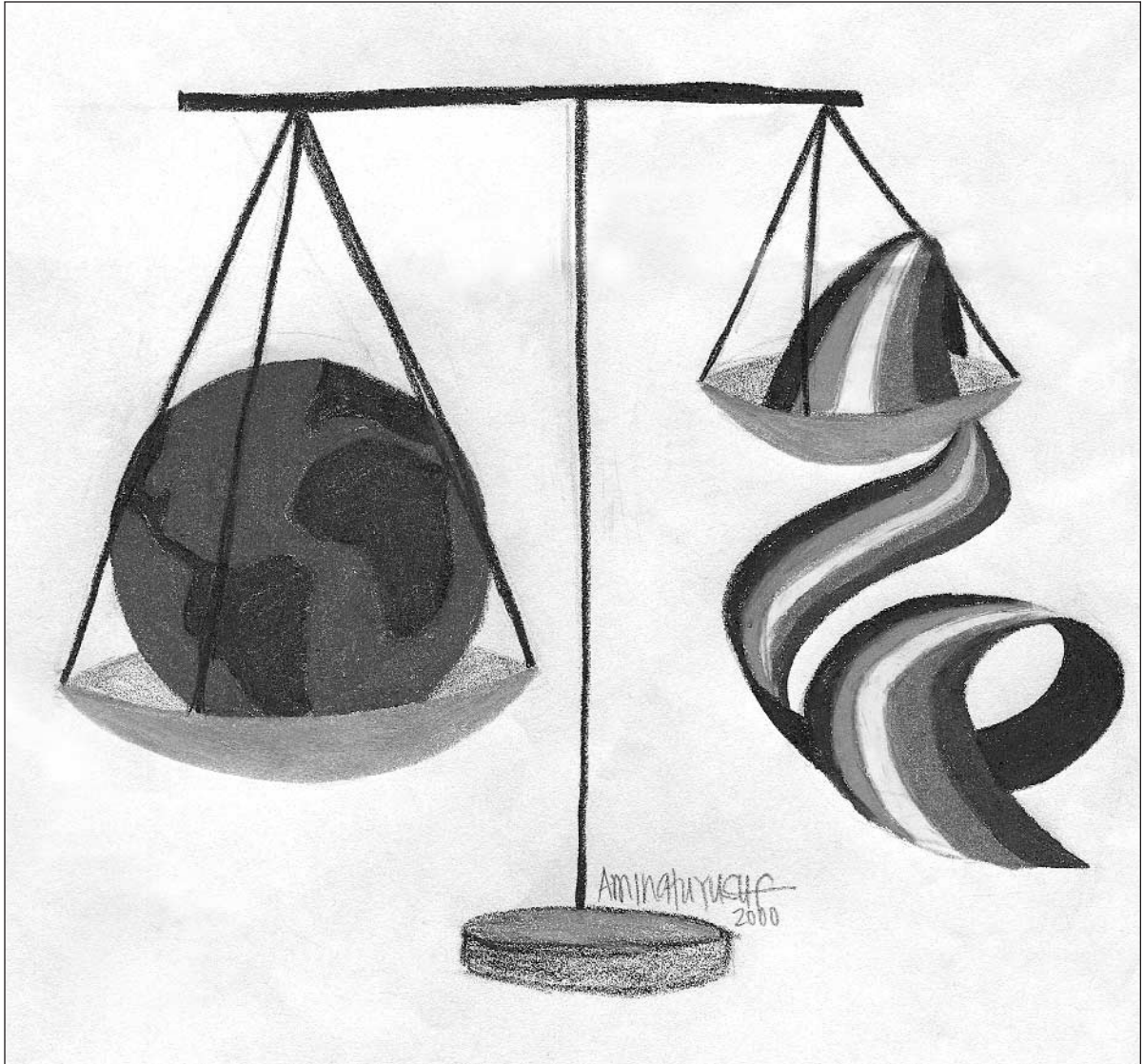
Juvenile System Research

Research related to the juvenile justice system was conducted via a contract with the University of Utah Social Research Institute. The primary investigator for the research was Russell K. Van Vleet, M.S.W. The research process was primarily overseen by the Juvenile Disproportionate Minority Confinement Committee. The *Disproportionate Minority Confinement Committee Report on the Juvenile Justice System* was submitted to the full Task Force on November 30, 1999 and included findings and recommendations from the SRI research as well as the committee's own research efforts.

The Task Force chose to consider the SRI research of the juvenile system directly. The SRI research included data from the Juvenile Justice Information System database (JIS), the Bureau of Criminal Identification (BCI) and selected court social files. In addition, a sample of 200 youth (100 minority and 100 non-minority) was randomly selected to examine offending histories and track them through the juvenile justice system. Focus groups were held with 101 youth and 85 juvenile justice system personnel. Exit interviews were conducted with 35 youth as they left the Scott M. Matheson Courthouse and the Cornell Detention Center. Finally, exploratory interviews were conducted with representatives of three law enforcement agencies for their responses to focus group discussions. These interviews were conducted because of comments about perceived bias by law enforcement, received at the focus groups, that were unanticipated in terms of intensity and frequency. While there was insufficient time to set up focus groups with law enforcement, initial comment was solicited from two urban and one rural police department. Further research in this area is already underway.

One segment of this study was designed to replicate a study completed by Jeffrey M. Jenson, et al. in 1995, entitled *Racial Disproportionality in the Utah Juvenile Justice System*. This report was completed for the Disproportionate Minority Confinement Committee (then part of the Commission on Criminal and Juvenile Justice) and provided baseline data for the Task Force's assessment of the juvenile system. Additional research questions merited the inclusion of focus groups, exit interviews, and examination of the social files and expanded the study completed by SRI.

The SRI study of the juvenile justice system is discussed in further detail in the *Needs Assessment* section of the report.



Artist: Aminatu Yusuf, Age 16, Ogden

Needs Assessment

The Task Force conducted a number of different research projects regarding real and perceived racial and ethnic bias. While individually the studies have interesting aspects, what is most significant to the work of the Task Force is how the studies interrelate and combine to yield a needs assessment of the criminal and juvenile justice system as it relates to racial and ethnic fairness. This needs assessment is presented in the following thematic sections: Workforce: Recruiting/Hiring, Training, Interpreting, Community Resources/Outreach, Complaint Processes, Administration, Data, Research, and Media.

Each thematic section begins with a narrative discussion of relevant research, followed by a series of unmet needs that are presented as Task Force recommendations. The recommendations begin with an overall theme that is designed to encompass the spirit of all recommendations in the section. While these themes address the entire criminal and juvenile justice system rather than pointing out a specific lead agency or organization, they are critical to understanding the Task Force's focus on an overall issue. Finally, within the list of recommendations, there are sidebar sections entitled, *What's Being Done*. These sections highlight laudable, current efforts addressing issues of racial and ethnic fairness that have been brought to the attention of the Task Force, usually via its comment period. No attempt was made to make the *What's Being Done* sections exhaustive. Rather it is meant to give the reader a reasonable sense of some positive things that are now occurring in Utah.

Task Force research projects are listed below, and their executive summaries are included in the *Appendices* section.

- *Adult System Research*, by Social Research Institute, University of Utah (SRI)
 - Community Resources Research
 - Client focus groups
 - Program staff focus groups
 - Program administrator survey
 - Courts Research
 - Comparison of pre-sentence recommendations, sentencing guidelines and actual sentence by minority status, 1999
 - Jury Selection Process study
 - Pre-Sentencing Process analysis
 - Pre-Sentence Investigation report evaluation

- Post-Adjudication Research
 - Utah Department of Corrections prison population by minority status, 1990-1998
 - Number and percentage on probation, in prison, and on parole by minority status
 - Incarcerated population by offense categories and minority status
 - Salt Lake County Jail bookings by minority status, 1996-1998
 - Utah State Prison inmate disciplinary rates by minority status
 - Inmate release length of stay by minority status
 - Length of stay in months for probation and parole supervision and percent in violation by minority status
 - Rates of receiving recommended guidelines for prison or probation by minority status
- *Community Resources Committee Report*
- *Courts Committee Report*
- *Disproportionate Minority Confinement Committee Report on the Juvenile Justice System*
- *Research Proposal Outlines for Further Study*, by SRI
 - Prosecutorial discretion
 - Private vs. public legal representation
 - Pre-sentence investigation reports
 - Representation on juries
 - Effect of credit for time served on prison length of stay by minority status
- *Interviews with Women of Color in the Legal Profession on Racial and Ethnic Fairness in the Legal System*, by Nicholas Woolf, M.A.
- *Law Enforcement Data Collection Proposals*, by SRI
- *Minority Overrepresentation in the Utah Juvenile Justice System*, by SRI
- *The Perceptions and Experiences of Female Attorneys of Color in Utah's Judicial System*, by Yvette Donosso Diaz, J.D.
- *Perceptions of Racial and Ethnic Fairness in the Criminal Justice System: Listening to Utahns, A Client Committee Report on the Public Hearings*
- *Pre-Adjudication Committee Report*
- *Post-Adjudication Committee Report*
- *Representation Committee Report*
- *Report on Interviews with Attorneys and Judges on Racial and Ethnic Fairness in the Legal System*, by Nicholas Woolf, M.A.
- *Report on the Public Hearings of the Utah Task Force on Racial and Ethnic Fairness in the Legal System*, by Nicholas Woolf, M.A. and SRI
- *Salt Lake County Jail bookings data analysis*, by John Collette, Ph.D. and Terry Allen, Ph.D.
- *Victims research*, by Professors Linda F. Smith and Paul G. Cassell, University of Utah College of Law

WORKFORCE: RECRUITING/HIRING

Workforce composition issues permeated Task Force and subcommittee research. Levels of workforce diversity became one measurement to determine how well the criminal and juvenile justice system encourages inclusion of racial and ethnic minorities in professional capacities.

A number of factors make workforce diversity a complex issue. First, comparison numbers are problematic. The Task Force considered several possible comparison data sets, including comparing workforce composition to the general population, to the eligible workforce, and to the composition of the client base. For example, the Division of Youth Corrections aspires to having a workforce that is representative of the population served. Due to the overrepresentation of minority youth in the juvenile justice system, the agency is aiming for a workforce that is significantly more diverse than the general population. Other workforce comparisons need to be made with the eligible workforce in mind. For example, when it comes to judgeships, it must be recognized that all juvenile, district, and appellate court appointees must be Utah attorneys, and there are a disproportionately small number of minority lawyers in comparison to the number of minorities in the general population. Therefore, any fair comparison should be made to the racial composition of the Utah State Bar. (However, the Task Force acknowledges that this comparison does not rule out the need for more aggressive recruitment of minorities into the legal profession.) Another example of the need to compare workforce data to the pool of qualified applicants is for law enforcement positions. All sworn officers must be certified by Peace Officers Standards and Training (POST). Therefore, the qualified applicant pool includes POST-certified officers and those who are POST-certified eligible.

Second, even after fixing upon an appropriate class of persons for comparison purposes, accurate data are difficult to locate. The U.S. Census provides general population estimates. Overall workforce applicant pool composition is also sometimes available. However, in more particularized groups, data are often either non-existent or unreliable. There appear to be no accurate statistics on the racial and ethnic composition of the POST-qualified applicant pool. Still, other entities, such as the Utah State Bar, do have numbers on the racial and ethnic make-up of their membership, but they are incomplete. Thus, data are not necessarily kept and thereby create a problem in determining baselines as well as progress in this area (see *Data* section for more details).

Third, particular problems may exist within certain agencies that make it difficult for them to maintain adequate staff employment levels let alone bring on new persons so as to achieve racial and ethnic diversity. While an agency may aspire to a diverse workforce, achieving that goal may be problematic due to issues such as starting salaries and professional certification requirements. For example, the Utah Department of Corrections has encountered difficulty over the past several years in recruiting people to fill correctional officer positions. All correctional officers must also be POST-certified, which limits the pool of possible applicants at a time of full employment along the Wasatch Front. At the same time, the Task Force believes that there is much that agencies can do to broaden their recruitment efforts toward minority communities.

Despite these challenges, the Task Force still attempted to collect workforce composition data. This data collection occurred at different times, therefore the data below are not all from the same year.

While results from individual segments of the justice system vary in their inclusion of minorities, the criminal and juvenile justice system workforce as a whole is not representative of the Utah population nor of the population served. Perception data corroborates the need for workforce diversity as well, showing that both the public and participants within the system (e.g., judges, attorneys, community program staff) believe that increased workforce diversity would help alleviate problems and potential problems related to racial and ethnic bias.

In addition to workforce composition issues, there is the issue of recruitment of minorities to positions in the justice system. In most instances, the criminal and juvenile justice system as a whole does not make an active, concerted effort to recruit, hire, retain, and promote minorities. A common response to Task Force inquiries about minority hiring rates was simply that minorities choose not to apply for available positions. Task Force members believe that most entities, governmental and private, could become more proactive in this area, and its recommendations encourage agencies to begin collaborating with minority communities to increase their abilities to recruit a diverse applicant pool (*Community Resources/Outreach* recommendations are complementary in this area). Workforce, recruitment and perception data are outlined below. Where available, it is broken down by agency and region.

Pre-Adjudication

Law enforcement workforce diversity varies by agency. Differences among agencies, such as size and urban/rural location, make comparisons difficult. Two Task Force subcommittees looked specifically at law enforcement workforce issues. The Juvenile Disproportionate Minority Confinement Committee concluded that “a lack of racial and ethnic diversity in law enforcement can amplify disparate treatment by race/ethnicity. However, [Committee] members recognize that most Utah law enforcement agencies are continually recruiting so as to diversify their workforce in order to appropriately represent the communities they serve.”³³

The Pre-Adjudication Committee attempted to determine workforce composition estimates through a written survey sent to law enforcement in five counties in Utah, and to Peace Officers Standards and Training.³⁴ Findings indicated that most agencies in the sample do not track the racial composition of their applicant pool.³⁵ That is, for any open position, it is impossible to determine the number of minorities that applied for the position. Recruiting efforts varied greatly, with some agencies offering scholarships and working with ethnic organizations to assist in outreach efforts.³⁶ Workforce composition from select agencies is shown in the table below. For the purposes of comparison, county composition by race/ethnicity is offered as applicant pool data were not available.

COUNTY	WORKFORCE COMPOSITION BY MINORITY STATUS	COUNTY COMPOSITION BY MINORITY STATUS
Salt Lake County ³⁷	9.6% minority	12.84% minority population
Uintah County ³⁸	0% minority	15.20% minority population

Washington County ³⁹	2.4% minority	4.55% minority population
Weber County ⁴⁰	7.1% minority	13.23% minority population

In certain areas, applicant pool data were available. The following table demonstrates two of the comparisons made by the Committee.

AGENCY	COUNTY POPULATION ESTIMATE	APPLICANT POOL	CURRENT WORKFORCE
Salt Lake County Sheriff's Office	12.84% minority	12% minority	10% minority
Utah County Sheriff's Office	6.7% minority	8.0% minority	5.3% minority

During the Task Force's comment period, the Salt Lake City Police Department (SLPD) submitted additional workforce data and more detailed recruitment information. Original data received by the Pre-Adjudication Committee provided SLPD workforce data as of September 4, 1997 and showed that of 412 sworn officers, six or 1.45% were Black, 15 or 3.64% were Hispanic, 18 or 4.36% were Asian/Islander, three or 0.72% were Indian.⁴¹

The additional information provided Salt Lake City Corporation employment numbers to the Task Force. These data only provide an indirect glimpse of current SLPD workforce composition. Within the protective service category of employment, in which officers are included, only the Native American community is underrepresented.⁴² Of salaried city employees only, protective service workers are approximately 9 percent minority, with the minority labor force estimated at 6 percent. SLPD recruitment efforts, including a June 1998 recruitment policy, note a change in emphasis to "focus more on minority areas, publications, etc. (e.g. newspapers, television stations, cultural centers, cultural markets)."⁴³

Legal Representation

Utah State Bar membership by race and status is included in the table below, showing an overall minority membership at 4.5 percent. These data were collected by the Courts Committee.

UTAH STATE BAR MEMBERSHIP	AFRICAN AMERICAN		WHITE		HISPANIC		ASIAN		PACIFIC ISLANDER		OTHER		TOTAL	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Inactive, No Service	0	0.0	257	96.3	2	0.7	3	1.1	1	0.4	4	1.5	267	100.0
Active	8	0.4	2,131	96.2	29	1.3	5	0.2	2	0.1	41	1.9	2,216	100.0
Active, Emeritus	0	0.0	56	100	0	0.0	0	0.0	0	0.0	0	0.0	56	100.0
Active Under 3	1	0.3	319	90.6	13	3.7	3	0.9	0	0.0	16	4.5	352	100.0
Inactive, Emeritus	0	0.0	29	93.5	0	0.0	0	0.0	0	0.0	2	6.5	31	100.0
Inactive, Full	1	0.2	490	95.1	7	1.4	2	0.4	2	0.4	13	2.5	515	100.0
Totals	10	0.3	3,282	95.5	51	1.5	13	0.4	5	0.1	76	2.2	3,437	100.0

Utah State Bar Membership by Race and Status

Data provided by: Utah State Bar, August 1998

The Representation Committee also reported numbers related to prosecution and defense attorney offices in Utah. The Representation Committee found the following:⁴⁴

- Racial and ethnic minorities are under-represented in the offices of county prosecutors throughout Utah, although the level of under-representation varies considerably by county.
- Racial and ethnic minorities are adequately represented, if not over-represented, in some legal defense offices and severely under-represented in others.
- Racial and ethnic minorities are under-represented in the officials/administrator category for county prosecutor and legal defense offices throughout the state.

The need for recruitment efforts of minorities into the legal profession was acknowledged by the two committees via their networking and recruitment recommendations. Finally, the Juvenile Disproportionate Minority Confinement Committee found that “the racial and ethnic composition of juvenile public defenders is predominately white, non-Hispanic attorneys.”⁴⁵

Courts

The composition of the Utah State Courts’ workforce is provided below, showing that approximately 10.9 percent of the overall workforce is minority. A Third District Court utilization analysis from October 1999 shows that compared to the Salt Lake County civilian labor force, minorities are underrepresented in the category of officials and managers.⁴⁶ While roughly 5 percent of the officials and managerial labor force is minority, none of the employees in the job category are minority. In all other job categories, the courts’ minority workforce exceeds the minority representation in the civilian labor force. Statewide juvenile court data were provided to the Task Force demonstrating that as of March 2000 the workforce of the Juvenile Court in Utah was 18 percent minority.⁴⁷ Finally, the Woolf report on the approximately 20 interviews with judges states that judges suggested that “greater minority representation throughout the court system would be uniformly desirable.”⁴⁸ Regarding recruiting, the Courts Committee found that efforts utilizing ethnic media are needed to increase the efforts to diversify the workforce. Further, “the Courts have begun an attempt to advertise in Utah’s ethnic print media on a regular basis in order to increase the association of the minority population of the courts as a potential and desirable workplace.”⁴⁹

Utah State Courts Workforce Composition

Data provided by: Administrative Office of the Courts, May 1998

EEO JOB CATEGORY	TOTAL %	BLACK		WHITE		HISPANIC		ASIAN AMERICAN		AMERICAN INDIAN		TOTAL MINORITY %
		MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
Officials & Administrators	91	4	0	46	33	3	3	1	1	0	0	12
	5.4%	4.4%	0.0%	50.5%	36.3%	3.3%	3.3%	1.1%	1.1%	0.0%	0.0%	13.2%
Professionals	287	6	3	128	116	10	5	6	9	1	3	43
	27.3%	2.1%	1.0%	44.6%	40.4%	3.5%	1.7%	2.1%	3.1%	0.3%	1.0%	15.0%
Technicians	21	0	0	13	6	0	1	1	0	0	0	2
	1.4%	0.0%	0.0%	61.9%	28.6%	0.0%	4.8%	4.8%	0.0%	0.0%	0.0%	9.5%
Paraprofessionals	193	4	1	67	102	9	5	2	1	1	1	24
	21.2%	2.1%	0.5%	34.7%	52.8%	4.7%	2.6%	1.0%	0.5%	0.5%	0.5%	12.4
Clerical	566	1	1	18	502	0	28	0	10	0	6	46
	43.9%	0.2%	0.2%	3.2%	88.7%	0.0%	4.9%	0.0%	1.8%	0.0%	1.1%	8.1%
Skilled trades / crafts	4	0	0	4	0	0	0	0	0	0	0	0
	0.3%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Service / maintenance	7	0	0	5	1	0	0	1	0	0	0	1
	0.5%	0.0%	0.0%	71.4%	14.3%	0.0%	0.0%	14.3%	0.0%	0.0%	0.0%	14.3%
Totals	1169	15	5	281	760	22	42	11	21	2	10	128
	100.0%	1.3%	0.4%	24.0%	65.0%	1.9%	3.6%	0.9%	1.8%	0.2%	0.9%	10.9%

A table of judicial applicants from 1986-1998 is provided below, showing the percentages of minority applicants, minority nominees, and minority appointments. On this matter, the Courts Committee found that “[o]f the 106 active judgeships in the Utah State Courts, six or 5.7 percent of the judges are minority, which is not representative of the level of diversity in Utah’s population. Depending on the accuracy of the Utah State Bar’s racial and ethnic data, this level of minority representation may or may not reflect the Bar’s composition.”⁵⁰ With the recent change to civil and criminal divisions in the Salt Lake City District Court, the Third Judicial District now has only one minority judicial representative who handles criminal matters.

Judicial Applicants	# of applications	% (#) of applications by ethnic minorities	# of nominees	% (#) of ethnic minority nominees	# of appointments	% (#) of appointments of ethnic minorities
Circuit Court ⁵¹	210	3.81% (8)	33	9.09% (3)	11	9.09% (1)
District Court	1060	3.77% (40)	150	6.67% (10)	48	8.33% (4)
Juvenile Court ⁵²	432	2.78% (12)	54	7.41% (4)	17	5.88% (1)
Appellate Court ⁵³	174	5.75% (10)	34	2.94% (1)	11	0% (0)
TOTAL	1876	3.73% (70)	271	6.64% (18)	87	6.90% (6)

Judicial Applicants, 1986-1998

Data provided by: Administrative Office of the Courts, 1998

Post-Adjudication

The Post-Adjudication Committee evaluated data on the Utah Department of Corrections’ labor force. The information is provided in the table below, followed by a table that shows the state’s civilian labor force as of July 1998.⁵⁴

Title	White	Hispanic	African American	Native American	Asian
Correctional Shift Supervisor	32	5			1
Correctional Officer I	179	10	2		4
Correctional Officer II	367	12	7	1	1
Enforcement Officer I	4				
Enforcement Officer II	67	2		2	
Support Services Officer	55	2			

Title	White	Hispanic	African American	Native American	Asian
Corrections totals	704 93.5%	31 4.1%	9 1.2%	3 0.4%	6 0.8%
AP&P Probation Officer	202	10	4	3	2
AP&P Totals	202 91.4%	10 4.5%	4 1.8%	3 1.6%	2 0.9%
Captain	27	1			
Center Supervisor	1				
Class Review Captain	1				
Clinical Program Administrator	2				
Region Coordinator	1				
Staff Supervisor	47	1	3	1	
Grievance Captain	1				
Hearing Captain	3				
Industries Production Mgr.	8				
Institution Program Coordinator	2				
Investigator	10				
IPP Coordinator	2	1			
Contracts Coordinator	2				
Support Services Supervisor III	3				
Training Manager	2				
Social Work Supervisor	2				
Specialist Field Operations	2				
Totals supervisor	116 94.3%	3 2.4%	3 2.4%	1 0.8%	0 0%

Title	White	Hispanic	African American	American Indian	Asian/ Pacific Islander
Executive, Administrative, & Managerial Occupations	86,990 95.3%	2,390 2.6%	393 0.4%	438 0.5%	1,022 1.1%
Professional Specialty Occupations	104,208 94.8%	2,421 2.2%	469 0.4%	637 0.6%	2,149 2.0%
Technicians & Related Support Occupations	28,503 93.1%	998 3.3%	75 0.2%	204 0.7%	845 2.8%
Protective Service Occupations	9,603 94.2%	317 3.1%	62 0.6%	131 1.3%	79 0.8%
Totals / Percentages	229,304 94.8%	6,126 2.5%	999 0.4%	1,410 0.6%	4,095 1.7%

Civilian Labor Force Occupational Groups By Ethnic Origin and Race
State of Utah
July 1998

The Committee stated that the statistics show “a workforce which is roughly representative of the workforce diversity in Utah, though it significantly differs from the racial composition of the population that it serves (i.e., prison inmates).”⁵⁵ Indeed, based on additional data provided by Corrections in April 2000, Corrections populations are as follows.

Location	White	Black	Hispanic	Native American/Alaskan	Asian & Pacific Islander
Total UDC Population	76%	5%	9%	3%	1%
Prison population	68%	7%	17%	3%	3%

The Utah Department of Corrections has, “over the past several years, because of the full employment condition along the Wasatch Front, ... experienced serious problems recruiting people to fill correctional officer positions.”⁵⁶

The Pre-Sentence Process analysis completed by the Social Research Institute (SRI) included interviews with pre-sentence investigators at Salt Lake County Adult Probation and Parole (AP&P) to gain a greater understanding of the investigation process as well as the impact of race and ethnic issues upon investigators. SRI found that of the 18 investigators at Salt Lake County AP&P, which is the largest in the area, all 18 are white, non-Hispanic. One investigator is bilingual, Spanish speaking.

Juvenile Justice

The Social Research Institute also completed a study of the juvenile justice system in Utah. SRI found that according to a 1997 Division of Youth Corrections Annual Report, “minorities represent nearly 10 percent of staff within the administrative job type; 26 percent in service delivery jobs; and 14 percent in support services. Approximately 22 percent of all staff are minority, compared with 31 percent of minority youth” served by the agency. Overall population data are provided for contrast in the study report, stating that “[i]n 1997, there were 302,374 youth ages 10 to 17 in Utah. Minority youth accounted for 9.5 percent of the total youth population.”⁵⁷ According to the report’s comparison to 1993 data, Youth Corrections has “made significant strides in hiring minorities.”⁵⁸ The study ultimately recommends an increase in minority staff, indicating that,

minority youth stated that they wanted the justice system to increase the number of minority staff who were members of their own cultural, language, and gender groups. At the front-line worker level, such an increase will allow for youth/staff ethnic matching. Increased numbers of minorities at administrative and management levels can lead to the development of policies and procedures that are more culturally competent. Of course, simply adding staff of color without modifying policies, procedures, and interventions cannot be effective.⁵⁹

Community Resources

Another study by SRI concerned community resource programs. A survey of administrators of community programs in the state found that Hispanic and African American staff at those agencies responding to the survey constituted a higher percentage than their representation in the general population and in their overall client base. While the staff composition compared favorably to the overall client base, the minority clients that were referred from the criminal justice system equaled roughly 30 percent, while staff percentages were approximately 18 percent. While the survey’s return rate was quite low and thus must be viewed as pilot data rather than a comprehensive survey, it did represent 2,111 full-time employees, 555 part-time employees, and 324 volunteers who provided services to 36,935 clients.

Focus groups were also held with staff from community programs. According to the SRI report, “[s]everal staff participants from multiple focus groups encouraged hiring more minorities into staff positions. Also observed was that a single ‘token’ member of a minority group often isn’t trusted and is considered by clients to likely be a ‘traitor.’ Some staff participants suggested that increasing numbers of minorities beyond token status could possibly reduce this perception.”⁶⁰ Focus groups of women of color in the legal profession yielded calls for more judicial diversity.

Concluding Remarks

In a separate study, Nicholas Woolf, M.A. collaborated with the Social Research Institute to conduct an analysis of the public hearing transcripts. The Woolf report states that, “[s]trong and frequent requests were expressed for increased minority participation in all facets of the justice system: police, attorneys, judges, review boards, and administration. Representation came closest to being seen

as the silver bullet that would ease unfairness system-wide, a single solution to the varied problems expressed.”⁶¹

While it is doubtful that any singular change will have such a great impact, this issue of workforce diversity and recruiting of minorities to full participation in the criminal and juvenile justice system is a significant one for the full Task Force. The following recommendations outline the suggested changes in more detail.

THEME: To assist the criminal and juvenile system in ensuring that the system is responsive to the culture and language needs of minorities and is accessible to those who utilize it, all entities should have a workforce that includes minorities within their job groups. Recruiting and hiring should be based on requisite skills. All entities should assure nondiscrimination in all conditions of their employment practices.

1. Agencies in the state of Utah should establish and maintain Equal Employment Opportunity Plans.
2. Law enforcement agencies and Peace Officer Standards and Training (POST) should make efforts to have a workforce that is reflective of the diversity of the population they serve (including racial, ethnic, cultural, and language diversity). Recruitment efforts should target local high schools, community colleges, ethnic community organizations and ethnic media to encourage minority youth into law enforcement careers.
3. Peace Officer Standards and Training (POST) and individual law enforcement agencies should adopt a proven evaluation instrument that can help screen all applicants for predisposition towards racial or ethnic biased behaviors. The tool should be an indicator of possible future job performance and not simply a measure of personal beliefs.
4. The judiciary and the legal community as a whole should enhance their current minority recruitment efforts and work with minority communities to attract a larger pool of qualified minority applicants.
5. All county commissions awarding legal defender contracts in Utah should consider the issue of workforce diversity as an important factor in its review and assessment of the qualifications of contract applications.
6. The Administrative Office of the Courts should conduct an examination of the racial and ethnic diversity of the courts workforce by judicial district to ensure progress in the goal of increasing workforce diversity. This examination should occur at least annually.
- 7a. The governor should ensure that every judicial nominating commission has a racially diverse membership.

7b. The judicial nominating commissions and governor should adopt a policy that expressly recognizes the importance of racial and ethnic diversity in the nomination and appointment of judges.

8. The Judicial Council, as part of the justice court certification process, should ensure that all judicial appointing authorities (city council/county government) recognize the importance of cultural diversity in the workplace and should have in place recruiting processes that result in diverse applicant pools. Further, the appointing authority, should retain data relating to the race and ethnic background of applicants for the judicial vacancy for examination by the Judicial Council to monitor compliance with this position.

9. Judges should consider the importance of diversity on the bar and bench in the hiring of law clerks.

10. The workforce of Adult Probation and Parole and the Utah Department of Corrections should establish policies and practices to increase their ability to recruit minority applicants. Hiring practices should be evaluated for their effect on minority applicants. Corrections should seek minority employees actively as new hires or on a contract basis, such as for pre-sentence investigators.

11. The Juvenile Courts and the Division of Youth Corrections, including their contract service providers, should establish policies and practices to increase their ability to recruit minority applicants.

Selected Strategies

The Task Force recommends the following strategies as suggestions for specific implementation efforts:

- Offer tuition scholarships for minority students to attend educational programs within the criminal and juvenile justice system, sponsored by community organizations and businesses.
- Emphasize the following in recruiting efforts:
 - Seek qualified minorities,

WHAT'S BEING DONE

During the last few years the Division of Youth Corrections (DYC) has made successful efforts to better meet the needs of its clients by recruiting minority staff, thus striking a more realistic balance between its workforce population and population demography. For example, the 1997 DYC Annual report described minority staff rates at 22 percent compared with approximately 31 percent of minority youth. Additionally, the number of minorities working within administrative positions increased from 10 percent in 1997 to 14.7 percent in 1999: a 47 percent increase within the span of two years. These increases may be attributed to the DYC practice of hiring temporary employees, also called "hiring at-will." Efforts such as this allow an increased number of minorities to develop a knowledge and familiarity with the system, thus promoting the possibility of future work with the division.

WHAT'S BEING DONE

For the past ten years, local television program, New Horizons, has sponsored five scholarships in the amounts of \$2,500-\$3,000 in order to provide financially disadvantaged and minority students a chance to attend Peace Officers Standards and Training's certification program. The organization has been committed to this program in hopes of promoting greater diversity within the law enforcement agencies of Utah.

- Seek those who speak languages other than English, and
- Utilize ethnic media sources, minority organizations, and other outreach avenues in advertising workforce openings.
- Pay specific attention to expanding recruiting efforts in order to increase the racial/ethnic representativeness of legal workforces, especially in rural counties and counties where the percentage of minorities in the county population exceeds that of overall Utah population percentages.
- Examine hiring practices for subtle and overt biases against women of color in state agencies and legal organizations.
- Create a Diversity Advisory Group, to meet regularly to discuss issues of diversity in the workplace. Diversity should include issues related to race and ethnicity but may also include issues related to gender, disability, and other diversity issues. The group should collect data on workforce diversity issues, such as recruitment, hiring, retention, termination, pay and workforce environment. It should create and implement a diversity improvement plan to address these issues.

TRAINING

Much of the Task Force's work led it to make training recommendations. Task Force and subcommittee members viewed the lack of cultural competency training as a problem in and of itself. In addition, training became a potential remedy for other problems noted in the system (e.g., insensitive comments, stereotyping, workforce diversity inadequacies). Not all training in this section is cultural competency training. Some training recommendations relate to the appropriate use of interpreters, immigration matters, and psychological evaluations. However the bulk of the training recommendations are about the issue of culture. To ensure that the type of training the Task Force is recommending is properly understood, some elaboration is merited.

As mentioned in the Definitions section of this report, cultural competency is defined as a “deeper knowledge/understanding of the dimensions of diversity that enable individuals to build and implement necessary skills to be more effective in a culturally diverse environment.” Culturally competent individuals appreciate differences, are aware of their own cultural values and biases, and can communicate effectively across diverse populations. The Task Force expressly does not advocate a singular position in terms of culture or political outlook. *Training should provide exposure to different perspectives, backgrounds and cultures, not advocating or mandating certain thoughts, but rather providing skills with which to work effectively within increasingly diverse environments. The goal is not to have all people in the workplace agree on lifestyle, culture or political thought, but rather to provide exposure to different approaches and skills regardless of personal values and lifestyles.* A final aspect of cultural competency training is the importance of conveying the legal ramifications of racial and ethnic bias in the workplace. That discrimination based on race or ethnicity will not be tolerated in the criminal and juvenile justice system should be a primary message of quality training.

All seven subcommittees recommended cultural training for workers within the segments of the system they evaluated.⁶² Many recommendations specified the importance of cross-cultural communication, knowledge of individual biases, and other skills that should be included in cultural training as well as specified entities that should be responsible for offering the training. Others related to immigration, hate crimes, the use of interpreters, and religious diversity issues that are echoed in the Task Force's recommendations below.

Subcommittee recommendations were based on their research findings such as the Courts Committee's finding that, “[f]ew minorities are included in the workforce of pre-sentence investigators for Adult Probation and Parole (AP&P), contract workers and staff.”⁶³ The Juvenile Disproportionate Minority Confinement Committee states, “[t]here is no systemic continuing education training on cultural issues nor any cultural competency requirements for public defense attorneys in the juvenile justice system.”⁶⁴ The Pre-Adjudication Committee found that Peace Officers Standards and Training (POST), “offers an initial training on issues of diversity in its basic training. While the training is of high quality, the time allotted is insufficient to address the needs of racial and ethnic communities in Utah. Very few agencies surveyed had offered any type of diversity training for continuing education purposes.”⁶⁵

The Community Resources Committee's recommendation for “regular cultural awareness training for all employees” within community resource programs stems from research completed by the Social

Research Institute (SRI).⁶⁶ A survey of program administrators demonstrated that approximately 50% had a written policy requiring cultural sensitivity training. Only 19% reported that such training was required on an annual basis. In answers to survey questions, “[a]dministrators cited many instances where individuals had acted insensitively when interacting with racial and ethnic minorities An administrator mentioned that persons of ethnic origin are ‘often told to go back to where they came from.’”⁶⁷ When asked for suggestions, administrators listed “cultural sensitivity training and the need for more education.”⁶⁸ The committee noted that academic research shows that “psychological evaluations completed through an interpreter (or even without an interpreter when a person has limited English skills) are of questionable validity.”⁶⁹ Training on this issue of the reliability of these evaluations are included in the recommendations below.

Focus groups with community resource program staff indicated that “[o]pinions seemed to illuminate a lack of cultural awareness on the part of some staff while others expressed deep concern for systemic features ‘that allow minorities to fall through the cracks.’”⁷⁰ It also found, “several instances of language and attitudes that would be categorized as ignorant, insensitive or possibly racist.”⁷¹ As a consequence, SRI recommended, “the education and continuing training of community program staff and employees of the justice system.”⁷²

Youth who participated in SRI’s juvenile justice focus groups felt that, “the attitudes and behaviors of professionals in the system subject them to racial bias.”⁷³ A majority of staff in focus groups spoke “directly about the negative experiences of minority juveniles due to the lack of access to resources, racial stereotypes, and miscommunications between families and the system.” The study found that, “[b]oth youth and professionals believe that racial stereotyping practiced by personnel at multiple points in the system (e.g., police, judges, intake workers, probation officers) and by school system personnel leads to more severe sentencing for minority youth.”⁷⁴ Further, the report found the following about juvenile justice system personnel:

- Professionals stated that system personnel exhibit biases in the areas of cultures, languages, and religions.
- Professionals demonstrated unconscious racial and social class bias during the focus groups.
- Some professionals exhibited a lack of understanding of the nature of racism or its impact on minority youths’ lives.⁷⁵

The report also found that the Division of Youth Corrections “currently offers diversity education . . . that is generic and not specific to race and ethnicity” and that is offered “at academies for new employees and supervisory education.” In 1998, 12 sessions for a total of 49 hours were offered for approximately 660 employees in attendance. Given these findings, the study recommended training in the areas of culture, the impact of stereotypes on staff decisions, societal racism, and on youth/staff ethnic matching.⁷⁶

Many of these findings are echoed by the research sponsored by the full Task Force. In the public hearing report by Woolf, he notes “the overall sense of the stories is that unfair and oppressive treatment is pervasive, long standing, and getting worse.”⁷⁷ Most prescriptions for education came in conjunction with a description of an experience or story of unfairness. The report found that “[e]ducation and training were repeatedly proposed as the way to bring about change. Two separate themes emerged:

transformation, that is, education to transform the values, attitudes, and behavior of both discriminators and discriminatees; and information, to level the playing field that is currently heavily tilted against minorities who do not have the necessary knowledge about the justice system to act in their own self interest.” More specifically, “[t]he first two themes of transformation are directed at discriminators, primarily the police. They include the need for teaching tolerance and respect, and the need for diversity, sensitivity, and other training. The third theme of transformation is directed at minorities, encouraging recognition of the role their attitude plays in contributing to unfairness, and how this can be alleviated by attitude transformation.”⁷⁸

The Woolf report on the attorney and judges interviews found that the attorneys tended to believe that “racism is pervasive in the justice system, and is often subtle, denied, or hidden,” whereas the judges revealed the stated ethos that “courts are fair to minorities, and the contradictory views of various other groups are only perceptions and alternative perspectives that may be understandable, but contrast with reality as they see it.”⁷⁹ Nonetheless, comments from a judge and an attorney proposing judicial training to address issues related to cultural sensitivity are included in the report. Both the Woolf and the Diaz analyses of the women of color attorney focus groups reveal that these attorneys also suggested educational experiences for justice system workers to improve cultural competency.⁸⁰

The Community Resources administrator survey yielded comments related to judges that demonstrate training needs. When asked if respondents had personally observed racial bias in the last three years, many of the comments cited the behavior of judges. One comment told of a judge who refuses to use certified court interpreters, instead requiring defendants to enter a plea saying “you understand English just fine” or “uses his clerk to translate.” Another comment was about judges who require a pre-sentence investigation of all Spanish speaking defendants “due to the language barrier” even for a first offense. And finally, particularly annoying to community treatment providers were judges who order defendants to complete in-patient treatment programs that do not exist (e.g., inpatient alcohol and drug treatment in Spanish).

Finally, SRI’s Pre-Sentence Process Analysis for the Task Force pointed to the need for cultural competency training. As noted in the Workforce: Recruiting/Hiring section, SRI found that “[a]ll the investigators at SL County AP&P (the largest in the area) are white. One investigator is white and bilingual (Spanish speaking).”⁸¹ This finding supports that of the Courts Committee mentioned above. All investigators interviewed,

had case experience with cultural diversity and interpreters. Investigators admitted that they were more apt to establish a rapport and trust a person of similar cultural, economic, and religious background to them, whether they were conscious of it or not. However, they also claimed that even if an investigator employed harmful stereotyping, while the interview process might be affected, the overall recommendation is checked by colleagues, a supervisor, defense, prosecution, and judge.⁸²

To address potential biases that may result from an all-white staff serving a diverse clientele, the report recommends increased cultural sensitivity training/cultural education.⁸³

WHAT'S BEING DONE

Peace Officers Standards and Training has begun efforts to update its curriculum to better meet the needs of new officers and is subsequently offering a modernized curriculum dedicated to the development of cultural competence. Courses teaching cross-cultural communication, stereotyping and racism issues as well as how to deliver police services in a multi-cultural community are taught as part of an effort to incorporate cultural awareness into the appropriate curriculum. Furthermore, POST is offering an in-service class on cultural competency, free of cost, to police agencies around the state. The course seeks to help officers understand and confront personal biases in addition to teaching effective communication skills.

The Salt Lake City Police Department (SLPD) has also incorporated diversity issues into its 40-hour continuing education requirement. Issues such as hate groups and hate crimes as well as sensitivity training and diversity issues have been spotlighted as part of this effort.

THEME: Every segment of the criminal and juvenile justice system should have appropriate and continuous training aimed at achieving cultural competency to help ensure racial and ethnic fairness. Existing resources, such as the joint council chairs of the State Offices of Ethnic Affairs and other diversity and multi-cultural programs throughout the state, should be utilized in the development of such training.

Ia. Peace Officer Standards and Training (POST) certified officers should be required to complete a minimum of four (4) hours per year of diversity training, as part of its forty hour (40) continuing education requirement.

Ib. Law enforcement diversity training should be non-repetitive and offer a variety of lesson plans throughout the year, such as:

- Race Versus Culture
- Hate Groups and Hate Crimes
- Gender as a Unique Cultural Heritage
- Domestic Violence Training
- Sexual Harassment on the Force
- Rape Survivor Awareness
- Understanding One's Own Biases
- Consequences for Racial Bias on the Job: Can I Be Sued?

Ic. Cultural diversity training should address the specific needs of law enforcement. This training should focus on cultural competency, not only awareness and sensitivity. It should provide opportunities for various ethnic groups to teach officers about the culture. The Utah Chiefs of Police Association, Utah Sheriffs' Association, and Peace Officer Standards and Training (POST), should create a curriculum for law enforcement.

2a. Upcoming annual conferences for chiefs and sheriffs should have diversity issues as a main focus.

2b. Administrative personnel, including chiefs and sheriffs, should be required to complete additional training, at least yearly, regarding issues related to managing a diverse workforce.

3a. The Utah Supreme Court's Board of Mandatory Continuing

Legal Education should require attorneys practicing in the criminal and juvenile justice systems to complete cultural competency training on a regular basis

3b. The Utah State Bar should offer Continuing Legal Education (CLE) training on cultural competency for attorneys and paralegals in the criminal and juvenile justice systems.

4. The court and counsel should, as a matter of policy, warn defendants, who agree to deportation as a condition of the sentence, of the harsh consequences under federal law for violating the condition not to return to the United States without permission from the government.

5a. The Judicial Council should ensure that all judges (at all levels of court) and relevant court personnel receive regular training on the appropriate use of interpreters in the courtroom.

5b. Judges should receive training on the level of reliability of psychological evaluation results in cases where the mental health practitioner does not speak the same language as the client/defendant, does not have an understanding of the defendant's culture, and in cases where an interpreter is used for the evaluation.

5c. Mandatory cultural diversity training should address the specific needs of court employees, including judges. The training should focus on cultural competency, not only awareness and sensitivity. The Administrative Office of the Courts should create a curriculum for court employees, including judges. Upon completion of the curriculum, the Administrative Office of the Courts should report to the Judicial Council on the status and implementation of its curriculum.

5d. Judges should receive training on the rights of individuals to serve on juries and defendants to have a jury that reflects a cross section of the community.

6. Individual judges, at all levels of the courts, and members of the Board of Pardons and Parole should conduct a heightened examination of the sentences they impose to determine whether or not they have, perhaps unintentionally, allowed racism to cloud their judgments.

7. Pre-Sentence investigators should receive training on the importance of adhering to sentencing guidelines and their affirmative duty to justify departures with specificity.

8. Training on the nature and impact of racial and ethnic bias within the system should be mandatory for Department of Corrections and Board of Pardons and Parole employees, including pre-sentence investigators (staff and contract). Mandatory training should include communication skills and the minority defendant. This training should assist employees in understanding different cultures.

WHAT'S BEING DONE

POST-certified (Peace Officers Standards and Training) personnel from the Utah Department of Corrections (UDC) as well as Board of Pardons and Parole are currently undergoing 25 hours of training in an effort to mitigate racial and ethnic bias in the system. Instruction includes issues on Cultural Diversity, Spanish for Law Enforcement, and Inter-personal Communications. Though private contract Pre-Sentence Investigators currently do not receive such training, the Department of Corrections has acknowledged that providing such services would be feasible and of minimal cost to the Department and concurs that such training should occur.

Suggested Strategies

The Task Force recommends the following strategies as suggestions for specific implementation efforts:

- Foster a heightened awareness of individual biases in the workplace. The tendency to discount the statements or experiences of people of color may be unconscious for some but is still inexcusable and dangerous behavior.
- Coordinate the establishment of a clearinghouse for curricula and resources on diversity issues. It should be developed through enlistment of various national and local resources and databases. The names of local diversity trainers should be made available through this clearinghouse, as well as national speakers for conferences and special events. All of this information should be available via a website for statewide access by agencies across the state.
- Sponsor training for law enforcement and prosecutors on recognizing, reporting, investigating, and prosecuting hate crimes as well as general awareness training about needs of hate crimes victims and diverse groups in Utah. The importance of ongoing contact with the victim about the status of their case is an essential element of the training.
- Conduct training on the nature and impact of racial and ethnic bias in ways that goes beyond cultural sensitivity and valuing diversity training and includes a personal assessment and personal coaching when necessary. For example, a racial bias indicator survey would assist employees in understanding their own personal biases in a non-threatening way.
- Make a half-day training on racial and ethnic issues part of the court clerks' career track. This training should be geared specifically to how clerks deal with minority litigants and other court patrons.
- Offer cultural diversity training both in new employee orientations and ongoing education programs.
- Provide opportunities and encourage staff to learn needed second language skills.

- Require judges to undergo personal training when the Judicial Conduct Commission finds evidence supporting a complaint related to racial and ethnic bias.
- Provide correctional staff with training on issues relating to diverse religious practices and the rights of inmates. The Department of Corrections should work with religious groups, including tribal members, to coordinate religious practices and ensure that religious practices in the prison are respected.

WHAT'S BEING DONE

The Multi-Cultural Legal Center is currently under contract with the Administrative Office of the Courts to develop a standardized, adaptable, cultural competency curriculum for the juvenile justice system. The curriculum will address law enforcement, legal representation, court personnel, youth corrections employees, and treatment providers. The project will include a conference to begin implementation of the curriculum with system administrators. Juvenile Justice program efforts were funded by Title II Formula Grant monies received from the Utah Board of Juvenile Justice and the Commission on Criminal and Juvenile Justice.

INTERPRETING

Six subcommittees issued findings or recommendations related to interpreting in the criminal and juvenile justice system. For example, the Pre-Adjudication Committee report included a chapter on the provision of competent interpreters and found that, “[a]t present, law enforcement agencies are not prepared for or capable of taking care of non-English speaking citizens adequately,” and “[t]he problem of competent interpreters as it now exists will be compounded by the continued growth of non-English speaking minorities.”⁸⁴ The Representation Committee found that the lack of interpreters and the quality of interpreting result in injustice for some limited-English proficient minorities.⁸⁵

The Courts Committee report had a section on Translation/Interpretation/Language Barriers with numerous findings in this area. The report found that “the Administrative Office of the Courts has been very active in the court interpreter field.” The Committee also noted that “there are not enough interpreters available in a sufficient number of languages, especially outside of the Salt Lake area. Also, “there are no Utah certification programs for spoken languages other than Spanish. Further, “court employees frequently lack an appreciation of the important role of court interpreters.”⁸⁶

Finally, the Juvenile Disproportionate Minority Confinement Committee found that interpreters are often not available to law enforcement and other agencies outside of the court system.⁸⁷ In addition, they found that “non-English speaking parents who don’t receive adequate understanding of the charges and/or sentencing are hampered in helping their child be successful either through the court process or post-adjudication.”⁸⁸ The SRI research that served as a foundation for this report found that in staff focus groups, juvenile justice professionals “asserted that bias occurs due to language barriers. That is, when staff are not able to speak the language of the youth and their families, youth do not receive fair treatment.”⁸⁹

The Community Resources Committee found that language barriers impede access to services, as in-patient treatment programs do not exist in Utah for individuals who do not speak English. In part, these findings rely upon the work of the Social Research Institute’s study of community resources programs. The community program administrator survey results stated that 55% of the agencies responding reported that interpreting services were available to “anyone” who needed them, 25% stated that they were available to “most” clients, and 10% provided interpreting services for “some” clients. No agencies reported that interpreting services were “not available at all.” In staff focus groups, the issue of language barriers generated a great deal of dialogue. Some participants reported, “a deep lack of interpretation/language services for clients while others stated that they had not noticed a significant problem with language barriers.”⁹⁰ Problems appeared most pronounced for languages other than Spanish, though the report notes insufficient Spanish interpreting services as well. The lack of program materials in other languages was a notable problem for some.⁹¹

The Woolf report on the public hearings notes that there were a great number of stories describing “how things are.” One category of these participant statements were about unfair treatment, specifically when access to services was denied. “Experiences of lack of access due to language barriers included the critical role of interpreters in communicating effectively with the justice system,” and “general experiences of lack of access caused by language barriers.”⁹² Major concerns regarding interpreters were the “important distinction between bilingual and bicultural interpreters ... the lack of qualified interpreters, and the reluctance of police and courts to make any special accommodations when defendants were clearly having communication problems.”⁹³

The Woolf report on the attorney and judges interviews echoes this language barrier problem. Attorneys mentioned language barriers as “an example of a factor correlated with race that leads to unfair treatment.”⁹⁴ Judges were very concerned about issues of interpreters and interpretation mentioning “the impossibility of fully compensating for a lack of English speaking skills; the need for interpreters to understand the culture as well as the language; the varying quality of interpretation; and the difficulties of reliably providing interpretation.”⁹⁵

The Diaz report on the women of color attorney interviews found that “language barriers were a big concern of the participants. The participants felt that judges ‘shut down’ and are disrespectful to people who are obviously of different ethnic or racial background, especially when there is a language barrier.”⁹⁶

Finally, the Pre-Sentencing process report by SRI found that interpreters used by Adult Probation & Parole are from the same pool of interpreters used by the courts. While investigators expressed confidence in the quality of interpretation, they acknowledged that interpreters are often not of the same cultural background as the defendant which could cause “misrepresentation of information to an investigator.”⁹⁷ Investigators also acknowledged that pre-sentence reports written via an interpreter are often shorter and with fewer “collateral contacts” than those where an interpreter is not needed.⁹⁸ For example, the report states, “it is often the case that an interpreter will hear several paragraphs of dialogue from a defendant, and then respond to the investigator with a few short sentences.”⁹⁹ Ultimately, the report recommends that “services for interpreters should continue to be a top priority for AP&P. Language barriers are recognized, but only sufficient numbers of interpreters can reduce the language barrier.”¹⁰⁰

THEME: All criminal and juvenile justice system entities should provide quality interpreting to those with limited English proficiency.

I. All law enforcement agencies should ensure effective interpreter services at arrest, booking, and at the complaint process. Strategies should include:

- development of minimal interpreter standards,
- utilization of the AT&T Language Line,
- language training opportunities for law enforcement, including tuition awards and in-house training, and
- use of volunteers to provide assistance with both knowledge of language and culture.

WHAT'S BEING DONE

The Salt Lake City Police Department (SLPD) has made efforts to provide language training opportunities for its officers in addition to using services to better serve non-English speaking communities. For example, bilingual officers are currently serving on over seven different divisions including Homicide, Hit and Run, and Auto Thefts. The SLPD hopes to expand these numbers by extending resources such as the “Career Path” Program which provides incentives and evaluation for bilingual capabilities.

2. The public and Bar should be provided with easily retrievable information on individual rights to an interpreter and the availability of interpreter services. Strategies should include:
 - Bar and Court web sites, and
 - Audiovisual and pamphlet materials available in multiple languages.
3. The court interpreter certification program should be strengthened and expanded to ensure quality interpretation for all those appearing in court proceedings. Strategies should include:
 - employing a full time administrator, including local managers, as appropriate,
 - employing full time interpreters as court employees, where appropriate,
 - establishing guidelines for contract interpreter selection,
 - monitoring needs requirements for additional language interpreters and certification testing,
 - establishing and maintaining a code of professional responsibility, discipline, and grievance procedure, and
 - conducting a concerted effort to recruit skilled interpreters so that a high probability exists that a certified interpreter will always be used.
4. Interpreters should be proficiently bilingual and culturally competent to provide the proper language and dialect to an individual before the court. More minorities should be recruited to serve as interpreters.
5. Non-interpreter court employees who have bilingual skills and use those skills as a part of their job duties should be acknowledged through increasing starting salary levels and/or appropriate pay increases.
6. The Judicial Council should assign the responsibility to the Court Interpreter Advisory Committee of conducting a feasibility study to evaluate the need, viability, and placement of a centralized authority for overseeing the administration of certification and delivery of interpreter services for all criminal and juvenile justice agencies.
7. Judges must assume responsibility in determining that the race, ethnicity or primary language of defendants, witnesses, victims, and counsel do not affect the ability of individual jurors to be impartial and should instruct court participants on the role of the interpreter (including the administration of the oath in open court).

WHAT'S BEING DONE

The Court Interpreter Advisory Committee has made recent proposals to improve the quality of service for those in need of interpreting assistance. For example, they are recommending that the qualification process for prospective interpreters be modified to include training and ethics testing as well as requirements for courtroom observation. Rule 3-306 has recently been amended to include discipline procedures to be observed following a complaint.

WHAT'S BEING DONE

Beginning July 2000 the Judicial Council approved a year long pilot program offering monetary incentives for bilingual court employees. This statewide effort offers a stipend for various court employees who are able to utilize second language skills during daily activities.

COMMUNITY RESOURCES/OUTREACH

A major focus of the Task Force's work, both in its research and its work to build partnerships, has been related to Community Resources and Outreach. Much of the research has pointed to a serious "disconnect" between communities of color and the justice system. The need for better communication and information flow between these groups constitute a significant portion of the recommendations of this report. The recommendations below address three major categories of Task Force findings.

First, the Task Force finds that there is a significant need for public education about the criminal and juvenile justice system.¹⁰¹ Public hearings demonstrated that many of the participants, whether of minority backgrounds or not, had insufficient knowledge about how the system is supposed to work. For example, the Woolf report on the public hearings states, "[t]he general sense of the hearings was that minorities experienced extreme powerlessness in the face of a justice system that they did not understand and that did not understand them."¹⁰² It was thus not uncommon for individuals to provide statements to the Task Force including the comment that they weren't sure if their treatment constituted bias, even though they certainly felt like they were being treated disrespectfully. In addition, people seemed to lack information about how to access the system, either to participate in it or to file a complaint against it. Public hearing participants recommended education and structural change to address these concerns. Relevant here is their call for educational needs to "inform minorities of the legal system process, and to change minority attitudes regarding accepting responsibility and seeing the other's point of view."¹⁰³

From another perspective, judges interviews showed that judges "placed more onus for facilitating change on minorities themselves, rather than the legal system. For example, judges emphasized that the problem was often the lack of understanding of the system by minorities, rather than resistance from the system itself."¹⁰⁴ Further, staff at community programs also observed that "education about the justice system was lacking for many minorities" and that "[n]ot understanding the laws and cultural norms of America also leads to a misperception about exactly who is expecting compliance from the minority clients."¹⁰⁵ Finally, the juvenile study by SRI ultimately recommended the creation of "Family-Advocacy Programs" that would "aim to help minority and low-income parents, in particular, to learn about their rights and responsibilities within the system."¹⁰⁶

Recommendations to address this first major community resources/outreach finding fall into three areas: recommendations aimed at the public education system to increase knowledge about the justice system and encourage young minority students toward careers in the justice system; recommendations aimed at community based organizations and other groups to provide information about rights and responsibilities in the legal system to their constituencies; and recommendations to criminal and juvenile justice system agencies to provide information to the public about the procedures available to access the system.¹⁰⁷

The Task Force's second community resources/outreach finding concerns a lack of mechanisms in the justice system to encourage full participation by racial and ethnic minorities. Perception data from focus groups of women of color attorneys show that, "[a] wide variety of examples were given of

mechanisms that are in place to help women of color, but that are ineffective, for example, the inability of minority institutions to appeal to women of color, the lack of data on attorneys who are women of color, preaching to the choir instead of reaching out to and involving all lawyers in working to break down barriers, and ineffective mentoring.”¹⁰⁸ Judges suggested that “greater minority representation throughout the court system would be uniformly desirable.”¹⁰⁹ Finally, rates of workforce diversity throughout the criminal and juvenile justice system (see *Workforce: Recruiting and Hiring* section) also demonstrate the need for mechanisms to encourage full participation within the system by minorities. These research results collectively point to the need for increased networking opportunities, broad-based recruiting efforts, and capacity building in minority communities.

Third, the Task Force found inconsistent and often inadequate cooperation and collaboration between system and community entities. The Task Force thus recommends a significant effort at building partnerships between criminal and juvenile justice system agencies and community based organizations, local government, civic groups, religious organizations, and local leaders in order to best meet the community’s needs.

THEME: Educational and informational efforts by all are needed to ensure racial and ethnic fairness and representation in the criminal and juvenile justice system.

I. The State Office of Education should consider the following as strategies to assist in developing the pool of qualified minority applicants for criminal and juvenile justice careers:

- a pilot criminal and juvenile justice academy/magnet school at the high school level that focuses on the many career opportunities in the criminal and juvenile justice system,
- incorporating criminal and juvenile justice issues into the high school curriculum.

2a. The State Office of Education, via their “Prevention Dimensions” K-12 curriculum, should take a leadership role in partnering with the courts, state government, local government, legal organizations, and community groups, to teach the community and students about respect for different cultures, tolerance of difference, and understanding about what constitutes a hate crime.

2b. The Judicial Council’s Public Outreach Committee should take the lead in helping communities to understand the court process by considering implementation of the following: civics classes for minority communities, tours of the courts for schools and youth clubs, Meet the Judges nights, and having a Court - Community Outreach effort to link the courts and the public.

WHAT’S BEING DONE

Community outreach efforts by the Salt Lake City Police Department (SLPD) include the placement of detectives in four high schools and two middle schools. Detectives often teach or speak to classes on issues such as court and complaint procedures and citizen rights. Furthermore, SLPD conducts a Youth Academy which seeks to educate students about careers within the department.

WHAT'S BEING DONE

The St. George Police Department has also taken initiatives to involve community members through programs such as their citizen's academy which offers courses discussing the role and limitations of law enforcement. This academy has also been geared to meet the needs of the minority community and offers sessions scheduled in Spanish. Furthermore, an academy has been established for youth between the ages of 11-14 providing week long job shadowing opportunities that work to build positive relationships between youth and police officers.

WHAT'S BEING DONE

The Multi-Cultural Legal Center and the Utah State Bar are collaborating to enhance the Bar's pro bono program efforts. The partnership aims to increase the knowledge of the pro bono program services within racial and ethnic communities in Utah and increase the number of minority attorneys participating in the program. Future plans also exist to create an interpreter pool to facilitate the interaction between attorneys and their clients when a language barrier exists.

3. All elements of the criminal and juvenile justice system should collaborate to provide the public and schools with information to better understand our law enforcement and justice system in order to enhance public trust and confidence. This should include:

- law enforcement complaint process,
- judicial complaint process,
- other employee complaint processes,
- annual report on minority bar, and
- web site information on minority bar and judges, to include tribal courts.

4. Minority organizations, including the Utah Minority Bar Association, should anticipate judicial vacancies, encourage minority lawyers to apply and participate directly in the nominating commission and selection processes.

5. The Utah Minority Bar Association and other associations should continue efforts to provide scholarships for minority law students and should work toward developing creative methods for expanding its outreach to recruit and encourage minorities to consider pursuing the practice of law.

6. The Utah State Bar should promote networking as a means for increasing minority membership and participation. This should include:

- social events and educational programs,
- law school programs,
- internships,
- scholarships, and
- mentor programs.

7. Minority communities should organize support groups to develop intervention and mentor/role model programs for high risk youth.

8. Criminal and juvenile justice entities should establish and maintain ongoing partnerships with community institutions from local government, to civic groups, to religious organizations, to local leaders in order to best meet the community's needs.

COMPLAINT PROCESSES

Research related to complaint processes fell into two major categories of data. First, this topic emerged in significance to the Task Force as a result of the public hearing process. The Task Force then conducted research into the complaint processes of law enforcement agencies via the Pre-Adjudication Committee and the Task Force's comment period.

Public hearing participants raised multiple concerns about law enforcement complaint processes at numerous hearings, including the Sorenson Multicultural Center hearing, the Central City Community Center hearing, the Indian Walk-In Center hearing, the Logan hearing, and the Layton hearing. Participants expressed concerns that ranged from a lack of feedback or inadequate feedback from agencies after filing a complaint, to a concern about never being contacted to provide testimony, to concerns about a lack of meaningful civilian or public input into the process, to feelings of intimidation and fear of harassment that kept individuals from filing complaints. While the purpose of the hearings was not to establish fact but rather perceptions, the frequency of the comments raised the concern of several Task Force members both about the public's knowledge of how complaint processes work as well as the actual process itself. Here, as elsewhere, perception and reality are closely connected, to the extent that there is widespread perception in the minority community that the system is ineffective or inadequate.

In its report on the public hearings, the Client Committee made recommendations about improving the complaint and grievance processes of the criminal and juvenile justice system. In the Woolf report on the public hearings, the report states, "[t]he most important themes of structural change were the increased representation of minorities throughout the justice system and the independent oversight of judicial institutions. . . . Participants expressed little or no confidence that abuses and discriminatory behaviors will be adequately addressed by the current system Many respondents spoke of the fear of retaliation that prevented them from filing complaints."¹¹⁰ The report also found that "[s]trong and frequent requests were expressed for increased minority participation in all facets of the justice system: police, attorneys, judges, review boards, and administration."¹¹¹

The Pre-Adjudication Committee spent some time attempting to learn more about law enforcement complaint processes across the state. The Committee asked 22 agencies across the state to respond to written questions about their respective policies and procedures. According to its report, the Committee was interested in determining:

(1) whether law enforcement agencies have in place a law enforcement abuse complaint process; (2) how the complaint process is organized; (3) whether the organizations keep track of the ethnicity of the person complaining; (4) whether the law enforcement entities keep track of the ethnicity of the officer which had a complaint filed against him/her; (5) what action is taken as a result of the filed complaint; (6) whether there is a review board in place to challenge and verify the findings made by the organization; and (7) if there is a review board in place to determine the make-up and terms of the review board members.¹¹²

Responses and results of the research are outlined fully in the Committee's report. The results have been criticized by law enforcement, stating that the data are not fully accurate. However, the Committee did find, for example, that 95 percent of the agencies surveyed stated that they have a complaint process in place. None of the agencies keep a record of the officer's ethnicity. Thirty-six percent said they had no record of complaints for the years of 1996-1998. Sixty percent indicated they did not have a review board. Those that had a review board had varying definitions of review boards, with different operating procedures and guiding policies. Finally, 63 percent said that they do not make efforts to inform the public of their existing complaint process.¹¹³

The final aspect of the Task Force's research on complaint processes was its comment period (see *Comment Period* section for more information). The Task Force received written comment from several law enforcement entities in the state, including the Duchesne County Sheriff's Office, Peace Officers Standards and Training, Salt Lake City Police Department, St. George Police Department, and the Utah Department of Corrections. Some of these agencies submitted comment regarding the complaint processes, both expressing concern about some of the proposed Task Force recommendations and providing information about its current process. Factual information about the current practices of law enforcement, submitted during the comment period are included below to acknowledge what is currently being done in this area.

The Task Force faced a number of challenges in making constructive recommendations in this area. Part of the difficulty stems from the fact that law enforcement agencies fall under almost as many sources of authority as there are different agencies. Municipal police departments, county sheriff's offices and statewide law enforcement are all independent from one another and have a vast range of sizes, resources, and jurisdictions. These variations in law enforcement are compounded by rural versus urban differences and ultimately make it difficult to recommend improvements that will be both viable and helpful. For instance, while a recommended solution may work well in an urban environment, it may be less cost effective, or even less constructive to implement in a rural setting. The Task Force believes that complaint processes can be improved despite these variations. And its members felt strongly enough about this issue that it chose to address it directly with the recommendations below.

Finally, the Task Force acknowledges that the goal of this section's recommendations, as stated in its overall theme is to make the complaint process user-friendly, allowing individuals to be free from harassment, intimidation and retaliation. The Task Force hopes that reaching this goal will address the perception of little or no confidence that complaints will be adequately addressed and that it will provide law enforcement agencies with a productive mechanism for investigating potential problems. They address both the process of filing a complaint as well as the public's access to information regarding complaints. The report's *Community Resources/Outreach* section deals with increasing public knowledge about complaint processes.

THEME: Complaint processes should be user-friendly, allowing individuals to file complaints in a non-intimidating environment and free of harassment, retaliation and retribution.

I. At a minimum, all law enforcement agencies in Utah should have a written complaint review process in place.

2. The Peace Officer Standards and Training (POST) Council should establish a model complaint process for law enforcement agencies. The POST Council should take into account the following issues:

A. Every law enforcement agency should have a Citizen's Review Board or a similar review process that investigates allegations of excessive force and other allegations of substantial civil rights violations. This review board should represent a cross section of the community not employed by law enforcement.

B. Every law enforcement agency should complete the review of the complainant's investigation within a reasonable time period and include a written response with supporting testimony or documents to justify the law enforcement agency's actions or inactions.

C. Every law enforcement agency should allow a complainant to file a law enforcement abuse complaint via the telephone.

D. Law enforcement agencies should accept anonymous complaints and should include a procedure informing anonymous complainants of the limits of investigations that are inherent to anonymous complaints.

E. Law enforcement agencies should allow the complainant to review, for verification of accuracy, a copy of his/her testimony.

WHAT'S BEING DONE

While many agencies, including the Salt Lake City Police Department and the Department of Corrections, currently have review processes in place, the Utah Chief's Association has agreed to encourage police departments and sheriff's offices without adequate policies to adopt a written policy.

WHAT'S BEING DONE

The Salt Lake City Police Department (SLPD) is working in compliance with a Civilian Review Board that examines complaints about police conduct as well as conducts audits of particular police department files relating to internal police investigations. Following these audits, the board produces periodic reports regarding trends that they have noticed as well as recommendations for future action. Information on how to file a complaint with the review board is placed in libraries, city buildings and is distributed during outreach programs. The brochures are written in both Spanish and English.

The West Valley Police Department has also established its Professional Standards Review Board (PSRB) which grants every Internal Affairs case a hearing. The current board hosts five civilian members all of which have been approved by the city manager and city council, as well as one police representative. The board assembles monthly to review complaints, police pursuits, and occurrences involving the use of force. Based on their findings they make recommendations to the chief of police. The PSRB has also made efforts to educate the community about these resources including a forum hosted by the NAACP wherein the Chief responded to questions about the complaint process.

WHAT'S BEING DONE

In 1998, the Judicial Council established a unique statewide Court Information Line: a resource through which Utahns may receive answers about court-related questions. The toll free number was suggested by the Administrative Office of the Courts as a public service for the community to turn to with questions or complaints. During its first year alone, the line received 1400 calls requesting information concerning Utah statutes and court processes.

F. Every law enforcement agency should have the complaint reviewed by the officer's supervisor and by someone other than the officer's immediate supervisor.

G. Every law enforcement agency should list general categories of common complaints (i.e., verbal, physical, harassment, action conducted by the law enforcement officer) on the complaint process form.

H. Law enforcement agencies should work to instill public confidence in the review process by keeping the public informed as to the total numbers and types of complaints filed per year, the types of dispositions on those complaints, as well as information about the complaint process itself.

I. Literature describing the complaint process, the complainant's rights to appeal, and the consequences for filing false complaints should be printed in English as well as other languages, and should be available at law enforcement agencies in plain view.

ADMINISTRATION

Many of the Task Force's recommendations are administrative in nature, that is, they require policy changes and decisions by management to effect change. Recommendations address groups such as the Utah Legislature, county and local governments, criminal and juvenile justice system agencies, and the Utah State Bar. As noted by the Client Committee in its report, "certain aspects of racial and ethnic fairness in the criminal justice system are best affected by the decisions, attitudes and examples of leadership."¹¹⁴ The Task Force urges local and state leaders to address these issues, all of which are based on Task Force research as outlined below.

Hate Crimes

As a result of its sponsorship of the *Changing Face of Hate*, a statewide symposium on hate crimes (see *Task Force Structure and History* section for more details), the Task Force received a significant amount of input on this issue, from community groups, individuals, professionals, and national experts. This two-day educational dialogue session revealed an unmet need for a safe and central location for hate crimes prevention and education.¹¹⁵ Certainly partnerships between existing organizations would facilitate the creation of such an entity. The cooperation of the entire criminal and juvenile justice system is required to provide this entity with the credibility and resources necessary to adequately address the problem.

Racial Profiling

Racial profiling by law enforcement has been a major issue for the Task Force. The first mention of racial profiling came during the public hearings. Task Force members are clear that these public hearings were not meant to establish fact, but instead, as the Woolf report states, the public hearings were "explicitly intended to gather and understand people's perspectives and interpretations of their experience of racial and ethnic bias, rather than to attempt to establish in any objective way whether such bias does or does not occur."¹¹⁶ The report also notes that "[q]ualitative research . . . assumes that people's experiences are to a great extent interpretations of the world, rather than objective descriptions to it." While the Task Force has received criticism for relying on this type of research, it should be noted that although the report does not reflect established facts, "two factors support the validity of the report. First, the report identifies only consistent themes expressed by many people at many hearings. While unique or uncommon experiences may be important or heartfelt, they have not been included in the report. Second, speakers were told to limit their presentations to five minutes each, and therefore had to select the stories that were felt the deepest. The story selection process was taken seriously [as evidenced by the prefaces of many participants' remarks]."¹¹⁷

The Woolf report contains a section specifically addressing profiling as a theme of unfair treatment mentioned during the public hearings. The report states,

Profiling is a term used by many respondents to describe experiences of being stopped, followed, harassed, or singled out of a group by a police officer, on the basis of appearance, without any suggestion that a specific wrongdoing has occurred. Profiling is described as part of the normal, everyday experience of minority life, regardless of social standing or position. Many people indicate that profiling has increased in recent years, and most have accepted profiling as a part of life that must be endured. Many describe the emotional strain that profiling creates. Typical emotions are anger, sadness and dismay that this is occurring in America, conflict with feelings of cultural pride, and frustration that a minority group has to suffer as a whole because of the behaviors of a small number of its members.

Two different types of profiling were identified. The first is based on various aspects of a person's appearance, and the second is based on a person's location, for example, a minority person driving in an upscale non-minority neighborhood.¹¹⁸

In addition to comments made at public hearings, attorneys, judges, and juvenile justice system personnel also indicated that they felt racial profiling occurs. The Woolf report on the attorney and judges interviews states that, "attorneys also expressed a strong belief that racial profiling by the police was standard operating procedure, but they also emphasized other types of profiling: profiling by judges and prosecutors, and the increase in profiling cases since the Lopez case."¹¹⁹ While judges, by contrast, "felt there was very little visible manifestation of unfairness," they expressed that what existed "was confined primarily to profiling activities of the police."¹²⁰ Finally, juvenile justice system professionals perceive that minority youth overrepresentation is "due at least in part to racial profiling by police."¹²¹

Due to this preponderance of qualitative input, the Task Force attempted to determine if indeed the existence of racial profiling could be established in Utah. Community members claimed they could prove the existence of profiling based on their personal experiences. They could not. Certain law enforcement agencies claimed they could prove that racial profiling did not exist based on their existing databases. They could not.

The Task Force worked with law enforcement data specialists and chiefs of police from several major urban enforcement agencies in the state to attempt to analyze databases for profiling. A large number of data challenges (see *Data Challenges* section for more details) served as major obstacles that ultimately precluded the Task Force from determining if racial profiling exists.

The Task Force did ask its research consultants to formulate an assessment of each of these agency databases and to determine what data fields would need to be collected in order to conduct a future study of racial profiling in Utah.¹²² Consultants also completed an analysis of the Utah Highway Patrol database to determine what data would need to be collected and which of these fields are already being collected.¹²³ Recommendations in the research section of the report advocate future studies on racial profiling once database modifications are complete.

The topic of racial profiling is nationwide. It is also a controversial, divisive topic. Undoubtedly, some Task Force members are personally convinced that racial profiling is a fact of life in Utah, one that

affects the lives of minority people profoundly. Other Task Force members are equally persuaded that racial profiling is not tolerated by law enforcement officials in Utah and does not affect the lives of minorities here. Still others may be undecided. However, all Task Force members agree that law enforcement administrators and directors should not tolerate police conduct in decision making that is based solely on race or ethnicity. Its recommendations in this section attempt to address what administrators in the law enforcement community can do to help ensure that racial profiling does not have the sanction to exist here in Utah.

Legal Representation

Recommendations addressing the Utah State Bar and issues related to legal representation more generally were the focus of several subcommittee and research efforts. The need for increased networking and avenues for minority lawyers is documented in the *Community Resources/Outreach* section and is supported by research completed by the Representation Committee, the Courts Committee and the Woolf and Diaz reports on the women of color attorneys focus groups.

The quality of legal representation was raised repeatedly. The public hearings noted a “lack of professional standards of representation” as well as an “unavailability to minorities of private attorneys due to unaffordability, and the unavailability of interest and concern from public defenders. Two separate forms of unfairness were thus coupled and intensified: unfairness due to low economic status, and unfairness due to the apparent lack of interest in the fate of minorities in the current public defender system.”¹²⁴

In the juvenile justice study by SRI, system personnel concurred, saying that “because minority youth are often from lower-income families, they may have inadequate representation in court. According to staff, such legal representation results in more severe dispositions for minority youth.”¹²⁵ While the Representation Committee’s survey of attorneys regarding caseloads did not yield strong feelings of negative impact upon minorities, the Committee did find that the “impact of a lack of resources on rural public defenders points to a disparate impact upon the adequate representation of racial and ethnic minorities because the percentage of minorities in several rural counties is higher than that of the state as a whole.”¹²⁶ More generally, the Committee noted the overrepresentation of minorities in the indigent population and called for policy and procedural changes to occur in an environment that considers the implications of this fact.¹²⁷ The Task Force recommendations in this area are designed to do precisely that, address broad issues related to legal representation with the acknowledgment that minority populations will be impacted by those changes.

Adjudication

The sentencing process received considerable attention by the Task Force. The Courts Committee began an assessment of the pre-sentence investigation process, finding it to be “a critical part of the sentencing process.” It also found:

- Pre-Sentence investigation workers lack specific training regarding racial and ethnic bias.
- Historically, pre-sentence reports began with the identification of the defendant and victim by race.¹²⁸

Regarding the sentencing process itself, the Committee supported the use of the indeterminate sentencing model. However, it also found that “any tools used for sentencing could result in racial and ethnic disparity or bias.” And that “there is very little racial and ethnic diversity among those involved in the sentencing process, with the exception of defendants. Committee members believe that this lack of workforce diversity in this segment could lead to unintentional biases in the sentencing process due to a lack of cross cultural experience of [those in decision making roles].”¹²⁹

The Task Force also asked the Social Research Institute (SRI) to assess the pre-sentence investigation (PSI) process. The report established areas of the process that had potential for bias: first, the lack of adequate workforce diversity of pre-sentence investigators yields the potential for less cross cultural experience and thus the possibility of bias, and second, the lack of cultural competency training for contract pre-sentence investigators. Additionally, the report noted that “the effect of the defendant feeling mistrust for the investigator could have an effect on the report because much of the content of the interview depends on the defendant’s willingness to reveal [his/her] personal history. That is, perhaps a defendant of a certain ethnicity does not trust an investigator and so withholds the information. This could hurt the defendant’s sentencing outcome to some degree.”¹³⁰

Since judges tend to follow the recommendations of the pre-sentence report approximately 90 percent of the time,¹³¹ the Task Force sees this process as critical to ensuring racial and ethnic fairness in sentencing. An analysis comparing pre-sentence investigation recommendations to Utah sentencing guidelines and to the actual sentence imposed formed a focal point of the research on sentencing. For this study, data were provided by the Utah Department of Corrections, as this database was the most complete and accurate of those containing sentencing information. The data contained the following information on individuals in their system: offense, degree of the offense, criminal history, pre-sentence investigation recommendations, sentencing guideline recommendations, actual sentence, race/ethnicity, and judicial district. Complete information was received for 1,155 individuals sentenced during 1999. As noted in the SRI report, one of the problems with using data before October 1998 was the policy change to new sentencing guidelines and the incompatibility between these two data sets.¹³²

One of the challenges of this analysis was the small sample size. When controlling for the effect of criminal history and types of offense, the resulting numbers for comparison were often too small to draw statistically reliable results. However, there were some instances that allowed for analysis. *When comparing the three largest offense categories: property, drug, and sex crimes for the least severe 3rd degree crime and the least serious criminal history, very little difference existed between the pre-sentence investigation recommendation and the actual sentence. Almost all of the individuals, regardless of race, received probation.*¹³³

The analysis looked for agreement and disagreement between the pre-sentence recommendation, the sentencing guidelines, and actual sentences. The report states that “there appears to be a high level of agreement between the PSI recommendations and the actual sentence for both minorities and Whites (89.2% and 93.0%).”¹³⁴ This finding supports the statistic cited above that judges tend to follow pre-sentence recommendations. When comparing pre-sentence recommendations to the sentencing guidelines, the two measurements agree 79.8% of the time for minority defendants. For whites, the pre-sentence recommendation and sentencing guidelines agree 87.5%. On this comparison, the report concludes that “while there is not as much agreement between the PSI and the guidelines as there was between the PSI and the actual

sentence, the agreement is still fairly high for both minorities and Whites. It is clear from the comparisons that the PSI is more accurate for Whites than minorities.”¹³⁵ In fact, a Chi-square statistical test reveals *significantly less agreement between the pre-sentence recommendations, sentencing guidelines, and the actual sentence for minorities than Whites*. As noted in the report, “this project found that all of the 18 pre-sentence investigators at SL County Adult Probation & Parole (AP&P) were white. This lack of ethnic representation may be one reason that there is more disagreement between PSI recommendations, sentencing guidelines, and the actual sentence for minorities than Whites.”¹³⁶

The analysis continued by examining agreement rates by judicial district. The Third Judicial District (including Salt Lake, Tooele, and Summit Counties) has the largest number of minorities and percentage of cases. Only the Second Judicial District (Weber, Morgan, and Davis Counties) also had enough cases to conduct a separate analysis. For that reason, analyses were conducted on these two districts separately, and then a third analysis combined the remaining six districts (1, 4, 5, 6, 7, and 8). The only difference noted among the districts was a higher level of non-agreement between the pre-sentence recommendation and the actual sentence given by the judge. This fact was especially true for minorities. While other districts had non-agreement rates for minorities of 6.3% (2nd District) and 7.5% (Districts 1, 4, 5, 6, 7, 8), the 3rd District had a non-agreement rate for minorities of 17.5%. *Thus, in the Third Judicial District, judges tend more often than in other locations to depart from the pre-sentence recommendation made by AP&P for minorities.*

In light of these findings, however preliminary, the importance of a non-biased pre-sentence investigation process becomes paramount. Task Force recommendations address this issue below. In addition, SRI has outlined additional recommended research in this area to determine more completely if the process leads to racial bias in sentencing.¹³⁷

Juvenile Justice

Recommendations related to the administration of juvenile justice in Utah have their origins in issues raised at public hearings and in research conducted by the Social Research Institute (SRI). Statements at public hearings included those that expressed “the improper bypassing of parents in juvenile situations,”¹³⁸ “despair at not being heard by the system,”¹³⁹ and “extreme powerlessness in the face of a justice system they did not understand, that did not understand them, and in which the power differences between themselves and those in authority were so great that resignation and inertia seemed to be the only rational responses.”¹⁴⁰ When considered in conjunction with findings and recommendations by SRI in its juvenile justice study, the Task Force formulated several recommendations that are designed to make the system more accessible, culturally appropriate, and user-friendly.¹⁴¹

THEME: All components of the criminal and juvenile justice system should not tolerate racial or ethnic bias or discrimination in their agency. All such agencies should evaluate their policies and procedures for any disparate impact upon minority populations.

System-Wide

I. Utahns should be provided a safe and central location to learn more about hate groups and hate

motivated violence, to receive information and education on recognizing, reporting, investigating, prosecuting, and punishing of hate crimes, and to report complaints about the handling of their cases.

Law Enforcement

2. Law enforcement administrators and directors should not tolerate police officer conduct in decision making at any level based solely on race or ethnicity.
3. Law enforcement agencies should adopt a written policy that prohibits the stopping, detention, or search of any person when the action is solely motivated by consideration of race, color, ethnicity, age or gender and would constitute a violation of the civil rights of that person.
4. Law enforcement agencies should seek funding necessary to install video cameras with audio capability to be used in patrol vehicles and micro-cassette recorders to be utilized on citizen contacts away from the patrol vehicle in order to ensure against profiling based on race and ethnicity.

Bar

5. Activities by the State Bar should include:
 - encouraging Utah women of color to participate in bar activities, and
 - coordinating efforts of Young Lawyers of Utah, Women Lawyers of Utah, Bar and Utah Minority Bar Association to increase the number of minority lawyers and their participation in bar activities.

Representation

6. Public defender contracts should be awarded to attorneys who have experience and competency in criminal law.
7. Law enforcement, prosecutors, and judges should not be decision makers in the award of public defender contracts. Input from others should be sought by those who decide the awards.
8. The budget for appointed attorneys should be separate from the budget for county prosecutors. Since funding a public defender office with funds from the prosecutor office budget can create the appearance of a conflict of interest, local governments should ensure that the budgets are separate.
9. Public defender and prosecutor caseloads should be lightened so as to allow more attention to individual cases.
10. Comparable pay for comparable experience should be given to public defenders and prosecutors so that lateral transfers within the system are possible.

11. Public defenders and all criminal defense attorneys should provide their clients with referrals to other agencies that can assist in resolving problems that are not legal in nature and thus outside the expertise of the attorneys.

12. The Legislature, county and local governments should provide additional financial resources to bring all prosecutor and legal defense offices up to the equivalent provided to the Salt Lake District Attorney's Office and the Salt Lake Legal Defender's Association.

Adjudication

13. In order to develop race-neutral release policies, Utah's criminal justice system should adopt objective criteria for pre-trial release.

14. The pre-sentence report header should not include any information on race/ethnicity of the accused and victims. At no time should race or ethnicity be considered in the pre-sentence evaluation, except when that information is an integral component to the pre-sentence evaluation, such as police report descriptions or in hate crimes. The data, however, should be collected and maintained separately and electronically if possible.

15. Upward departure recommendations on pre-sentence investigations should, by policy, require review by a supervisor. Records shall be kept in a searchable form of all approvals for upward departures.

16. The Judicial Council should request annual reports from the Administrative Office of the Courts and the Utah State Bar outlining their progress in implementation of court workforce recommendations.

17. Court ordered psychological evaluations (i.e., those completed by Pre-Trial Services, Department of Human Services competency evaluations, in conjunction with Adult Probation and Parole pre-sentence investigations, the mental health component of diagnostic evaluations, Adult Compliance and Education Center, community based treatment program mental health evaluations) should be conducted by skilled practitioners. Practitioners should strive for linguistic and cultural similarity with their clients. At a minimum, practitioners should demonstrate a basic understanding of their client's cultural background in order to account for the significant influences of race and ethnicity upon the accuracy of the evaluations.

WHAT'S BEING DONE

Salt Lake County Pre-Trial Release utilizes a standardized and race-neutral set of guidelines in evaluating whether an individual should be released to supervision. These criteria include factors such as criminal history as well as pre-trial history. Additionally, the individual must demonstrate a minimum residency requirement and have local ties to provide references.

Juvenile

18. Juvenile justice system services should be provided to the entire family to insure that family issues that may contribute to delinquent behavior are addressed as well as those of the minor.
19. The Juvenile Court, and its attendant services, such as probation, should expand its operating hours to accommodate work responsibilities of many parents of court clients.
20. Advocate positions should be created by the Utah State Courts as a means of helping individuals and families through the court process. The availability of an advocate who is knowledgeable about the system, has a bi/multi-lingual capability, and has demonstrated cross-cultural skills would create a perception of a friendlier and more caring system.
21. Community based organizations that are engaged in intervention projects targeting minority youth should utilize existing research on reducing risk and enhancing strengths (i.e., the Hawkins Catalano Communities that Care Model,¹⁴² Search Institute Asset-Building Model) in their program development efforts.
22. The Division of Youth Corrections should include cultural competency as one criteria in its review of contract treatment programs. The ability to serve clients and families whose first language is not English should also be considered.
23. Treatment programs need to improve their content to recognize that cultural and ethnic differences exist and adjust the program content to better serve the needs of all clients served. Culturally and ethnically appropriate mentor programs should be designed and implemented.

DATA

The recommendations contained in this section of the report respond primarily to research obstacles that the Task Force encountered in the course of its work. The types of challenges are outlined in greater detail in the *Data Challenges* section of this report. However, where other sources of support for these recommendation exist, they are mentioned below.

Discussions of Data Need

During its retreat, the Task Force held extensive discussions on the need for racial and ethnic data in the criminal and juvenile justice system. It must be acknowledged that there are risks inherent to collecting such data. The collection of such data can potentially be misused in situations that could result in increased racial bias. The collection of data can sometimes serve to inflame situations of contact between staff and clients (i.e., police - citizen contacts), or at least draw attention to issues of race where none may exist. Task Force members were acutely aware of these risks in their discussions. In addition, some criminal and juvenile justice system members of the Task Force stated their reluctance to collect such data based on their understanding that it was improper to do so.

The discussions yielded agreements about the collection of race and ethnicity data. First, members reached the agreement that *the need to collect the data outweighs the risks associated with collection*. Minority members of the Task Force stated the importance of understanding the problem at the same time as they urged that necessary precautions be taken to guard against improper use of the data. Second, the group agreed that *race and ethnic data should be kept separate from the decision making process*. For example, race data should be kept on hiring applications but should be separated from the application prior to review by the supervisor. Therefore, data is kept for tracking and research purposes, not staff decision making purposes. Third, *racial and ethnic community leaders stated their desire that this data be collected and expressed their ongoing interest in knowing what the information yields about the status of race and ethnic fairness*. Fourth, *the tracking of data often results in increased sensitivity by decision makers in the system*, as it raises the consciousness level about the issue. This increased awareness can result in changed behaviors over time.

With community leaders participating in the Task Force process and the ongoing tracking and interpretation of the data, the Task Force agreed that the collection of race and ethnic data was worth pursuing.

Crime Victims

The Courts Committee noted an absence of statewide crime victim information specific to race and ethnicity. The collection of this data would facilitate future research. One study, sponsored by the Task Force, involved victims but met with minimal success.¹⁴³ A database providing some of the information needed for analysis would have greatly aided such a project. The data would have the additional benefit of facilitating knowledge related to hate crimes in Utah.

Law Enforcement

As mentioned earlier, the Task Force encountered a number of challenges related to law enforcement data, particularly in relation to its juvenile justice study's use of Bureau of Criminal

Identification data. Lack of reliable data and missing data were two significant concerns. In addition, attorneys in the general attorney focus groups noted that the lack of information on race in databases, such as police records demonstrates an impediment to positive change in the system.¹⁴⁴ SRI has proposed potential research studies related to profiling that should be enabled if data collection recommendations are implemented.¹⁴⁵ Finally, data collection in areas such as the complaint process are crucial to provide accurate feedback to the public and to provide law enforcement with a mechanism to investigate and track potential race-related problems.

Legal Representation

The need for data on legal representation issues was underscored by the difficulties in conducting research in this area. Concerns about legal representation were not uncommon at the public hearings. However, there were studies that the Task Force was unable to undertake given data limitations and fiscal constraints. Two future studies, outlined in further detail in the *Research* section of this report were created by SRI as part of its research contract.¹⁴⁶

Courts & Judges

The data collection recommendations for courts and judges will enable future analyses that were either impossible for the Task Force or difficult given the quality or accessibility of the data. Especially notable was the lack of data related to jury service. While the Task Force asked SRI to conduct an initial evaluation of the jury selection process, data issues made progress on this issue beyond the time frame of the Task Force.¹⁴⁷ This section and the *Research* section of the report have specific recommendations related to jury data and studies that should enable a more complete understanding of the effect of race on jury service. Finally, SRI also completed an outline of a future study to analyze the representation on juries by race and ethnicity.¹⁴⁸

THEME: Data collection of race and ethnicity is necessary for accurate understanding of racial and ethnic fairness in the criminal and juvenile justice system. The entire criminal and juvenile justice system must make a commitment to the proper collection of racial and ethnic data for the sole purpose of system-wide research. All efforts to collect race and ethnicity data should be kept for data purposes alone, and necessary precautions should be taken to ensure against improper use of the data.

System-Wide

1. The race and ethnicity of crime victims should be maintained electronically in databases so that further studies of minority crime victims are possible in the future.

Law Enforcement

2. Individual law enforcement agencies should track yearly the following data related to complaint processes:

- Review board members' race and ethnicity,
- Review board members' length of service,

- The officer's race/ethnicity,
- The complainant's race/ethnicity, and
- The overall number of police abuse complaints filed and their dispositions.

3. Law enforcement agencies should keep not only accurate, but readily compilable, accessible and reviewable racial and ethnic data on all stops (traffic and pedestrian), searches, citations, arrests, and citizen complaints. Stops should also include data collection about reason for stops (i.e., gang-related stops, traffic violations).

4. The Utah Department of Public Safety should modify and improve the Bureau of Criminal Investigation database. Lack of complete data prevents a thorough understanding of the extent of racial bias in the system. The Utah Sheriffs' Association, the Utah Chiefs of Police Association, Peace Officer Standards and Training (POST), and the Bureau of Criminal Investigation should give strong support for maintaining a statewide, standardized law enforcement software which would consistently report crime and arrest information. These organizations should seek complete and regular reporting from all law enforcement agencies in the state.

State Bar

5. The Utah State Bar and Utah Minority Bar Association should track and report racial data to the Utah Supreme Court, including:
- number of minorities employed at the Bar,
 - participation of minority lawyers in bar activities and leadership positions, and
 - racial and ethnic composition of Utah State Bar, including applicants for Bar exam.

Representation

6. Salt Lake Legal Defender's Association and other providers of public defender services in Utah should keep track of the race, ethnicity and primary language of each defendant served. These data should be kept electronically, if possible.

Court

7. Track electronically racial and ethnic data on pre-trial release decisions, including Consent Decree Release (CDR), release to Pre-trial Services (PTS), and release on own recognizance (OR).
8. The Administrative Office of the Courts should keep statistics regarding the race and ethnic background of judicial applicants (for appellate, juvenile, and district court positions) throughout the application process. The process for collecting these data should allow applicants to self-identify their race/ethnicity. The data should be used for statistical purposes only. Therefore, data should be collected with the application but separated prior to the review process.

9. The Administrative Office of the Courts' court employee application form should include some type of form that requests Equal Employment Opportunity data as an optional part of the application. The collection of this data should be used for statistical purposes only. Therefore, the form should not be attached to the application so as to ensure that the information will not be forwarded to the interview process. The data should be self-reported. A self-addressed postcard or foldable mailer are two possibilities.

WHAT'S BEING DONE

After three years of compiling data from judges, lawyers, jurors and jury clerks, the Committee on Improving Jury Service released its final report to the Judicial Council in July 2000. The Committee was established with the goal of improving the lives of jurors and their role within the judicial system. Their final report makes several recommendations related to improving racial and ethnic fairness. For example, the report suggests broadening the master jury list using Social Security Administration records, U.S. Postal Service records, and purchasing updated software as a means of representing an inclusive adult population. They additionally recommend that the Judicial Council begin collection of demographic information in the categories of race and ethnicity, among other groups, in order to determine whether certain individuals have been excluded from the process.

10. Criminal and juvenile justice agencies should conduct annual reviews as well as confidential exit interviews for employees that include a question regarding racial and ethnic fairness in the employee's work environment.

11. Justice courts across the state should maintain data on sentencing decisions by race and ethnicity. Data should be kept in a consistent manner for the purposes of evaluation.

12. The racial and ethnic composition of the qualified jury list and of jury service should be tracked regularly to determine levels of participation by minorities and the representativeness of Utah's jury pool database.

Judges

13. The Judicial Conduct Commission should track and publish the total number of complaints and the aggregate outcome of those complaints by outcome category.

14. The Judicial Council should require justice courts to provide statistical information to the Administrative Office of the Courts (AOC) on workforce issues that the AOC tracks for other levels of court, including racial/ethnic data on judicial applicant pools.

15. The Judicial Performance Evaluation Committee should add the following item to the judicial performance evaluation form to inquire specifically about racial and ethnic bias. Respondents should be asked to rate the justice or judge on the following issue: Engages in any language or behaviors or allows others in the courtroom to engage in any language or behaviors that result in racial, ethnic or gender bias or the appearance of racial, ethnic or gender bias?

Corrections

I6. The Department of Corrections should keep racial and ethnic statistics regarding the demographics of the prison, probation and parole populations, including: offense by type(s); recommendations of pre-sentence reports; sentencing guidelines compared to sentences by courts to probation, prison; length of stay compared with sentencing guidelines; probation or parole violation rates, termination of probation or parole rates; and those with illegal alien status, so that the impact of efforts toward increasing racial and ethnic fairness can be properly monitored.

Youth Corrections

I7. The Division of Youth Corrections should collect socioeconomic data in its database in order to facilitate a future examination of the relationship of social class to custody issues.

WHAT'S BEING DONE

In 1996, the Department of Corrections began implementation of the new database system "O-Track." The offender tracking database has been in use since the beginning of the year and provides comprehensive information concerning everything from the offender's criminal history to their length of prison stay. The new database provides sentencing and release information and will allow for future analysis of decision making in this area.

RESEARCH

The research recommendations contained in this section of the report are designed to promote future studies in the area of racial and ethnic fairness. Some studies require changes to data collection practices before completion, as noted in the *Data* section of this report. Other studies can be done immediately and are recommended as follow-up to Task Force research. In several instances, the lead agencies of the recommendations have already indicated their willingness to conduct such research. In a few other instances, actions are already being taken. In such cases, that progress is noted in a *What's Being Done* sidebar.

In addition to the recommendations contained below, the Social Research Institute was asked by the Task Force to create research protocols and outlines for potential future studies to determine if racial and ethnic bias is present in segments of the system. These outlines are as follows:

- Prosecutorial Discretion
- Public vs. Private Legal Representation
- Pre-Sentence Investigation Reports
- Analysis of Juries: Representation by Race/Ethnicity
- Post-Adjudication Study (credit for time served)¹⁴⁹

Finally, it is important to note that the significance of recommending these studies is ultimately dependent upon the willingness of the system to continue to engage in research efforts on this subject of racial fairness. In order to help ensure implementation, the Task Force has outlined an implementation plan contained in the *Plan of Action* section of this report.

THEME: Further research in the criminal and juvenile justice system is necessary for a full understanding of the existence or extent of racial and ethnic bias.

System-Wide

1. The criminal and juvenile justice system should implement management information systems that produce information that captures “what works” predicated on guiding principles that provide for a pro-active problem solving approach in dealing with the offender and the offender’s family.

Law Enforcement

2. The Commission on Criminal and Juvenile Justice should sponsor research into the alleged practice of stacking of charges to determine whether minorities receive more charges on arrest than non-minorities.

3. The Commission on Criminal and Juvenile Justice should study law enforcement data regarding racial profiling, once sufficient data has been collected by local law enforcement agencies (i.e., Salt Lake Police Department, St. George Police Department), and should publish their findings.

4. Law enforcement, in conjunction with other agencies, should support research to define and identify the nature and extent, if any, of racial profiling.

WHAT'S BEING DONE

Racial profiling, or the act of targeting minorities because of their skin color, has been a controversial issue that has prompted over 100 police departments nationwide to action. In the Spring 2000, the Salt Lake City Police Department, along with the St. George Police Department, announced that they would begin voluntarily collecting racial data in attempt to discover whether or not racial profiling exists within Utah. Before these efforts, data were not collected, thus making it difficult to observe whether or not a disproportionate number of minorities are pulled over. SLPD officers are now being instructed to note the race of the individual pulled over and periodic reports will be released to detail data collection findings. Prior to publication of this report, SLPD announced preliminary findings that their statistics showed evidence that racial profiling stops were not occurring in Salt Lake City. As of August 2000, the Task Force has not been presented with the data to substantiate those findings.

WHAT'S BEING DONE

The Social Research Institute has been working with various law enforcement agencies and the juvenile court to examine whether or not bootstrapping, defined as the alleged practice of stacking charges onto an individual within a single criminal episode, occurs and if so, if it is disproportionate to the minority population. Evidence that bootstrapping disproportionately affects youth of color would assist in explaining why such youth are more likely to be incarcerated than are Caucasian youth. Following recent SRI findings, this study will examine youths' records from a county with a larger proportion of youth of color to determine whether the case files of youth of color include more charges per incident than do files of Caucasian youth.

5. The Driver License Division of the Department of Public Safety should request that each applicant for a driver license or state identification card state his or her race and ethnicity in accordance with the categories established by the U.S. Census.

State Bar

6. The Utah State Bar should review disciplinary practices for racial and ethnic bias.

7. The Utah State Bar should have the admissions process and procedures reviewed for racial and ethnic bias, and review the bar exam for disparate impact.

8. The Utah State Bar should examine the reasons behind the large percentage of minority lawyers who have "inactive status" with the Bar. Where appropriate, the Bar should develop internship and placement programs for minorities.

Representation

9. The State of Utah should conduct an assessment of how indigent defense services are conducted. The Task Force recommends the establishment of an Indigent Defense Review Council (IDRC) to be active for three years. Membership in the IDRC would be designated by the Legislature and would include one committee member from each judicial district in Utah, minority representation reflective of Utah's overall population, as well as an equal balance between prosecution and defense counsel, and others. IDRC would be charged with studying current delivery efforts in each county with specific attention to standards of fairness as applied to the representation of racial and ethnic minorities. IDRC would be state-funded, and its services divided as follows:

Phase One: Review existing policies and procedures, as well as historically relevant issues, related to statewide indigent defense.

Phase Two: Create a report of findings and recommendations for changes and improvements to existing policies and procedures based on the Phase One review. Include in the report the creation of broad statewide standards to apply to each individual county. At the end of Phase Two, the IDRC will report back to the Utah State Legislature regarding their findings and recommendations.

Phase Three: Implement and supervise the implementation of the changes and improvements recommended in Phase Two. Report progress and final findings and recommendations to the Utah State Legislature.

IDRC's mission will be five-fold:

1. To study the current delivery of indigent defense services throughout the state.
2. To establish standards for provision of indigent defense services statewide.
3. To apply those standards effectively and pragmatically to each individual county.
4. To monitor compliance with recommended standards.
5. To report to the Legislature with findings and recommendations.

IDRC specifically should do the following:

1. Conduct more detailed research into the specific situations of individual counties regarding caseloads and office resources.
2. Conduct more detailed research into the relationship between socio-economic status and race upon treatment by the criminal and juvenile justice system.
3. Seriously consider the impact of public defender resources upon racial and ethnic minority populations, particularly when the percentage of the county's minority population exceeds that of the state as a whole.

10. A statewide Appellate Public Defender's Office should be created, consistent with the recommendations of the Task Force of Appellate Representation of Indigent Defendants (September 14, 1994).

11. The Statewide Association of Prosecutors (SWAP) and the Prosecution Council should sponsor a process that represents multiple perspectives to conduct research on whether racial or ethnic bias is reflected in prosecutorial decision making.

12. More research and information about effective ways to punish hate crimes are needed including "models of intervention" such as mediation, education and training, more intensive probationary provisions, and offender treatment programs.

Juries:

13. The Judicial Council should determine methods for increasing the racial and ethnic representativeness of juries.

14. The Administrative Office of the Courts should sponsor significant research on the source lists for the jury master list, the jury qualification process, and the use of peremptory challenges for racial and ethnic bias. Research should also study whether and to what extent jurors feel they have been the object of racial or ethnic bias in their capacity as jurors.

15. The Administrative Office of the Courts should sponsor research to determine whether the absence of minorities on juries results in an inability to receive a fair trial. The study should compare conviction rates of minority defendants by all white juries versus conviction rates of minority defendants by juries with minority representation.

Sentencing

16. The Utah Sentencing Commission should conduct an experiment involving the question of aggravating and mitigating circumstances both in the adult and juvenile justice systems. For example, conduct a "blind" review of recommendations where social information that would identify or suggest the client's ethnicity is deleted in a matched set of minority and non-minority clients. The research should also examine the extent to which chronicity scores contribute to minority overrepresentation. This study would provide an opportunity to see if and how subtle bias creeps into case processing, particularly in the areas of preparing sentencing and placement recommendations.

WHAT'S BEING DONE

With the support and approval of the Judicial Council, Judge Lyle R. Anderson of the Seventh District Court has made recent efforts to create jury pools reflective of the minority population in San Juan County. For instance, both have advocated the use of member lists from the Navajo Nation as a source list for jury pools. Additionally, Judge Anderson noted that long traveling distances to courthouses may discourage some minority jurors from serving. Subsequently, the Judicial Council approved the reimbursement of motel accommodations for those traveling 100 miles or more.

WHAT'S BEING DONE

A recent Utah Senate bill approved \$30,000 to begin evaluation into whether a cost-benefit analysis of Utah's juvenile crime prevention and intervention programs will promote more effective and cost efficient results. The "comparative costs and benefits" model to be investigated was first piloted by the Washington State Institute for Public Policy which has used this analytical framework to locate the programs which deliver maximum benefit in terms of crime prevention for every dollar spent. Thus far the Juvenile Courts and Division of Youth Corrections have met with a number of representatives of the Washington State Institute including a juvenile court administrator from Washington, as well as members of the software company that designed the risk assessment tool. They will report to the Senate early next year with their findings.

Juvenile

17. The Juvenile Courts, the Department of Child and Family Services, and the Division of Youth Corrections should jointly examine the relationship between custody and socio-economic status. Specifically, the research should attempt to establish if a relationship exists between income level and custody decisions.

18. The Juvenile Courts and the Division of Youth Corrections should conduct qualitative reviews involving youth who successfully exit the system.

19. The Utah Sentencing Commission should evaluate the application of aggravating and mitigating factors in sentencing, as opposed to the use of "strength-based" and "risk-focused" models, to determine if racial and ethnic bias occurs in that application.

20. The Department of Human Services should conduct research in order to review child welfare practices to determine if child welfare practices increase the likelihood of the youth correctional system to gain eventual custody of youth of color.

WHAT'S BEING DONE

The University of Utah's Social Research Institute (SRI), in conjunction with the Utah Sentencing Committee, has conducted a federally funded examination into the guidelines used for Juvenile Sentencing in order to determine whether new programming provided earlier in the youth's career can reduce delinquency. Thus far, their research has indicated wide-spread support for the current guidelines and has included recommendations for more consistent guidelines implementation. The study additionally recommends an evaluation into the applicability of a strengths based model to be used for sentencing.

MEDIA

While none of the research expressly requested information related to the impact of the media on racial and ethnic fairness in the criminal and juvenile justice system, two studies contained segments that mentioned the media specifically. In the Woolf report on the attorney and judges interviews, “[t]he most common explanation for the lack of will in eliminating racial unfairness was the effect of selective media coverage of crime.”¹⁵⁰ Specific comments mentioned judges’ lack of will to combat racially biased behavior, such as racially-motivated police stops, for fear of media coverage making them look ‘soft on crime;’ the general sensitivity of judges to selective media coverage; and the media’s disparate coverage of crimes with white victims versus minority victims. This “opportunistic media coverage of crime” was seen to have broad effects.¹⁵¹ For example, one attorney stated,

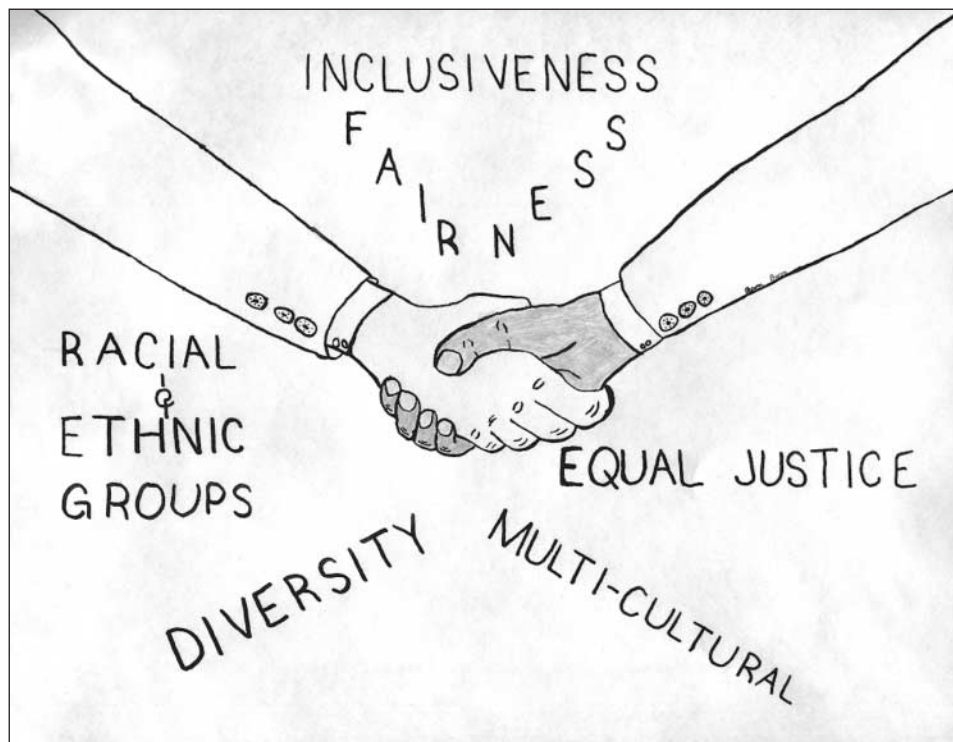
And to that extent, who the victim is makes a huge difference. If it is a low-income minority from the west side, the media tends to pay very little attention. If it is the victim of a burglary who gets killed, who lives on the East Bench, then it’s going to get a great deal of publicity, and therefore, the judges respond, the prosecutors respond, because there are requests for interviews. I think it even drowns their charging decisions in many instances, the decision to charge the death penalty, the decision to charge some sort of an aggravated felony, which carries a five year mandatory sentence. I think all of those things are driven by who the victim is.¹⁵²

In the SRI research report on the juvenile justice system by SRI, the focus groups of system professionals indicated that participants “felt that media create negative attitudes toward minority individuals because of the tendency to exaggerate the crimes committed by minorities.”

Indeed, as a study in the *National Institute of Justice Journal*, called “Race, Crime, and the Administration of Justice,” notes, “[m]ost people of all races and ethnic groups are never convicted of a crime, but stereotypes can work to brand all members of some groups with suspicion. These stereotypes may have their roots in past biases, but they also can be reinforced through broadcast news and newspaper reports.” The article cites research showing that racial groups are overidentified with crime and gang membership, despite their actual lower levels of involvement. It also cites a study that has found that African Americans and Hispanics are “overrepresented in TV news depictions of violent crime, while whites are overrepresented in stories involving nonviolent crime.”¹⁵³

Task Force members have also discussed the impact of the media on its own work. Members expressed concern regarding the superficial coverage that tends to be given to issues of race and ethnic fairness versus the seriousness and complexity of the issues at hand. The tendency of this issue to yield tantalizing but unproductive sound bites renders sincere efforts vulnerable to misunderstanding. For these reasons and given these research results, the Task Force makes the following recommendation to the media.

THEME: Media representatives should exercise care so that their reporting does not perpetuate divisions, increase tensions and create misunderstanding about issues related to race and ethnicity in the criminal and juvenile justice system.



Artist: Jason Burr, Age 15, Brigham City

Plan of Action

The members of the Task Force believe that while its work has been successful at raising the level of awareness in Utah about the importance of the issues under examination, the key to success is the implementation of its many recommendations. Crucial to that implementation is the creation and support of an implementation process that has the participation and support of the entire criminal and juvenile justice system in Utah and, equally important, support by Utah's ethnic communities. By unanimous vote, the Task Force has chosen to support the implementation proposal outlined below.

Implementation Recommendation

The Task Force proposes the creation of a *Commission on Racial and Ethnic Fairness in the Criminal and Juvenile Justice System*. This body would no longer be solely commissioned by the Judicial Council but would be a collaborative partnership among criminal and juvenile justice system entities and community based organizations in Utah. The Commission would require funding from the Utah Legislature and would have the following elements:

- The Commission would be a stand-alone entity, sponsored by the Judicial Council for the purpose of administrative support by the Administrative Office of the Courts, but would report to the Council just as it would report to any of the other participating entities.
- Membership would include representatives from the entities responsible for implementation (i.e., criminal and juvenile justice system agencies, community based organizations).
- A resolution would be signed by all member agencies to ensure ongoing participation.
- The Commission would publish an annual report to update the public on its progress toward implementation of the Task Force's recommendations.
- Each member agency would be responsible for implementing its own recommendations from this Task Force report.
- Ethnic community organizations would elect members of their choice to represent them on the Commission.

- The Commission would have subcommittees to oversee implementation of system-wide efforts (i.e., cultural competency training, data coordination, public outreach).
- The Commission would conduct an annual evaluation of its efforts including ongoing modifications for improvement and the viability of community sponsorship in 3-5 years.

The funding of this implementation process is the next critical step toward ensuring equal justice in Utah for racial and ethnic minorities. To date, the Task Force has already begun work with the Judicial Council to request funds from the Utah Legislature during its 2001 General Session. A Legislative building block request will cover the costs associated with staffing this proposed group.

The above proposal has both participation from key participants in the system and representation from Utah's ethnic communities. Public accountability of the commission has been written into the proposal by the publication of an annual report that will enable Utahns to assess the level of energy put toward the system changes and provide a tool for continued advocacy by concerned citizens.

Concluding Remarks

The Task Force recognizes the importance of continued commitment by all segments of society to ensure that these recommendations become institutionalized and equal justice is assured. In fact, the Task Force encourages and requests both its members and those who are watching its work and progress to continue the encouragement necessary to help ensure successful implementation. Systems of government can and should continue to improve, with issues of fairness being of paramount importance. Much of this report addresses the importance of government action and recommends specific action. Indeed, some of these issues are already in the process of positive change. However, the impetus for continued improvement is often generated by consistent public feedback. The voice of Utah's minority communities is essential in this ongoing dialogue. The Task Force hopes that the public, through a variety of means, including community based organizations, private individuals, community groups, churches, tribes, law firms and professional associations, continue to hold this effort toward racial and ethnic fairness in the public light where it belongs.

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EXECUTIVE SUMMARY

The crime victim research was designed by Professors Linda F. Smith and Paul G. Cassell for their Criminal Justice Clinical course for law students. The project aimed to provide law students with social science research in addition to exposure to criminal justice issues.

The study relied on data provided by the Salt Lake County District Attorney's Office. A sample of 400 crime victims (200 minority and 200 non-minority cases) was identified based on closed cases. Each individual in the sample was mailed an invitation to participate in the study and be interviewed. Due to confidentiality issues, the Salt Lake District Attorney's Office sent out the invitations directly from its office and neither the professors nor students had access to the list names and contact information.

A survey questionnaire for victims was developed, utilizing a past survey by Schulman, Ronca and Bucuvalas, Inc. for a National Institute of Justice national study as a model. It attempted to determine victim perspectives about their treatment by the police, prosecutors, victim support agencies and courts. Questions sought to understand whether the victims were accorded certain rights they may have by statute (e.g. to be consulted about plea bargains, to make a statement at sentencing) and to discover how victims felt about their treatment by the professionals in the legal system. Respondents were to be asked whether they believed race or ethnicity affected their treatment in any way. The questionnaire could be administered either in person or via a telephone interview. Students read the questions and completed the survey form based upon the subjects' responses.

Of the sample, the district attorney's office indicated that approximately half of the sample was returned in the mail as "undeliverable." Fewer than twenty, or 5 %, of the subjects returned the mailed post card indicating their interest in being interviewed. All of those who responded have been or are currently being interviewed. Results of the survey are not reliable due to the low number of respondents. All findings are tentative and should be used only for guidance in designing future research studies. For example, this study pointed to the fact that crime victims tend to be from low socioeconomic brackets, affecting the desired means of contacting future samples of crime victims for research purposes. No findings could be determined related to race and ethnicity.

Perceptions of Racial and Ethnic Fairness
in the Criminal Justice System: Listening to Utahns.
A Client Committee Report on the Public Hearings of the
Utah Task Force on Racial and Ethnic Fairness in the Legal System.
October 1999

EXECUTIVE SUMMARY

The Client Committee of the Utah Task Force on Racial and Ethnic Fairness in the Legal System (Task Force) was created to examine the experiences and perceptions of offenders, victims, and their families regarding racial and ethnic fairness in the criminal justice system. The Committee was co-chaired by two Task Force members who selected and convened 13 additional members.

To fulfill its mandate, the Committee held 27 public hearings designed to give participants opportunities to provide information publicly or confidentially at the hearings, or through telephone and written reports. Hearings focused on groups by geographical location and ethnicity. Interpreters were provided as needed. The information provided by hearing participants varied in content and focus. Although staff made concerted efforts to solicit information about all segments of the criminal justice system, law enforcement was the focus of many remarks.

This report documents public hearing perceptions of the criminal justice system and the Committee's recommendations to address those perceptions. No systematic effort was made to verify information from the public hearings as the hearings represented only a portion of the Task Force's research. Actual documentation of racial and ethnic discrimination will be determined by research of other segments of the Task Force. Individual perceptions are presented from the perspective of the hearing participants and do not necessarily represent Committee member perspectives. Perceptions noted at multiple hearings and overall themes throughout the hearings are emphasized in this report.

Law Enforcement

Law enforcement complaints dominated the public hearings. Many voiced the belief that the role of law enforcement in any community should be to protect society and make all residents feel safe. The overwhelming perception was that Utah's racial and ethnic minorities are subject to discrimination by law enforcement due to:

- targeted police action based on race or ethnicity. Racial profiling perceptions exist within and outside of minority communities.
- the abuse of legal authority by law enforcement. Participants alleged unnecessary verbal and physical abuse, the use of racial slurs, and harsher treatment of minorities.
- language barriers. Racial and ethnic minorities with limited English proficiency often felt defenseless when dealing with law enforcement, perceiving that needed assistance is unavailable, punishment is unfair, and clients are blamed for communication barriers.
- cultural barriers that inhibit appropriate interaction between law enforcement and minority clients. The perception that the system works against minorities leads to an avoidance of the system regardless of personal costs.

- ineffective and intimidating complaint processes. The lack of uniformity between law enforcement agencies in the process of filing complaints is a deterrent to filing complaints. The process is perceived to do nothing to solve problems of police abuse. Participants advocated hiring minority police officers to help diminish the problems associated with misunderstandings, language barriers, and harassment based on racial and ethnic stereotypes.

Legal Representation

Many participants raised the question of adequate legal representation of racial and ethnic minority clients by both appointed and privately retained defense attorneys. These perceptions lead to distrust of the attorneys who are supposed to represent client interests. Perceptions included:

- a denial of access due to language barriers and the lack of cultural sensitivity among attorneys.
- a widespread lack of knowledge of the law within minority communities.
- a lack of adequate preparation for cases and failure to communicate with clients concerning the status of the cases by appointed attorneys.
- the existence of prejudice and lack of care for minority clients.

Complaints of discrimination extended to prosecutors. Participants believed prosecutors were unlikely to bring criminal charges against Whites where the interest of a White person seemed to take precedence over the minority person's interests. Participants stated that if the victim was minority, incidents were deemed accidents and dropped, or the minority person was charged and prosecuted. Prosecutors were thought more likely to prosecute or seek tougher penalties against minorities.

Courts

Court-related comments echoed other legal system concerns. Some expressed difficulty in understanding the nature of legal proceedings in a culture different from their own. Stereotyping of minorities and racism were seen as bases for unfair trials, sentencing and disparate treatment. Additional perceptions included:

- a lack of cultural sensitivity among judges, court employees and court interpreters, as well as a lack of awareness of the impact of ethnic and racial cultures on individual behavior.
- disrespect for minorities in the courtroom.
- an inability of the courts to ensure equal justice.
- longer sentences given to minorities than to Whites for the same crimes, a perception reinforced by a courtroom filled entirely by White people.
- disparate treatment due to inadequately trained, uncertified interpreters in areas outside of Salt Lake and the use of returned L.D.S. missionaries instead of native language interpreters.

Post-Adjudication

Public hearing comments on post-adjudication issues focused on three themes: the length of sentences served by minorities, their treatment in correctional facilities, and the fairness of actions by the Board of Pardons and Parole. Inmates related perceptions of unfair punishment especially of those with language barriers, and retaliation based on race by the Board of Pardons and Parole. American Indian inmates stated that their rights to religious ceremonies are not respected in prison.

Juvenile Justice

Public hearing participants expressed a lack of knowledge and understanding of the juvenile justice system. Accounts of interaction with law enforcement revealed perceptions of targeting and profiling that left clients feeling singled out and presumed guilty at first contact. Participants relayed examples of youth who were presumed to be gang members due to their race or ethnicity. Parents commented on their difficulty negotiating the complexity of the court system, particularly when hampered by language barriers and cultural differences. They were frustrated of being left out of the judicial process when decisions concerning their children were made without their input. The power of court workers to make decisions that impact juvenile lives was another area of concern. Parents also expressed concern about custodial issues and not understanding the juvenile delinquency process with the Division of Youth Corrections.

Victims

Minority crime victims spoke about their interactions with law enforcement, the medical system, social services and the media. They were concerned that they were not treated fairly by the system because they were not listened to, nor taken seriously. Worse, others expressed statements that imply being re-victimized during interactions with law enforcement and with “the system.” The treatment of those who are incarcerated was also reported as creating a group of victims due to race. Racial and ethnic women shared unique experiences as victims in the criminal justice system.

Conclusion and Recommendations

The public hearing process was as much a learning experience as it was an effort to collect information from the public. The Committee strove to set up hearings in the least intimidating environments possible and continually refined the hearing process. Recognizing the potential suspicion with which hearings could be regarded, the Committee worked to establish the trust necessary to hold these hearings. However in some cases people still did not have sufficient trust to come forward publicly, establishing the need for alternative methods of collecting information.

Participant comments indicated a lack of knowledge about the judicial system and individual rights. Many minorities believed they are treated unfairly by the entire legal system. Predominant perceptions included: law enforcement abuse of power including profiling, harassment, verbal and physical abuse; lack of adequate representation; lack of cultural awareness and sensitivity; inadequate communication between the legal system and minority communities; and shortcomings in complaint/grievance processes. The legal system must also recognize that not all minority groups have the same issues. Specific attention is needed regarding intra-racial diversity and rural area issues.

The need to educate the public about the structure of governmental entities became apparent as many hearing comments did not relate specifically to the Task Force’s mandate. The Committee has made efforts to forward information to other appropriate public entities. Comments also point to the need for governmental

entities to work more closely with one another and with community groups to solve problems. The Committee believes that facilitating communication between ethnic communities and the criminal justice system can be effective in solving problems faced by racial and ethnic minorities in Utah's criminal justice system. Skepticism of the effectiveness of the Task Force's work was expressed at every public hearing with the question, "Now that you've heard our issues, how are you going to correct the problems?" Recommendations grouped into areas of focus are listed below. Actual implementation of the recommendations will be the ultimate test of the system's willingness to address racial and ethnic bias in a serious, committed manner.

<i>Administration:</i>	Commitment from criminal justice system administration is critical, including funding and support.
<i>Workforce Diversity & Recruitment:</i>	All segments of the criminal justice system should reflect the populations served. Recruitment in minority communities is essential to ensure a diverse workforce.
<i>Training:</i>	The legal system at all levels must become more sensitive to the needs of the diverse population it serves. Training should focus on cultural awareness including specific issues such as American Indian religious rights and hate crimes as a significant part of every agency's basic training.
<i>Outreach:</i>	The criminal justice system should provide opportunities to educate minority communities about their rights and responsibilities in the legal system as well as mechanisms to encourage better communication with the public.
<i>Complaint & Grievance Processes:</i>	The criminal justice system should have complaint/grievance procedures that are consistent and well-known to the public and that are free from intimidation and potential retaliation.
<i>Research & Data Collection:</i>	On-going data collection and research efforts are critical to determine the actual existence of racial and ethnic bias in the criminal justice system.

EXECUTIVE SUMMARY

Methodology

This study was part of an effort to discover whether or not, and to what extent, disproportionality exists within the incarceration process of the justice system. The study compiled records from the Salt Lake County jail on the length of time spent in prison, specifically, the number of days served from intake to release. The data was additionally restricted to male Anglos and Hispanics due to the fact that information for other minority groups was far too limited. With regards to sample size, 3,055 Hispanics and 10,916 Anglo records were evaluated.

Upon initial evaluation, the data describe statistically significant results relating to the incarceration of Hispanics and Anglos. However, when evaluating this information, one must be aware of the many factors other than race and ethnicity that may be responsible for these results. Differences between the two groups such as age and criminal history considerably limited the data sample and the amount of direct comparison that could be done. For example, one trend discovered was that Hispanics were arrested at a slightly younger age than their Anglo counterparts. The mean age for Hispanics in this data pool was 31.76 years whereas the mean age for Anglos was 35.43. Additional differences include the fact that Hispanic arrestees also had slightly more previous bookings than their Anglo counterparts and a larger proportion of the Hispanic bookings were for felonies. In order to be able to draw inferences from the data that are not related to age or criminal history but rather to race, the sample would need to be limited to only those cases where the mean age or the criminal history between the two groups were the same. Examples such as this demonstrate that although these findings are statistically significant, analyses that require the review of multiple variables require a larger sample size in order to ensure the reliability of the results.

Findings

- *Booking Percent by Race by Year:* Over the three years that this data was taken, the booking percent for Hispanics decreased while the rate for Anglos experienced a slight increase. During the transition from 1996 to 1997, the booking percent decreased from 24.8 percent to 19.6 percent. The trend continued in 1998 when it fell to 16.48 percent, falling a total of 12.32 percentage points. In contrast, the booking percent for Anglos began in 1996 at 66.56 and progressed in 1997 to 71.2 percent and in 1998 to 73 percent, rising a total of 6.44 percentage points.
- *Time from Booking to Disposition in Days:* Anglos tend to be held for shorter periods of time than Hispanics. A greater percentage of Anglos are held 0-1 days from booking to disposition than Hispanics. In contrast, a greater number of Hispanics are held for 6-10 days between booking to disposition, than Anglos. (A ratio of 35 percent Hispanic and 24 percent Anglo.)
- *Percent Felonies by Year:* While Hispanics accounted for more felonies per year than Anglos, the number of felonies committed decreased. Beginning in 1996, Hispanics accounted for 36 percent of felonies compared to Anglos who accounted for 24 percent. In 1998 however, Hispanic felonies decreased to approximately 28 percent while the felonies committed by Anglos leveled off at 21 percent, thus revealing a slight convergence between the two races during the course of those 3 years.

- *Age and Mean Days Held:* On average, Hispanics, both young and old, were held for longer days than their Anglo counterparts. The average younger Hispanic male was held for approximately 36 days while the younger Anglo was held for only 21 days. Older Hispanic males were held for 28 days while their Anglo counterparts were held for 17 days.
- *Mean Days Held for Felonies and Misdemeanors:* Regardless of felony or misdemeanor, Hispanics were held on average, for more days than their Anglo counterparts. Hispanics were held for approximately 42 days for committing a felony. Anglos were held for 26 days. With regards to misdemeanors, Hispanics are held 28 days while Anglos are held for about 17. This data demonstrates that Hispanics are held for about 2 days longer for the lesser charge of a misdemeanor than Anglos are held for higher charges of felonies.
- *Number of Times Booked:* Hispanics tended to be held for a longer period of time than their Anglo counterparts despite similar histories in bookings. Hispanics booked over five times were held for 27 days and Anglos booked the same number of times were held for 11 days.

EXECUTIVE SUMMARY

The Community Resources Committee is one of eight committees established by the Utah Judicial Council's Task Force on Racial and Ethnic Fairness in the Legal System. The Committee was asked to examine the quality of community resources provided to people of color. Because the Task Force focused on the criminal justice system, the Committee similarly focused on resources available and provided to criminal defendants.

The Committee began its work by gaining an understanding of the scope of the issue. The Committee reviewed materials from other states' task forces and committees, and invited presenters to provide background on the Utah criminal justice system, as well as treatment, education and counseling centers. After obtaining a better understanding of the issues, the Committee developed a Theme Question to be answered by the Committee's research: **Do community services work as well for people of color as for the majority population in Utah?**

The Committee determined that the best means of obtaining information that could be used to answer the question was through surveys and focus groups. A survey instrument was prepared and sent to administrators of treatment facilities. The survey asked questions about the racial and ethnic makeup of the facilities' workforce and clients. The survey also asked questions to illicit information about cultural sensitivity training, interpreters, and observed instances of bias. Twenty-two out of 107 facilities returned the survey, a 20.56 percent response rate, providing enough information to make certain findings.

Focus groups were conducted with line staff and clients of treatment facilities. Discussions during the line staff focus groups involved topics such as cultural awareness training, barriers to effective treatment, special needs of and resources available to people of color, and observed instances of bias. The client focus group discussions involved topics such as line staff's respect and knowledge of cultural differences, barriers to treatment, and examples of discriminatory treatment.

After information from the research was compiled, the Committee made six major findings. Based on the study sample, the Committee found that:

1. Institutionalized racism, as defined by the Committee, affects community resource programs.¹
2. Language barriers impede access to services.
3. Clients of the criminal justice system state that they feel hopeless about their future.
4. Offenders and the general public lack education about the criminal justice system.
5. Clients state that grievance processes are unresponsive.
6. Task Force efforts will be ineffective without broad-based efforts.

Based on these findings the Committee has concluded: **Community services do not work as well for people of color as for the majority population in Utah.** The Committee has made the following recommendations:

1. The Utah Judicial Council should establish a standing oversight committee on fairness, to receive and resolve complaints and otherwise address fairness issues.
2. The Utah Judicial Council should sponsor research into the long-range, causal factors of and the prevention of racism.
3. Other state agencies should create standing oversight boards or committees to receive and resolve complaints and address issues of fairness.
4. The state should establish an oversight entity to oversee other Fairness Committees.
5. All community resource entities should implement regular cultural awareness training for all employees; these entities should have a workforce representative of the clients they serve; and inpatient services should be provided in Spanish.
6. The criminal justice system should adopt a holistic approach to punishment and rehabilitation.
7. The State, through its judicial, legislative and executive branch agencies and leaders (e.g., school districts), must set the example in addressing and eliminating racism.

EXECUTIVE SUMMARY

The Utah Task Force on Racial and Ethnic Fairness in the Legal System gave the Courts Committee the mandate to examine the adjudication process of the criminal justice system. With assistance from the Task Force's Operations Committee, co-chairs Charlotte L. Miller and Judge Lynn W. Davis, identified individuals with diverse backgrounds for the Committee. The Committee's work included three phases: learning more about the criminal justice system, prioritizing issues for examination, and researching, information gathering and determining findings and recommendations. The findings and recommendations for each priority issue are summarized below. The complete list of findings is reserved for the full report.

Priority #1 – Racial and Ethnic Impact on Sentencing and Analysis of Sentencing Recommendations

The Committee supports the continued use and application of Utah's indeterminate sentencing model. The current tools are useful in the sentencing process, however without proper training, any tools used for sentencing could result in racial and ethnic disparity. The Committee reviewed studies about sentencing and sentencing guidelines and their impact on minorities. It also looked at the perceptions of those involved in the criminal justice system and the workforce involved in the sentencing process. As a result, the Committee recommends that all segments of that workforce be reflective of the racial and ethnic diversity of those who appear before the court, that training on the nature and impact of racial and ethnic bias be offered to that workforce, that racial and ethnic data be kept by all relevant agencies, and that the availability of incarceration-alternative programs be expanded for those with limited-English proficiency.

Priority #2 – Racial and Ethnic Attitudes and Impact on Minority Defendants in the Courtroom

The Committee examined the experiences of defendants in the courtroom. The Committee received reports of negative stereotypes and cultural barriers. The Committee found that bias, often unintentional, is communicated by court employees. The Committee recommends continued education on the effect of inappropriate racial remarks on the perception of fairness in the courtroom and education for judges and prosecutors on cultural aspects affecting minority defendants.

Priority #3 – Jury Issues

The Committee identified the following jury issues: the demographics of the databases from which jury pools are selected, the selection process of juries, and the experiences of jurors. However, the Committee's research efforts were severely hampered by the lack of racial data kept by the courts about potential and actual jurors. Findings address concerns that minority defendants express hesitation to counsel about participating in trials where

no minorities serve on the jury, as well as juror perceptions about the effect of race on the trial process. Committee recommendations address the voir dire process, methods for increasing minority participation on juries, judicial leadership in ascertaining the impact of race, ethnicity or primary language on the ability of jurors to be impartial, and the need for accurate data collection to enable future, ongoing research efforts.

Priority #4 – Racial and Ethnic Impact on Pre-Sentence Investigations

Committee members found the pre-sentence investigation process to be a critical part of the sentencing process. Few minorities are in the Adult Probation and Parole workforce, and pre-sentence investigators lack specific training regarding racial and ethnic bias. Recommendations to address these concerns include the deletion of any racial/ethnic information on accused and victims from consideration on pre-sentence reports, except when race is essential to the resolution process (e.g., hate crime cases). The Committee also recommends training for pre-sentence investigators on the nature and impact of racial and ethnic bias. The Department of Corrections should keep racial and ethnic statistics so that the impact of efforts toward increasing racial and ethnic fairness can be properly monitored. Finally, appropriate agencies within the state should increase the availability of therapeutic and other alternative supportive programs for limited-English speaking defendants which might affect Adult Probation and Parole recommendations and impact successful completion of probation.

Priority #5 – Judicial Selection

The Committee examined the judicial selection process for racial and ethnic diversity, including applicant pools, nominating commissions, and appointments since 1986. Members found it significant that Arizona's constitution requires the consideration of racial and ethnic diversity in Arizona's appointments. Committee recommendations to the Administrative Office of the Courts, the Utah Minority Bar Association, the Utah State Bar, the Utah Legislature and others include the need for statistics on the race/ethnicity of judicial applicants, the need for recruiting efforts to increase the number of minority applicants for judicial vacancies, and the need for more racially diverse judicial nominating commissions.

Priority #6 – Court System Workforce Issues

The court system workforce includes all those who participate in the court system, including court employees, administrators, bailiffs, judges, law clerks, and lawyers. The committee looked at training issues, workforce composition, complaint processes, performance evaluation processes, statistical databases, as well as hiring, recruiting, promotion, and termination issues relating to people of color in the court system. Recommendations are directed to the Administrative Office of the Courts, Judicial Conduct Commission, Judicial Performance Evaluation Committee, Utah Judicial Council and Utah Supreme Court, Utah State Bar, Utah Minority Bar, Mandatory Continuing Legal Education Board, and others. Recommendations include mandatory training on the nature and impact of racial and ethnic bias, the creation of a Diversity Advisory Group within the Utah State Courts, the inclusion of questions related to race/ethnic bias on the judicial performance evaluation form, and continuing legal education for lawyers on racial and ethnic bias as part of the mandatory ethics training requirement. Recommendations to the Utah State Bar address statistical information that should be tracked; outreach, communication, and inclusion efforts directed toward attorneys of color; needed training needs for lawyers; as well as a review of current practices to determine their effect on attorneys of color in Utah.

Priority #7 – Women of Color

Committee members recognize and underscore that all of the topics addressed in this report and their accompanying recommendations are relevant to women of color. The Committee chose this issue as a separate priority area because of its importance to overall fairness in the legal system. Women of color told the Committee that they did not feel they were included in the Gender and Justice Task Force. Female attorneys of color in Utah also said that discussions about minority issues often focus only on men. Therefore, it was clear to Committee members that the Task Force's efforts should address women of color directly in its deliberations. The Committee found female attorneys of color to be significantly underrepresented in all areas of the legal profession. The women noted that race and gender stereotypes limit their work opportunities and affect the way they are treated in the courtroom. They stated that they do not have adequate mentors or network mechanisms. Recommendations address the Administrative Office of the Courts, Utah State Bar, Utah law schools, Utah Minority Bar Association, Young Lawyers Division, and Women Lawyers of Utah with ways to effect positive change in the experiences of female attorneys of color in Utah.

Priority #8 – Translation / Interpretation / Language Barriers

The Administrative Office of the Courts has been very active in the court interpreter field in recent years. The Committee noted the positive progress on this issue as well as areas that still need attention. There are no Utah certification programs for spoken languages other than Spanish, and even Spanish-speaking defendants worry that they receive unfair treatment with the use of interpreters. There are not enough interpreters available for a sufficient number of languages, especially outside of the Salt Lake area. Recommendations address the Administrative Office of the Courts, Judicial Council and Utah State Bar. They include the expansion of certification programs for other languages, development of a confidential grievance procedure, inclusion of interpreters for languages other than Spanish on the Interpreter Advisory Committee, and development of materials to educate attorneys on issues related to representing non-English speaking clients.

Priority #9 – Racial and Ethnic Attitudes and Impact on Minority Victims in the Courtroom

The Committee was interested in the experiences and perceptions of minority victims in Utah, however looking at this issue presented a variety of challenges. No formal database on the race and ethnicity of victims exists in the state of Utah. The victims' survey sponsored by the full Task Force is still pending. The Committee reserves its final recommendations on this issue until the results of that study is known. However, the Committee heard reports from many who work in the court system who perceive racial and ethnic bias exists in cases where the victim is a person of color and the defendant is Caucasian, and where the defendant is a person of color and the victim is Caucasian. In both instances, the judge and jury may treat one or the other party as more credible. Bias may also occur where non-English speaking minority victims are not offered adequate translation services or where victims' impact statements are not gained due to language barriers. Recommendations include the need to track race and ethnicity as well as the Committee's support for the recommendations set forth by the Client Committee.

Priority #10 – Tribal Jurisdictional Issues

The Committee acknowledges the existence and progress of the Tribal/State/Federal Court Forum, chaired by Justice Michael D. Zimmerman. The Committee endorses the work of the Forum, acknowledges the many jurisdictional issues that affect American Indians and the legal system in Utah as areas of mutual concern for the Task Force and the Forum, and defers full consideration of these matters to the Forum.

Priority #11 – Immigration Status Issues

Criminal defendants may not receive adequate information about the impact of their situation. For example, in early 1999, the Third Judicial District elected to delete from the plea agreement form information about the consequences of a guilty plea on a criminal defendant's immigration status. Also, the court and counsel do not uniformly advise criminal defendants who agree to deportation as a condition of the sentence that there are very harsh consequences under federal law for violating the condition of not returning to the United States without permission from the government. The Committee recommends that all judicial districts in Utah adopt a plea agreement form that fully and clearly discloses to all criminal defendants the consequences of a guilty plea on a criminal defendant's immigration status. The Committee also recommends that the Utah Association of Criminal Defense Lawyers educate criminal defense lawyers about these immigration issues.

Conclusion

The Courts Committee acknowledges the racial division in the United States. That division is reflected in the legal system and adds to the lack of credibility of the legal system. Members of the public must have faith that the legal system is fair in order for the legal system to be effective. It is critical to recognize and overcome the racial division in the legal system and to provide fair and equal treatment for all. There are numerous recommendations in this report directed at various entities. The purpose of these recommendations is to increase faith and trust in the legal system.

EXECUTIVE SUMMARY

According to the 1990 United States Census, the number of female attorneys of color increased from 7,300 to 23,000 between 1980 and 1990.¹⁵⁵ Although these figures seem to imply a rapid influx of female attorneys of color into our judicial system, the fact is that female attorneys of color are not as visible and empowered as these figures suggest. In fact, on a national level, there is little if any data and information on the lives of female attorneys of color, especially in regards to Native Americans.¹⁵⁶ We do not know the specific breakdowns of their racial and ethnic backgrounds, the areas of law they practice, or their perspectives and experiences in the legal system.

Utah is no different than the rest of the nation in its lack of documentation of the status of female attorneys of color; it is therefore impossible to know how many female attorneys of color are licensed or practice in the state.¹⁵⁷ In fact, we know little about them: their age, area of practice, alma maters, networks, affiliations and experiences in the profession. Based on the mailing lists of the Utah Minority Bar Association and the Women Lawyer's Association, there are approximately 40 female attorneys of color in the state. These estimates are based on the women's last names, which are not always indicative of race and ethnicity, and on personal contacts. Also, there is the possibility that some women are not affiliated with these organizations or have recently moved in or out of the state.

Although, in general, data on female attorneys of color is scarce, there are some factors which indicate that their experience in law school and the legal profession is unique. A study by the American Bar Association found that the first year of law school destroys most students' self-esteem. The study found that white males regained their confidence by the second year of law school, and white females by the third year of law school, but the study was unable to determine if and when female minority students regained their confidence.¹⁵⁸ In fact, according to some studies, law school is not a hospitable place for women of color, "it is hostile, alienating and abusive."¹⁵⁹

This situation is exacerbated by the scarcity of minority law professors and deans, who can serve as role models and mentors. Last December, Linda Mabry, one of five minority professors at Stanford Law School, resigned because she felt the law school was a "hostile environment for women and people of color."¹⁶⁰ Ms. Mabry is one of fifteen current and former faculty members from across the university who have filed a complaint with the U.S. Department of Labor, alleging Stanford's tenure and promotion practices are discriminatory.¹⁶¹

There are also female attorneys of color resigning from prestigious white-majority law firms. Maurita K. Cooley worked for a D.C. firm for ten years, making partner after four years as an associate, but left the firm to become the senior vice-president of Black Entertainment Television. According to a study by the American Bar Association, eighty five percent of minority women leave predominantly white firms before their seventh year of practice due to difficulties in generating business, lack of access to mentoring and feeling isolated.¹⁶² This is an alarming statistic considering that minorities account for only 2.95 percent of partners nationwide, with women comprising only 14.2 percent of that number;¹⁶³ or, in other words, 0.4189 percent of partners nationwide.

These accounts of discrimination and sexism faced by women of color in the legal profession are painful and difficult to address. The Utah Task Force on Racial and Ethnic Fairness in the Legal System (herein Task Force) was established to research real and perceived racial and ethnic bias in the criminal justice system. Women

of color as a group were not specifically addressed in the research done by the Utah Task Force on Gender and Justice.¹⁶⁴ Therefore, the Task Force felt it was critical to dedicate a segment of its research plan to investigate how women of color, as victims, defendants, and attorneys, perceive the legal system.

This research project was specifically dedicated to documenting the views and experiences of female attorneys of color who practice in Utah. Section I, introduces the topic of female attorneys of color in Utah, explains the methodology of the research, discusses the major findings of *“The Burdens of Both, the Privileges of Neither”*— the guide and comparison point for this project — and provides a summary of both the findings of the research and the recommendations of the participants. Section II presents the major findings of the research through the voices of the women who participated. Their direct quotes were used not only to powerfully document their views and experiences, but also to incorporate the richness of their narratives into the text. This section is organized into five areas: the law school experience; the interviewing and hiring process; the work place; views on how women of color are treated by the justice system; and a discussion of the diverse views of the participants, in regards to the issue of race and gender, and the term “women of color.” Most importantly, this paper in Section III, presents the recommendations given by the participants on how to lessen the inequalities they face in the legal profession through cultural sensitivity training, mentoring, and networking. Section IV, the conclusion, synthesizes and analyzes the findings and recommendations of the research project.

Methodology

1. Background

The American Bar Association approved two commissions to gather data specifically about female attorneys and attorneys of color: the Commission on Women in the Profession and the Commission on Opportunities for Minorities in the Legal Profession. In 1989, the two commissions approved the creation of the Minority Women Lawyer’s Subcommittee (since renamed the Multicultural Women Attorneys Network, herein referred to as “MWAN”).¹⁶⁵ In the early 1990’s MWAN conducted a series of informal round table discussions in six metropolitan cities to discuss the status of female attorneys of color in the profession.¹⁶⁶ Typically, about twelve to fifteen women attended each of the discussion groups and the composition was a ratio of 6:3:1 African-American women, Hispanic women and Asian-American women.¹⁶⁷ MWAN also held regional conferences in New York City and San Francisco, which drew a total of about 350 participants.¹⁶⁸

From the information gathered from the round table discussion groups and the regional conferences, MWAN produced a report entitled, *The Burdens of Both, the Privileges of Neither*. This is the only publication which specifically addresses the perspectives and experiences of women of color in the legal system; therefore, it was instrumental in developing the issues covered during the focus groups conducted to gather data for this paper. The findings of the MWAN report are an important comparison point to our research project.

According to the findings of MWAN, female attorneys of color encounter persistent and unique barriers in the legal profession:

- The combination of being an attorney of color and a woman is a double-negative in the legal market, regardless of type of practice or geographic region.
- Female attorneys of color perceive they are “ghettoized” into certain areas of the law.
- Female attorneys of color must repeatedly establish their competence to professors, peers, and judges.
- Due to negative attitudes and stereotypes, female attorneys of color are not visible in the profession and have more difficulty achieving prominence and rewards in the legal field.
- To succeed, female attorneys of color must choose between race and gender.

- Female attorneys of color face barriers of gender discrimination in minority bar and majority bar associations.¹⁶⁹

The report was a hopeful beginning in addressing the needs and issues faced by women of color in the legal profession nation-wide. It included insightful recommendations and implementation strategies for the American Bar Association and the Commission of Women in the Profession. Unfortunately, MWAN is no longer active or functioning in any capacity; and it is uncertain if and when it will be reinstated.¹⁷⁰ Without a commission dedicated to addressing and advocating the needs and views of female attorneys of color, it is up to each state bar to take the appropriate measures to keep their female attorneys of color from falling through the cracks.

To gather data for the research of this paper, the Task Force sponsored two focus groups in Salt Lake City. The participants were consulted on the convenient times, locations, and dates. Approximately forty female attorneys of color and all the female minority law students at J. Reuben Clark Law School and the University of Utah College of Law were invited to attend and participate in the focus groups. (See Appendix I: sample of invitation letter). The National Judicial Education Program and the American Bar Association Commission of Women in the Profession were contacted for existing data and literature; as well as for suggestions on how to structure the focus groups.

The focus groups lasted approximately two hours each and were tape recorded. Before the start of the focus groups, the participants were asked to fill out a survey requesting demographic information. (See Appendix 2). The format of the focus groups was informal and flexible to allow the participants to direct the discussion of issues critical to them. However, four topics were suggested as important themes of discussion at the beginning of each session:

1. Do participants perceive they are being treated differently by the justice system? If so, how?
2. Are they expected to behave differently in their interactions with individuals? If so, how?
3. How do they perceive women of color, victims and defendants, are being treated in the justice system?
4. What are their insights on whether the system can be changed and how?

Questions under each topic were used as prompts during the focus group discussions (See Appendix 3). Also, telephone interviews were conducted with women who were unable to attend the focus groups but were willing to participate in the study. The same survey and questions that were used in the focus groups were used during the telephone interviews.

2. Demographic Data of Focus Group Participants

A total of ten women participated in the project: nine attended the focus groups and one woman was interviewed over the telephone. The following is a summary of the demographic data gathered from the survey. It should be noted that all of the participants attended law schools in Utah.

Age:

- Four of the participants are between the ages of 26 to 35;
- Five are between the ages of 36 to 45; and
- One is over the age of 46.

It is difficult to assess if these women's ages are representative of all female attorneys of color in Utah; however it is fair to say that the focus groups had a good mix of age groups.

Ethnic/racial background:

- Six of the participants were Hispanic: three were Mexican-American and the others were of Latin-American descent.
- Three of the participants were Asian-American: two were of Japanese descent and one was born in the Philippines.
- One of the participants was African-American.

No African-American or Native-American attorneys attended the focus groups. The follow up interviews were meant to get perspectives of Africa-American and Native American female attorneys. Of the ten participants, seven speak English as their native language. Also, five of the participants were born and raised in Utah.

Education and career:

Seven of the nine participants are the first in their immediate families to obtain a law or postgraduate degree. Four of the women specifically indicated that they pursued a law degree because they wanted to have a greater impact in the community, by promoting justice and equality in the legal profession and in public policy. Of the ten participants, four work in non-legal fields.

Findings

There is a denial by the legal profession that inequalities exist. Overall, the participants perceive, that in some way or another, they have been or are being treated differently than white male and female attorneys, by various components of the justice system. Some of the women believe the particular disparate treatment and unique experiences they face is based on gender bias; while other women felt it was based on both gender and racial bias. In fact, the latter women felt it was impossible to separate gender bias from racial bias in their life experiences.

Despite diverse opinions and experiences, the following seven themes were strongly repeated during both of the focus groups.

- I. Female attorneys of color in Utah are significantly under-represented in all areas of the legal profession.
 - A. When asked if female attorneys of color were visible in Utah, the response was almost unanimously, "There are hardly any."
 - B. Some of the women felt like outsiders in the legal profession, "...they are shocked when they see us."
2. Law school does not foster a positive and supportive environment for women of color, promoting instead stereotypes of tokenism and incompetence about women of color, which after graduation from law school, are carried into the legal field.
 - A. Some of the women felt the worst racial bias they have experienced occurred in law school.
 - B. Most of the women felt they were branded as "affirmative action babies; " therefore, they were not regarded as competent by their peers.
 - C. Some also felt there was little, if any, support for minority students during law school.
3. Race and or gender stereotypes sometimes limit the work opportunities for female attorneys of color.
 - A. Some of the participants felt race has never been an issue in their careers, while most felt they have had to "fight" for their current jobs.

- B. There was the concern that some of the participants have a difficult time finding out about jobs, getting interviews, and making the right connections.
4. Female attorneys of color perceive that peers and judges question their status and competence as attorneys; also they are expected to be “better” and to represent the views of their respective racial and ethnic communities.
 - A. Some of the participants felt that judges have offered them help in a condescending matter or reprimanded them needlessly during court appearances.
 - B. Some of the women have been confused with other ethnic attorneys or completely ignored by judges.
 - C. Some of the participants have felt pressure to be “better” because they are expected to represent their entire race.
 - D. Most of the participants agreed that they cannot adequately represent the views of all members of their ethnic community.
 5. Female attorneys of color perceive that minorities are not being treated fairly or respectfully by the legal system.
 - A. All the participants unanimously agreed that being a person of color is a definite negative disadvantage in the legal system.
 - B. Language barriers was a big concern for the participants. The participants felt that judges “shut down” and are disrespectful to people who are obviously of different ethnic or racial background, especially when there is a language barrier.
 6. Female attorneys of color have dealt differently with the bias and inequalities they experience. Some choose to assimilate, while others prefer to assert their ethnic identity more strongly.
 - A. Some of the women are uncomfortable with the term “women of color.”
 - B. Other women, mostly Asian-American and African-American, felt that it was impossible for them to blend in due to their ethnic appearance.
 7. Female attorneys of color do not have adequate mentors, role models, or network mechanisms.
 - A. All the women felt there are not enough mentors for female law students and attorneys of color.
 - B. They also agreed that due to the small number of minority professors and students, there are hardly any role models for female attorneys of color.
 - C. Some of the women would like to interact with other female attorneys of color to share experiences, exchange opinions and support one another, but feel that due to the small number of female attorneys of color and the lack of adequate network mechanisms, it is difficult to interact and make connections.

Some of our findings are very similar to the findings of the MWAN report. For example, our participants also felt that female attorneys of color are not visible in the profession and have more difficulty achieving prominence and rewards in the legal field. They strongly perceived that women of color must repeatedly establish their competence to professors, peers, and judges. Some of the women in our focus groups did not feel as welcomed by the majority bar as by the minority bar. For example, they claimed that some of Utah State Bar functions, such as the annual meetings in San Diego, are not worth the expense for young attorneys of color.

There were some differences of opinion as well. Some women said they purposefully did not belong to the Utah Minority Bar Association because they did not want to be labeled as minorities or they did not feel they

would be accepted by the group. Also, not all the participants of the Utah focus groups felt being a woman of color was a double-negative in the legal profession. Some felt they had never been discriminated against due to race, but instead felt gender was the discriminatory factor. These women felt that as long as an applicant is qualified for a position, race bias would not be a factor in the hiring process. On the other hand, some women strongly felt it was impossible to separate gender bias from racial bias. It is important to note that at some point in their careers all the women who participated have wondered if they were hired because they would fill two quotas.

As opposed to the MWAN findings, none of the women felt they were limited or “ghettoized” to certain practice areas. Interestingly, the women who most strongly asserted their ethnic roots, seemed to have experienced more hardships in job placement, were the most intimidated by private practice, and were skeptical about advancement opportunities.

Recommendations

The participants strongly felt that in order to change the legal system, individuals need to be changed first; even if that means changing the system one person at a time. They felt there needs to be acknowledgment of the inequalities and different experiences they face; honest exposure and awareness to the issues of race and gender in the legal system; and a commitment of the will and resources necessary to achieve full and equal representation and participation by women of color in the legal profession. Their recommendations are as follows:

1. Require diversity/cultural sensitivity training for judges, as well as court personnel, firms, and state government agencies.
2. Create discussion groups where minority attorneys can engage in positive and honest dialogue with participants of the legal profession, such as judges, other attorneys and court administrators. This format would allow more experienced attorneys to share the factors or rules that helped them become successful.
3. Establish strong mentoring programs for minority law students by members of the legal profession, even prior to law school if possible.
4. Improve and expand the network mechanisms used by minority attorneys and not limit these efforts to the Utah Minority Bar Association.

EXECUTIVE SUMMARY

In 1992, amendments to the Juvenile Justice and Delinquency Prevention Act required that states address disproportionate minority confinement (DMC) by examining the extent of the problem and developing a plan to reduce disproportionality if such a problem existed. As a result, the Utah Board of Juvenile Justice formed the Disproportionate Minority Confinement Committee (Committee) in 1994 and commissioned a research study. The report, *Racial Disproportionality in the Utah Juvenile Justice System*, was presented to the Committee in 1995. The Committee published a follow-up report recommending research and systemic changes to address the documented overrepresentation. For a number of reasons, the Committee's report was not accepted and no recommendations were implemented. The Committee then disassembled.

In 1997, the Committee was reconvened by the Utah Board of Juvenile Justice to follow-up on the Committee's recommendations. A summary of the progress on implementation is attached in Appendix E. When the Utah Task Force on Racial and Ethnic Fairness in the Legal System was created, the Committee was asked to participate as the committee on juvenile issues. The Committee is co-chaired by Leticia Medina, Director of the State Office of Hispanic Affairs, Lieutenant Mark Nosack of Sandy City Police Department, and Dan Maldonado, Assistant Director of the Division of Youth Corrections. Membership includes many of those that served on the 1994 group, as well as new members who also have expertise in the juvenile justice system.

The Committee gathered information using several strategies. First, Committee members attended many of the Task Force's public hearings to learn about perceptions of the juvenile justice system. Second, the Committee conducted its own meetings with an educational focus, gathering information on numerous issues. Finally, there was an exhaustive research project conducted at the behest of the Committee through the University of Utah's Social Research Institute. The research was funded by the Commission on Criminal and Juvenile Justice (CCJJ) and contained significant quantitative and qualitative components designed to provide a longitudinal comparison to the earlier research study. In October 1999, principal investigator, Russell K. Van Vleet submitted the research results to the Committee in a draft report titled, *Minority Overrepresentation in the Utah Juvenile Justice System*.

CCJJ has provided additional funding to examine the practice of stacking charges against an individual youth charged in a particular incident and how it may affect the number of minority youth that are processed through the juvenile justice system. This study is currently underway and results are forthcoming. The Committee will then provide an addendum to this report.

The Committee created three subcommittees that addressed each of its priority areas. A brief overview of each priority area is offered below, while a complete list of findings and recommendations are contained in the body of the report.

PRE-ADJUDICATION AND CLIENT ISSUES

The Committee began with the conclusion that law enforcement has a significant impact on the introduction of all clients into the juvenile justice system. It concludes that a lack of racial and ethnic diversity in law enforcement agencies can amplify disparate treatment by race/ethnicity. Public hearings conducted by the

Task Force over the past year provided testimony indicating incidents of potential law enforcement harassment, abuse, discrimination, and communication breakdown. Certainly the perception of mistreatment by officers demands attention. The hearings confirmed there is a definite need for improved law enforcement training in cultural awareness and cultural competency. Recommendations also address the need for consistent data between and among law enforcement agencies throughout the state, the establishment of a network of interpreters to address language barriers in law enforcement encounters, and outreach efforts to minority communities by law enforcement. The Committee acknowledges that to be successful, changes in training must be sanctioned and supported by the chief law enforcement executives in the state, and the desired results from the training must be enforced by management within all agencies.

REPRESENTATION AND COURTS ISSUES

The Representation and Juvenile Courts Subcommittee addressed issues of legal representation as well as the adjudication process. The use of interpreters to overcome language barriers was a major topic of discussion as well as the cultural competency of attorneys, judges and court employees. The need for racial and ethnic data and the process for tracking this data in electronic databases is addressed. Recommendations include modifications to the Juvenile Information System, enhancements to the court interpreter program, cultural competency efforts among attorneys and Juvenile Court personnel, and multi-lingual outreach with court process information to ethnic communities.

POST-ADJUDICATION AND COMMUNITY RESOURCES ISSUES

The Post-Adjudication and Community Resources Subcommittee focused on what occurs after a youth is adjudicated. The group also examined community resources to determine their availability and applicability to minority youth needs.

The Van Vleet research conducted for the Committee documents the risk factors present in ethnic populations, including analysis of factors related to youth, families, and communities. The researchers reviewed the existing situation using models that measure risk based on different theoretical frameworks. Committee members believe that this segment of the research is perhaps the single most important finding in the Van Vleet study and that it demands serious attention.

Recommendations in this section suggest a number of future research and pilot projects, many of which address an assessment of a risk-focused sentencing model. Other recommendations address data collection in the Division of Youth Corrections, ensuring cultural competency and multi-lingual ability of post-adjudicatory programs.

FINAL REMARKS

When the Disproportionate Minority Confinement Committee published its original report in 1995, the recommendations in the report were not implemented. All of the recommendations in this report have been formulated in response to the substantial research that has been conducted on the issue of minority overrepresentation in the juvenile justice system. In the end, this report contains a challenging agenda for the juvenile justice system to begin a comprehensive approach to understanding and addressing racial and ethnic justice in the juvenile system.

However, the DMC issue merits more than study. The Committee advocates strongly for the immediate and cooperative implementation of these recommendations. Concerted, systemic efforts will help to address not only racial and ethnic bias but also public perception and credibility of the juvenile justice system. The Committee remains hopeful that this report marks the beginning of a serious and effective implementation process.

EXECUTIVE SUMMARY

The Post-Adjudication Committee was assigned the task of examining the criminal justice system after sentencing, with a primary focus on probation, parole, and incarceration. The Committee was co-chaired by the Reverend France A. Davis of the Calvary Baptist Church and H.L. "Pete" Haun, the Director of the State of Utah, Utah Department of Corrections. With the assistance of the Operations Committee, the co-chairs selected members who had knowledge and interest in post-adjudication issues. The entire Committee membership is listed in the beginning of this report.

The Committee began its work in March 1998. The first activities consisted of creating a list of priority topics to be studied. The Committee's work consisted primarily of commissioning researchers to gather statistics about minority involvement in probation, incarceration and parole, as compared to non-minority involvement in the same areas. Task Force staff and researchers also gathered information on workforce diversity by contacting the Utah Department of Corrections as well as all county sheriffs offices in the state for jail information.

The Committee was not able to gather the information necessary to answer all of its priority topics. However, the data that was gathered provides significant comparisons between minority and non-minority interactions with the post-adjudication criminal justice system. Among the Committee's significant findings are the following:

1. Minorities make up a disproportionate percentage of the post-adjudication system population.
2. Minorities are charged with probation violations, parole violations and prison disciplinarys at greater rates than non-minorities.
3. Minorities serve slightly longer prison terms as compared to non-minorities.
4. The workforce compositions of Corrections and many jails varies in their representativeness of the populations served and the qualified labor force.

Based on the findings, the Committee has made several recommendations. The recommendations are as follows:

1. Employees of post-adjudication entities should receive cultural awareness training when hired and on an annual basis.
2. All entities should make a "good faith effort" to have a workforce that includes minorities within their job groups based on requisite skills and assure non discrimination in all conditions of their employment practices.
3. All entities should create and maintain a reporting and monitoring system to assure minorities have the opportunity to participate in all of their programs and activities in compliance with Title VI of the civil Rights Act of 1964.
4. The Task Force should determine the reasons for disproportionality in the entire criminal justice system.
5. The Commission on Criminal and Juvenile Justice should be responsible for assuring that all criminal justice entities maintain a reporting system that assures non discrimination in employment and programs and activities as required under Title VI and V II of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1960.

EXECUTIVE SUMMARY

The Pre-Adjudication Committee of the Utah Task Force on Racial and Ethnic Fairness in the Legal System was created to examine those segments of the criminal justice system that occur prior to any appearance in court, with a primary focus on law enforcement. Committee co-chairs, Honorable Glenn K. Iwasaki, Third District Court, and Jeanetta Williams, Salt Lake Branch NAACP, selected a diverse group of thirteen additional committee members with knowledge and interest in pre-adjudication issues.

The Committee's work included learning about pre-adjudication issues, developing priority issues, dividing into work groups, conducting research and information gathering, and developing appropriate recommendations. The Committee learned of existing programs that work to improve the quality of fairness received by racial and ethnic minorities and thus deserve mention. Members expressed the importance of a balanced report that sought system improvement while acknowledging positive efforts. Some of the Committee's priority issues await results from the Task Force's research consultant. The Committee reserves the right to comment on the results of that research and present additional recommendations upon completion of that research.

Following is a brief summary of each priority issue examined by the Committee. A full list of findings and recommendations for each topic can be found in the main report.

Law Enforcement Profiling

The Committee began with the belief that to all people, regardless of race, their perception is their reality. The public hearings suggest that many Utahns perceive that law enforcement engages in racial profiling. Members concluded that there are some law enforcement officers who allow their personal bias and feelings to affect their decisions. Some Committee members also believe that there have been minorities who were stopped or arrested by officers with a bias against them based on race or ethnicity. On the other hand, the Committee reviewed cases where law enforcement officers were accused of racist behavior when their actions were based on observation of illegal conduct. While the data reviewed by the Committee does not point definitively to the existence of law enforcement profiling in Utah, the issue remains of great concern to the Committee. The Committee's recommendations include: state legislation to track issues related to officer stops by race and ethnicity, screening of prospective officer candidates for racial or ethnic bias and prejudice, recruiting and hiring a diverse workforce, and diversity training for officers.

Provision of Competent Interpreters in Law Enforcement

Committee members believe that concern is warranted as to how non-English speaking people can receive equal protection under the law if a language barrier exists. The Committee found that language barriers prevent officers from learning the true nature of events they investigate, and interpreter services are not often utilized. Law enforcement agencies are not prepared for or capable of taking care of non-English speaking citizens adequately. The Committee's recommendations include pay incentives for those officers who can speak a needed second language and the establishment of standards for certification of second language skills among officers.

Law Enforcement Workforce Diversity Training

The Committee believes that it is imperative that law enforcement personnel have diversity training. Law enforcement can not afford to be unaware of the issues facing the communities it serves. In addition, law enforcement personnel are also individuals who can not help but be influenced by their own past training, socialization, and cultural ways of knowing. Ignoring cultural difference and the biases it may generate can have serious consequences. The Committee found that P.O.S.T. (Peace Officers Standards and Training) offers an initial diversity training in its basic training. While the training is of high quality, the time allotted is insufficient. Very few agencies surveyed had offered any type of diversity training for continuing education purposes. The Committee recommends yearly, consistent diversity training for officers and administrators. Training topics are suggested as well as the establishment of a statewide clearinghouse for diversity training materials for use by all law enforcement agencies in the state.

Law Enforcement Workforce Diversity and Recruitment Efforts

The Committee started with an assumption that it is desirable for law enforcement to reflect the racial composition of the community that it serves. A number of sources attest to the positive value of diversity in the workforce. The Committee found that law enforcement entities in the state vary in their minority representativeness of the communities they serve. Also, most agencies do not conduct special outreach efforts to increase the ethnic diversity of their workforce. The Committee noted that P.O.S.T. and New Horizons, a local television program, sponsor annual scholarships for minority students to enter P.O.S.T. training. The Committee recommends that law enforcement make efforts to have a workforce that is reflective of the population it serves, that recruitment of minority populations focus on schools and ethnic community organizations, and that more private organizations fund minority scholarships to support the goal of a diverse law enforcement workforce.

Law Enforcement Complaint Process

The Committee examined law enforcement's citizen complaint processes. It found that agencies have a variety of different processes, with widely varying policies and procedures. This situation is supported by perceptions raised in the public hearings of a lack of understanding and clarity about citizen complaint processes. Ninety-five percent of the law enforcement agencies stated there is a complaint process in place. Only nine percent indicated that a record is kept of complainant's ethnicity. Sixty percent of the agencies indicated they did not have a review board. The Committee had lengthy discussions on the ability of review boards to enforce their decisions. While the Committee did not reach consensus on a specific recommendation on this matter, all agreed that this issue was of great significance to their overall discussion of complaint processes. Committee recommendations address complaint process procedures, data collection and tracking, and complaint process outreach efforts to minority communities.

Public Defender Contract Award Process

Some counties in rural Utah have relatively large concentrations of minority groups. These minority individuals often are indigent, requiring court-appointed counsel. The negotiation process for public defender contracts is important because it affects the quality of legal representation. It is important to ensure a fair contract-negotiation process, especially since attorneys in rural counties may be subject to pressure from the community and elected officials to a greater extent than may occur in urban areas. The Committee found the appearance of a conflict of interest in the selection process concerning, especially where prosecutors are involved in reviewing and negotiating public defender contracts, or where county attorneys and other county entities, such

as law enforcement, compete with public defenders for public funds. The Committee recommends funding public defender costs through the Utah Legislature, standardizing selection criteria and contract review processes, and prohibiting the involvement of law enforcement, prosecutors and judges in the contract award process. The Committee also believes that diversity training for public defenders is an important component of quality representation. The Committee forwarded this issue to the Representation Committee for further examination and comment.

Pre-trial Non-Bail Release Decisions

The Committee examined the three pre-trial release systems that do not require the posting of a bail bond for racial and ethnic bias: supervised pre-trial release (PTS); court ordered own-recognizance release (OR) and releases entered pursuant to federal court ordered consent decrees (CDR). The Committee found that the PTS and CDR programs are generally based on racial and ethnic neutral criteria. However, the PTS recommendation is subject to judicial approval. There are no statistics available to indicate any bias or prejudice on the part of judges who reject those recommendations. Likewise, the OR release system is governed solely by judicial discretion. The factors that are considered important vary from district to district and even from judge to judge within a district. There are no statistics available to demonstrate the existence or lack of any racial or ethnic bias in those releases. The Committee recommends that racial/ethnic data on pre-trial release decisions be tracked, that all those involved in pre-trial release decisions receive training on how racial and ethnic bias can impact decision making, and that Utah's criminal justice system should adopt race-neutral release policies.

Bail and Charging Decisions

There are no data at this time to determine whether there is bias in the setting of bail or in charging decisions. However, the Committee notes that both decision points are vulnerable to abuse. There is no mechanism in place to prevent outright, purposeful discrimination. To address these concerns, the Committee recommends the establishment of a more structured system for the setting of bail, training for judges and prosecutors on the dangers presented by racial and ethnic bias, and the tracking of data to determine whether race and ethnicity have an effect on the types of charges filed.

Hate Crimes

The Task Force was a major sponsor of a recent symposium on hate crimes, called "The Changing Face of Hate in Utah." The Committee discussed the outcomes of the symposium and the overall importance of addressing hate crimes as part of the Task Force's work. The Committee chose to endorse the ten recommendations formulated most often by the symposium working groups. These recommendations include training for law enforcement and for the public on recognizing, reporting, investigating, prosecuting and punishing hate crimes, the need for effective state legislation to address hate crimes, and the need for Utah leaders to recognize and acknowledge the existence of discrimination, hate and hate motivated violence in this state.

Noteworthy Programs in Utah

While the Committee's purpose is to determine whether racial and ethnic bias occurs in the pre-adjudication phase of the system, positive efforts to lessen disparate impact and improve communication between law enforcement and communities of color also deserve attention and acknowledgment. The Committee attempts to provide information about four programs that it found noteworthy. This is not an exhaustive listing. Indeed, members hope that there are many more positive examples of bridge building between ethnic communities and

Utah law enforcement. This section highlights minority student scholarships provided annually by New Horizons; civilian academies by the St. George Police Department, diversity training efforts by the Salt Lake City Police Department, and the citizens' review board of the West Valley City Police Department.

Conclusion

Law enforcement is the entry point to the criminal justice system. The Committee has attempted to understand where individual perception of bias and real experiences of bias converge on issues related to profiling, hate crimes, complaint processes, bail and other issues. A system-wide lack of data created difficulties in completing the work. However, members were able to assess several important pre-adjudication issues. The recommendations contained in this report are ambitious and, if implemented, are designed to express a clear aspiration of law enforcement to ensure public safety without creating a disparate negative impact on racial and ethnic communities. The Committee believes that collaborative work on racial and ethnic issues among law enforcement entities and between law enforcement and the rest of the criminal justice system is critical to both successfully addressing issues of racial and ethnic bias and instilling public trust and confidence in our criminal justice system.

EXECUTIVE SUMMARY

The Representation Committee of the Utah Task Force on Racial and Ethnic Fairness in the Legal System was created in order to examine the criminal justice system after arrest, from charging through disposition, with a primary focus on prosecution and defense. The Committee was co-chaired by three Task Force members: F. John Hill, Executive Director, Salt Lake Legal Defenders Association, Judge G.A. Petry, Uintah County Justice Court, and Jerry G. Campbell, Chief Deputy District Attorney, Salt Lake District Attorney's Office. The Committee is composed of individuals from diverse backgrounds having experience with representation issues in the criminal justice system.

The Committee created a prioritized list of topics for investigation, forwarding some issues to the Task Force's research consultant and examining others utilizing its own resources. The Committee itself conducted two surveys. The first survey examined the workforce composition of prosecution and legal defense offices throughout Utah. The second survey asked a sample of Utah attorneys questions regarding the representation of racial and ethnic minorities in Utah. The Committee awaits the results of the research consultant's research and reserves the right to add and modify any recommendations contained herein after review of those results.

This summary outlines the issues addressed by the Committee and provides a broad overview of the findings and recommendations on each topic. The full report contains a complete list.

The Indigent Minority Population

The Committee began with the question of whether the indigent population was reflective of Utah's general population by race and ethnicity. Committee member experience indicated that there was a higher percentage of minorities in the indigent population than in the overall population. The Utah Code Ann. §77-32-202(3) indicates that "indigency" means that a person "has an income level at or below 150% of the United States poverty level." The Committee looked to U.S. Census data for poverty levels by race and ethnicity and found minorities significantly over-represented in the indigent population in Utah. Recommendations by the Committee include paying specific attention to the implications of this over-representation in policy changes and final Task Force recommendations.

Workforce Composition

The Committee evaluated the level of racial and ethnic diversity in workforce compositions of county prosecutors' offices and legal defenders' offices in Utah. The Committee found that racial and ethnic minorities are under-represented in the offices of county prosecutors throughout Utah as compared to overall levels of diversity in the overall state population. The representation of minorities in Utah legal defense offices varies considerably by county. In terms of both prosecution and defense offices, the Committee discussed the rather large discrepancies of the high minority population in some rural counties like San Juan and Tooele with the extremely low minority workforce representation in those counties. The Committee recommends recruitment efforts to assist in raising the level of workforce diversity to reflect that of the community served. The Committee also notes that minorities are generally under-represented in the legal community as a whole and recommends efforts to increase the numbers of attorneys of color practicing in Utah.

Case Load and Office Resources

The Committee evaluated issues relating to the available staff, caseloads and resources in city and county prosecution offices, as well as those available to legal defense offices. The primary focus centered around both the general availability/shortage of these resources and the impact (if any) the shortages had on minority and indigent minority defendants. The majority of prosecutors and defense attorneys said they believed that indigent minorities are not disparately affected by attorney caseloads. However, a significantly higher number of both prosecutors and defense attorneys stated that they believed the size of their caseloads adversely impacted all defendants, regardless of ethnicity and indigence. Rural public defenders were likely to believe that they did not have access to adequate resources. The impact of a lack of resources on rural public defenders points to a disparate impact upon the adequate representation of racial and ethnic minorities because the percentage of minorities in several rural counties is higher than that of the state as a whole.

Despite the disparity of resources throughout the state, the majority of attorneys indicated that their offices had adequate resources to competently represent or defend indigent minority defendants. Of those defense attorneys whose practices were not entirely devoted to criminal defense, the majority claimed this factor had no impact on their representation of minority clients. Defense attorneys who said they believed a diversified practice was likely to negatively impact their minority clients were primarily practicing in urban areas along the Wasatch Front.

Committee members worked toward recommendations that could help bring a uniformity to legal representation issues in a way that would minimize disparate negative impact on minorities and still allow for differences in individual county needs. Committee members favor the legislative establishment of a statewide Indigent Defense Review Committee with a mission to study current delivery systems, establish standards, report compliance on a county by county basis, and to report to the Legislature with their findings and recommendations at the end of a three-year period.

Public Hearing Perceptions

The Task Force public hearings raised several perceptions regarding issues related to legal defense and prosecution of minority clients. Committee members attended some of the public hearings and received all of the public hearing summaries from the Client Committee of the Task Force. It should be noted that Committee members deemed many of the perceptions applicable in a broad sense to all public defenders and others in the criminal justice system and not only those whose clients are people of color. The Committee discussed each perception and whether members agreed that the perceptions were a reality in Utah courtrooms. Members formulated recommendations that they believe will help to address the perceptions. Recommendations include cultural diversity training for prosecution and defense attorneys, education for the public about the adjudication process, and education of all major players in the adjudication process about the effective use of court interpreters.

Attorney Perceptions

The Committee focused on whether minority/non-minority public defenders, prosecutors and privately-retained defense attorneys view racial and ethnic fairness in the criminal justice system differently; whether the race or ethnicity of a defendant plays a role in charges filed, pleas offered or case dispositions; and whether private counsel is reluctant to represent minority defendants. These inquiries were relayed to the Task Force's research consultant. Research methods included focus groups of attorneys. Over 100 criminal law attorneys from throughout Utah were invited to participate in focus groups to discuss their perceptions of racial and ethnic

fairness in the criminal justice system. While the results have not yet been reported to the Committee, the members see this portion of its analysis as significant and hope to amend their report to include findings and recommendations in this area as soon as data become available.

Search and Seizure Issues

Finally, the Committee asked if fourth amendment rights of minority defendants charged with drug offenses are violated more often than others who are arrested for the same violation. The Committee forwarded this research question to the Task Force's research consultant and has not yet received data on this matter. Committee members hope to address this issue in its report amendment.

Concluding Remarks

The Representation Committee's work represents its best effort to examine issues related to criminal defense and prosecution issues and their impact on racial and ethnic minorities in Utah. The Committee discussed issues related to minorities and indigent defense, the experiences of attorneys of color, and minority victim experiences. The impact of heavy caseloads and the differences involved in resources available to different offices throughout the state were also addressed for their impact on racial and ethnic minorities. Finally the Committee acknowledges that the perceptions of clients and attorneys about the impact of race and ethnicity on representation issues are a significant component of what must be addressed by the Task Force. Negative perceptions about fairness has an impact on the credibility of the legal system and must be actively addressed. The Committee makes recommendations to attempt to improve both perceived and actual fairness to minorities in the criminal justice system.

Local Law Enforcement Agencies:

Data Needed to Examine Whether Racial Profiling Occurs

Anecdotal evidence suggests that some local law enforcement officers in Utah are engaging in racial profiling. Due to this anecdotal evidence, we recommend that two steps be taken.

First, we recommend that local law enforcement agencies require their officers to participate in training about ways in which racial, ethnic, social class, and gender bias may effect their enforcement of the laws.

Second, we recommend that all jurisdictions collect data that will enable future research into whether or not racial profiling is practiced. The following fields are recommended; the question(s) that each field would help to answer are included.

- *Date of birth of suspect.* Are certain age residents apprehended more than others?
- *Sex of suspect.* Are males apprehended more than females?
- *Race and ethnicity¹⁷¹ of suspect.* Are certain races and ethnicities apprehended more than others?
- *Nationality.* What is the effect of U.S. citizenship or status as a legal immigrant on treatment of suspects/individuals?
- *Skin/complexion.* What is the effect of skin color on treatment of suspects/individuals?
- *Attire.* What is the effect of suspects'/individuals' dress on their treatment?
- *Hair color.* What is the effect of suspects'/individuals' non-natural hair color (e.g., blue) on their treatment?
- *Driving vs. pedestrian.* Was suspect a pedestrian or was s/he driving a vehicle?

If in a vehicle:

- *Vehicle make, model, year, and state.* If suspect was in a vehicle: Do drivers of certain makes, models, years, and states get stopped more than do others? This field may allow examination of (1) income/social class groups, since the vehicles' makes, models, and years may serve as one indication of social class, and (2) whether those of color who drive expensive late-model vehicles are more likely to be stopped than are whites who drive such vehicles.
- *Passenger information.* Race, ethnicity, DOB, and gender of passengers.
- *Reason for stop/apprehension.* Was stop/questioning due to citizen complaint or was it officer initiated?
 - *If citizen complaint:* What was the nature of the complaint? Did citizen include racial or ethnic information in complaint? Was sole reason for complaint that a person perceived to be of a certain race or ethnicity did not "belong" in that location?
 - *If officer initiated:* What led officer to stop/question this individual?
- *Was individual cited?* This data would allow examination of whether (1) people of color are more often stopped or questioned when no citable offense has been committed, and (2) people of color are more often cited for certain offenses than are whites who commit the same offense.
- *Was individual arrested?* Same questions as previous field.
- *Was a search requested?* This field would allow examination of whether officers are more likely to request searches of persons of color.

- *Did officer have a warrant to search?*
- *Did a search take place?* Are certain groups more likely to allow officers to conduct a search without a warrant?
- *Results of search.* Of those vehicles and persons searched, are certain groups more likely to possess contraband?
- *Vehicle impounded?* Do officers apply their ability to impound offenders' vehicles equally across races and ethnicities?
- *Officer name.* If racial profiling occurs, is it practiced by multiple officers or by only a few?
- *Location (and direction, if driving).* If racial profiling occurs, is it practiced statewide, or only in certain locations?
- *Date, day, and time.* If racial profiling occurs, are there certain times of day or days of the week when it is more likely practiced?

Much of this information already is available from some jurisdictions. It is unclear, however, whether the data is collected and recorded in a manner that allows for the question of racial profiling to be examined. That is, when we requested data, we were provided with only aggregate data, making it impossible to examine the necessary questions.

Data about vehicle passengers is not currently collected. Further discussion with officers, Utah residents, and task force members is required to determine the necessity and feasibility of collecting data in this area.

Utah Highway Patrol: Data Needed to Examine Whether Racial Profiling Occurs

Anecdotal evidence suggests that some officers of the Utah Highway Patrol may be engaging in racial profiling. Unfortunately, existing data do not allow for the examination of this issue. This paper therefore offers recommendations for data fields that are needed to examine whether racial profiling is being practiced by members of the Utah Highway Patrol.

The following fields are recommended. The question(s) that each field would help to answer are included.

- *Date of birth of driver and passengers.* Do certain age drivers get stopped more than do others?
- *Sex of driver and passengers.* Do males get stopped more than females?
- *Race and ethnicity¹⁷² of driver and passengers.* Do certain races and ethnicities get stopped more than do others?
- *Vehicle make, model, year, and state.* Do drivers of certain makes, models, years, and states get stopped more than do others? This field may allow examination of (1) income/social class groups, since the vehicles' makes, models, and years may serve as one indication of social class, and (2) whether those of color who drive expensive late-model vehicles are more likely to be stopped than are whites who drive such vehicles.
- *Reason for stop (including whether roadblock or other stop).* Do certain "intersections" of races, ages, and sexes (e.g., young men of color) get stopped for certain reasons (e.g., swerving) that are alleged to be racially motivated?
- *Citation issued.* Was a citation issued? This data would allow examination of whether (1) people of color are stopped when no citable offense has been committed, and (2) people of color are more often cited for certain offenses than are whites who commit the same offense.
- *Was a search requested?* This field would allow examination of whether officers are more likely to request searches of vehicles driven by or occupied by people of color.
- *Did a search take place?* Are certain groups more likely to allow officers to conduct a search without a warrant?
- *Results of search.* Of those vehicles and persons searched, are certain groups more likely to possess contraband?

- *Vehicle impounded?* Do officers apply their ability to impound offenders' vehicles equally across races and ethnicities?
- *Trooper name.* If racial profiling occurs, is it practiced by multiple officers or by only a few?
- *Location and direction.* If racial profiling occurs, is it practiced statewide, or only in certain locations?
- *Date, day, and time.* If racial profiling occurs, are there certain times of day or days of the week when it is more likely practiced?

According to the Utah Highway Patrol, some of the above recommended data currently are collected, though sometimes in only certain cases. Other data fields are not being collected. The following tables provides information regarding the status of these data fields.

Data Field	Available in State's Computer Database?	Available in Davis, Salt Lake City, and Weber Database? ¹⁷³	Available on Paper Citations? ¹⁷⁴
Date of birth of driver	Only for drug interdictions	Only when citation is issued (vs. for all stops)	Only when citation is issued (vs. for all stops)
Date of birth of passengers	Only for drug interdictions (up to 2 passengers, plus total number in vehicle)	No	No
Sex of driver	No	Unknown	Unknown
Sex of passengers	Only for drug interdictions (up to 2 passengers, plus total number in vehicle)	Unknown	Unknown
Race and ethnicity ¹⁷⁵ of driver	Only for drug interdictions	Only when citation is issued; have plans to add this field on warnings	Requested for citations, but not always filled in; not on warnings
Race and ethnicity ¹⁷⁶ of passengers	Only for drug interdictions (up to 2 passengers, plus total number in vehicle)	No	No
Vehicle make, model, year, and state	Only for drug interdictions (vs. for all stops)	Only when citation or warning is issued (vs. for all stops)	Only when citation or warning is issued (vs. for all stops)
Reason for stop (including whether roadblock or other stop)	Only for drug interdictions	No; only if arrest takes place	No; only if arrest takes place then included on incident report. (Exception is DUI, when reason is included)

Was a citation issued?	Only for drug interdictions	Yes	Yes
Was a search requested? ¹⁷	No; only know when a search has taken place.	No	No
Did a search take place? ¹⁷⁸	Only for drug interdictions	Unknown	Unknown
Results of search	Only for drug interdictions	Yes	No; this information is completed on another form
Vehicle impounded?	Only for drug interdictions	Unknown; this field will soon be included, if it is not yet.	No; this information is completed on another form
Trooper name	Only for drug interdictions	Only when citation or warning is issued (vs. for all stops)	Only when citation or warning is issued (vs. for all stops)
Location and direction	Only for drug interdictions	Only when citation or warning is issued (vs. for all stops)	Only when citation is issued (vs. for all stops)
Date, day, and time	Only for drug interdictions	Only when citation or warning is issued (vs. for all stops)	Only when citation is issued (vs. for all stops)

Prosecutorial Discretion

Question:

Are decisions/outcome regarding prosecution, pleas bargaining, and negotiating different for whites and people of color?

Design:

Identify specific misdemeanor and felony offenses (e.g., theft, assault, DWI, marijuana possession)

Random sample of those arrested in _____jurisdictions, stratified by:

White vs. African American vs. Latino vs. Native American vs. Asian vs. Pacific Islander.

Large enough n to look at gender, social class, and religion?

Data gathering:

Within specific offense, track each alleged offender from arrest through disposition, examining:

Changes in charges—what factors appear to have been considered?

Plea bargaining—what factors appear to have been considered?

Analysis:

Quantitative or qualitative? Sample size, can data be quantified?

Whichever used, examine whether decisions differ by race, previous arrests, previous convictions, and private vs. public attorney. If qualitative, also look at gender, age, social class.

Resources:

Access to files at all stages in process.

Decision-maker from each stage as consultants.

Interviews with decision-makers for subsample of sample.

Public vs. Private Legal Representation

Questions:

1. Are people of color more likely to be represented by public attorneys?
2. Do those who are represented by public attorneys receive harsher dispositions than do those with private attorneys?

Design:

Identify specific misdemeanor and felony offenses (e.g., theft, assault, DWI, marijuana possession)

Random sample of those arrested in _____jurisdictions, stratified by:

White vs. African American vs. Latino vs. Native American vs. Asian/PI.

Large enough n to look at gender?

Data:

“Rate” offender history—how to do this?

Within specific offense, track each alleged offender from arrest through disposition, examining:

Changes in charges—what attempts did attorney make to reduce charges? Were these attempts successful?

Plea bargaining—what attempts did attorney make to reduce charges? Were these attempts successful?

Was the final charge and outcome less than, equal to, or greater than original charge and recommended sentence?

How many times did the attorney meet with the client? OR How many hours were billed? If large differences in anticipated direction, then would suggest need for additional money for public attorneys, rather than implying that public attorneys are less competent.

Do those with public attorneys wait longer from incarceration to appointment with an attorney to date of hearing?

Analysis:

Quantitative or *qualitative*? Sample size, can data be quantified?

Whichever used, examine whether decisions differ by race, previous arrests, previous convictions, and private vs. public attorney. If qualitative, also look at gender, age.

Resources:

Access to files at all stages in process.

Private and public attorney as consultants.

Interviews with attorneys and clients.

Pre-Sentence Investigation Reports

Questions:

Overall: Do Pre-sentence Investigation Reports (PSIs) lead to racial or social class bias in sentencing?

Specific:

1. Are reports consistent across race in reporting previous arrests and dispositions?
2. Are reports consistent across race in including demographic information (e.g., race, [gender, religion,] social class indicators)?
3. Do reports include language or make recommendations indicative of race, income, education, employment, family status, or religious bias?

Sampling Method:

Identify specific misdemeanor and felony offenses (e.g., theft, assault, DWI, marijuana possession)

Obtain list of all PSIs created between [July 1998-June 1999 OR January 1999 - December 1999]

Select random sample of 200 cases of those arrested in _____jurisdiction, stratified as follows:

Race	Felony 1	Felony 2	Misdemeanor 1	Misdemeanor 2
White	n = 10	n = 10	n = 10	n = 10
African American	n = 10	n = 10	n = 10	n = 10
Latino	n = 10	n = 10	n = 10	n = 10
Native American	n = 10	n = 10	n = 10	n = 10
Asian	n = 10	n = 10	n = 10	n = 10
Pacific Islander	n = 10	n = 10	n = 10	n = 10

Qualitative Design:

Enter PSIs into Atlas-ti, and code for indicators of race, income, education, employment, family status, and religion, noting whether directly stated or implied.

Determine whether recommendations are consistent with sentencing guidelines. (This part may be quantitative?) If different, are there differences by race/ethnicity?

Identify themes and patterns.

Compare and contrast themes and patterns of people of different races/ethnicities to discover relationships, if any, between race and PSI content.

Time line:

Weeks	Tasks	Hours Needed
Week 1	Access to PSIs and arrest/outcome data. What form are they in? Where are they?	Principal Investigator—I0 Research Lead—I0
Weeks 2 & 3	Create random sample and hire 4 RAs	Principal Investigator—I0 Research Lead—20 Data entry person—20
Week 4	Gather arrest data for subsample of sample	Principal Investigator—I0 Research Lead—I0 4 RAs—?
Week 5	Literature review	RA—20 hours
Week 6 [3 weeks if not available as ASCII files]	PSIs into Atlas-ti	Research Lead—I0 Data entry person—I0 [Transcriptionist?]
Week 7	Atlas-ti training	3 days for Research Lead and 4 RAs [and Principal Investigator]
Weeks 8-18	Atlas-ti coding	240 PSIs X 1 hour (to code each PSI) X 2 (persons to code each file) = 480 hours Research Lead—200 hours RAs—280 hours

Weeks 19-21	Identification of themes and relationships	Principal Investigator—20 hours Research Lead—20 hours RAs—10 hours X 4 people = 40 hours
Week 22	Literature review	RAs—20 hours
Weeks 23-24	Prepare report	Principal Investigator—20 hours Research Lead—40 hours RAs—10 hours X 4 people = 40 hours

Additional Costs:

Consultants:

[Purchasing Atlas-ti for all stations]

Atlas-ti trainer

Project Consultants: Task Force staff, community experts, Atlas-ti trainer
follow-up, Contract Investigator?

Analysis of Juries: Representation by Race/Ethnicity

Questions:

1. Is the proportion of people of color on juries consistent with their representation in the general population?
2. Is there a difference in the race and ethnicity of juries if the attorneys are of color vs. white?

Method

1. Select jurisdictions with at least X% racial or ethnic minority population.
2. Obtain a list of all juries convened in those jurisdictions from January through December 1999.
(What is the N for juries?)
3. For each jury, prepare a list of
 - a. those called for jury duty,
 - b. those called but excused (at the request of the potential juror) from jury duty,
 - c. those excluded for duty by either the prosecution or the defense, and
 - d. those who served on juries.
4. For lists generated by steps a and b (see step 3, above)
 - a. review names for evidence that surnames are likely to be non-Anglo names, and
 - b. select a random sample of those in each list (Anglo and non-Anglo names) to contact personally in order to evaluate likely error rate or making decisions by reviewing surnames.
5. For lists generated by steps c and d (see step 3, above), meet with defense and prosecution attorneys to determine
 - a. the perceived race and/or ethnicity of those who were included and excluded from jury duty
 - b. learn attorneys' views regarding why certain individuals were excluded from jury duty, and
 - c. meet with a random sample of whites and of people of color who were excluded in order to learn their perspective regarding why they were excluded from jury duty.

Analysis

Quantitative:

1. Chi square to compare expected frequencies by race/ethnicity based on proportion in populations vs. those called for duty.
2. Chi square to compare expected frequencies by race/ethnicity based on those called vs. those served.

Qualitative:

1. Analysis of reasons for excused, by race/ethnicity.
2. Analysis of reasons for being excluded, by race/ethnicity.
3. Compare and contrast the reasons for exclusion provided by attorneys to perceptions given by those who are excluded.

Post-Adjudication Study

Question:

Is there a difference between white inmates and inmates of color in receiving credit for time served while awaiting sentencing?

Method:

1. Request that Corrections prepare a list of all inmates (by number) who came up for review between January and December 1999.
2. Separate inmates based on offense.
3. If a large number of inmates is in each category, select a random sample. Otherwise, include all inmates.
4. Review selected files, gathering the following data for each inmate: Offense, race, ethnicity, gender, [education, employment, income, private vs. public attorney,] days incarcerated while awaiting sentencing, credit for time served, date of commitment to prison, adjusted date (that takes into account the credit given), and the actual numbers of credit days.

Quantitative Analyses

1. Create field that calculates whether full credit was received.
2. Chi square race X full credit for time served.
3. Chi square race X full credit for time served for each offense category.
4. Chi square attorney type X full credit for time served.
5. Chi square income X full credit for time served.

Summary of the Adult System Research
Conducted by the Social Research Institute
For the Utah Task Force on Racial and Ethnic Fairness
In the Legal System
December 1999

Faculty members at the Social Research Institute, University of Utah were asked to investigate whether or not racial bias is an issue in the Utah Criminal Justice System. Information collected by the Utah Department of Corrections, the Salt Lake County Jail, and Census Bureau were used in the analysis. In addition, focus groups and individual interviews were conducted to explain criminal justice processes and make recommendations for future research to the Task Force.

The investigation began with a comparison between the percentage of minorities in the general population and the percentage of minorities in the Department of Corrections population to determine whether or not minorities were over-represented in the criminal justice system (CJS). An analysis of the population data showed that minorities were indeed over-represented in the CJS. Further analyses were conducted to try to determine the cause of the over-representation. This is a summary of the findings of those analyses.

The Ethnic Population in Utah

In order to determine whether or not minorities are over-represented in the criminal justice system, a review of the ethnic composition of Utah was conducted. The census of Utah for the past nine years shows that the minority population has steadily increased from 8.8% in 1990 to 11.1% in 1998. In 1998, the largest ethnic group was Hispanic with 6.3% of the population followed by Asian/Pacific Islanders at 2.5%, American Indian at 1.4% and African Americans at .9%. Thus, for the years 1990 through 1998, minorities comprised approximately 10% and Whites 90% of the population in Utah.

Utah Corrections Population

The minority population supervised by the Utah Department of Corrections has also increased over the past nine years with 22.0% of the corrections population being minority in 1990 and 24.3% being minority in 1998. This is the same 2.3% increase that occurred in the general population. Thus, the percentage of minorities in the corrections system has remained fairly constant over the eight years from 1990 to 1998 at approximately 24%. The largest ethnic group in the corrections system was Hispanic at 14.2%, next was Asian/Pacific Islanders at 2.0%, then American Indians at 2.9%, and African Americans at 5.1%.

The ethnic composition of the corrections population is quite different when compared to the general population. *For the corrections population, the percentage of minorities in 1998 was 24% which is 13% higher than expected if all ethnic groups were represented according to their general population base.* This is similar to the difference between the general population and corrections population nation wide where in 1996 minorities accounted for 40% of those under correctional supervision compared to 27% of the general population, a difference of 13%.

Another way of expressing how over or under represented the various ethnic groups are in the criminal justice system is to calculate the number of individuals currently supervised by the Department of Corrections per 1,000 residents in the general population. In 1998, African Americans had the highest rate of involvement with the Department of Corrections at 49 per 1,000 residents, while Asian/Pacific Islanders had the lowest rate at 5.2 per

1,000. Hispanics had a rate of 19.2, American Indians had a rate of 17.7, all minorities combined had a rate of 18.5 and Whites had a rate of 7.2 per 1,000 residents. *Thus, it is clear that with the exception of Asian/Pacific Islanders, minorities are over-represented in the Utah Criminal Justice System when compared with their representation in the general population.* The next section will compare the characteristics of White and minority individuals in the criminal justice system.

Characteristics of White and Minority Populations in the Criminal Justice System

There are several types of offenses for which there is a difference in the percentage of minority and White individuals. Examining the percentage of individuals incarcerated over the past nine years, Whites have a higher rate of sex crimes, while minorities have a higher rate of crimes against persons and drug crimes. The percentage of incarcerated Whites is approximately twice the percentage of minorities for sex crimes (25.5% vs 14.3%), while the percentage of incarcerated minorities is approximately one and one-half times that of incarcerated Whites for drug crimes (16.1% vs 10.9%) and crimes against persons (33.2% vs 22.5%).

The Department of Corrections reports minority information for three groups of individuals: probationers, parolees, and inmates. There is a considerable difference among the ethnic groups in the percentage on probation, on parole, and in prison (inmate) with Hispanics and African Americans having a greater proportion of their populations in more restrictive settings. An examination of how the individuals in each ethnic group were divided into the three correction options shows that for 1998, Whites, Asian/Pacific Islanders, and American Indians had over one-half on probation and one-quarter in prison while Hispanics and African Americans had approximately one-third on probation and over one-third in prison.

One explanation for these findings is that the minority population in the Criminal Justice System is comprised of individuals with more serious crimes and more severe criminal histories and therefore need more restrictive confinement. This hypothesis was tested by a review of 1,155 individuals sentenced during 1999. There was considerable information available for these individuals: 1) their offense, 2) the degree of the offense, 3) the criminal history, 4) pre-sentence investigation recommendations, 5) the sentencing guideline recommendations, 6) actual sentence, 7) race/ethnicity, and 8) judicial district. An analysis of the database revealed that minorities have more serious criminal histories with the percentage of minorities in categories 4 and 5 (criminal history is rated from 1 least severe to 5 most severe) twice that of Whites (23% of minorities versus 12% of Whites). Further analysis shows that minorities committed more serious offenses (offenses are rated from 1st most serious to 3rd least serious) with first degree offenses over twice that of Whites (6.6% of minorities versus 2.7% of Whites).

In summary, a comparison of ethnic groups in the Criminal Justice System shows minorities are over-represented in the system, are more likely than Whites to be in prison or on parole rather than on probation, are more likely to be convicted of drug crimes or crimes against persons, are convicted of more serious crimes, and have more severe criminal histories.

Because minorities are arrested on more severe crimes and have more serious criminal histories, it would be expected that as a group they would be more likely to be placed in prison than on probation. In order to determine whether there is ethnic fairness in the CJS, it is necessary to compare Whites and minorities with similar criminal backgrounds and similar offenses. Then it will be possible to determine if minorities are treated more harshly by the criminal justice system.

Disciplinary Actions and Length of Stay in Prison

Minority inmates have a higher rate of disciplinary actions than Whites with 266 disciplinary actions per 100 inmates for minorities and 216 disciplinary actions per 100 inmates for Whites. Also, the percent of inmates with no disciplinary record show a higher percentage of Whites (38.4%) than minorities (28.0%). However, the higher rate of disciplinary actions received by minorities does not appear to increase their length of stay in prison over Whites.

Even though nine years of data were available for analysis, there were several offense categories that had too few cases to analyze. For any offense type with less than 50 cases the data are not consistent enough to draw conclusions about minority and White differences. However, for the offenses with a large enough number of cases for analysis, there does not appear to be significant differences between minorities and whites on length of stay in prison.

Adherence to Sentencing Guidelines

One way to review the effect of sentencing guidelines is to determine the percentage of individuals who receive sentences that follow the guidelines and those that do not. Two scenarios were reviewed. In the first case the guidelines recommend prison and the person goes to prison, jail, or is placed on probation, while in the second case the guidelines recommend probation and the person goes to prison, jail or is placed on probation. A review of the percentages for the White and minority groups reveal that when prison is recommended by the guidelines, 67.5% of the Whites and 70.2% of the minorities go to prison. However, when probation is recommended by the guidelines, almost twice as many minorities go to prison as Whites (22.7% vs 12.0%).

Agreement Between Presentence Investigations, Sentencing Guidelines, and Actual Sentences for Whites and minorities

The analysis presented above was for nine years of data. However, that database did not contain the results of the presentence investigation (PSI) recommendations. The database with the 1,155 individuals contained all three data sources. The problem in com

paring Whites and minorities on pre-sentence investigation recommendations, sentencing guidelines, and actual sentences is that there are too few cases in most of the crime categories. For example, when property crimes are selected, there are 427 cases (81 minorities and 346 Whites). However, there are not enough cases in most of the five categories of criminal history, three offense degrees, and two ethnic categories to determine whether or not there is bias. One area where there were enough cases to analyze was for the least severe criminal history and the least serious crime category. A review of three different crimes (property, drug, and sex) showed that for the least severe criminal history and least serious crime category there was very little difference between the PSI recommendations and the actual sentences with almost all of the minorities and Whites receiving probation.

A review of the overall sentencing guidelines, actual sentence, and presentence investigation reports shows that for all three there is a greater percentage of the minority population being incarcerated. However, since minorities have more severe criminal histories and are convicted of more serious crimes they would be expected to have a higher incarceration percentage. **The only way to determine if there is ethnic fairness is to compare Whites and minorities with similar offences and similar criminal histories. At this time the number of cases in the database do not allow that analysis to be conducted.**

Another way of comparing the PSI with actual sentences and sentencing guidelines is to review the cases for

agreement and disagreement between the PSI recommendation, the sentencing guidelines, and actual sentences. After careful analysis, there appears to be a high level of agreement between the PSI recommendations and the actual sentence for both minorities and Whites (89.2% and 93.0%).

A comparison of the PSI recommendations for minorities and Whites with the sentencing guidelines was also completed. While there is not as much agreement between the PSI and the guidelines as there was between the PSI and the actual sentence, the agreement is still fairly high for both minorities and Whites (79.8% and 87.5%). However, It is clear from the comparisons that the PSI is more accurate for Whites than minorities. The cases where the guidelines recommended probation and the PSI recommended prison appeared to be biased against minorities. For minorities, the PSI recommended prison for 17.8% of those who the guidelines recommended probation, while for Whites, the PSI recommended prison for 9.8% who the guidelines recommended probation.

When the differences between minorities and Whites on the PSI recommendations, sentencing guidelines, and actual sentence were reviewed, the closest agreement was between the PSI recommendation and the actual sentence for minorities and Whites. The guidelines do not agree as well with either the actual sentence or the PSI. Other reports prepared for this project found that all of the 18 pre-sentence investigators at Salt Lake County AP&P were White. This lack of ethnic representation may be one reason that there is more disagreement between the PSI recommendations, sentencing guidelines, and the actual sentence for minorities than Whites.

Salt Lake County Jail Bookings Compared to Corrections Population

In order to gain more information about where in the corrections system the over-representation of minorities occurs, Jail bookings were investigated. It is assumed that the individuals who enter the criminal justice system start with being arrested and booked into jail. Two groups of jail bookings at the Salt Lake County Jail were reviewed. The first was for the three years 1996, through 1998 and the second was a sample of bookings during February, July, and October of 1998. The first study examined the bookings by four ethnic groups for misdemeanors, felonies, and total bookings. The second study reviewed bookings for an additional group, Asian/Pacific Islander, and reviewed days in jail by ethnic group. The results of the bookings were then compared to the population in the corrections system from the Third Judicial District.

Because the Department of Corrections is currently receiving fewer individuals that have misdemeanor convictions, the felony bookings are probably the best indicator of the individuals who will be convicted and enter the Department of Corrections' system. A review of the percentage of bookings for felonies shows that the percentages of minorities who are booked in jail on felony charges is higher than the percentage of individuals who are convicted and become involved with corrections (34.5% for bookings versus 28.1% for corrections). Thus it appears that minorities who are arrested have a 6.4% lower rate of being convicted of a crime and continuing on to supervision by Correction than Whites.

A review of the bookings by ethnicity shows that there is decreased representation for Hispanics where they accounted for approximately 26% of the bookings and 16% of the corrections population during 1996 through 1998. African Americans account for 7% of the bookings and 6% of the corrections population, and Native Americans account for 2% of the bookings and 2% of the corrections population. The booking study that examined Asian/Pacific Islanders showed that approximately 3% were booked into the Salt Lake County Jail and comprised 4% of the corrections population. It should be noted that while Salt Lake County Jail bookings

represent a large number (15,454), they may not be representative of the entire state and all bookings should be reviewed to determine if the comparisons between Salt Lake County Jail bookings are representative of Utah.

At this time It is difficult to determine why the decrease in representation from bookings to corrections occurs among Hispanics. One possible explanation is that some of the Hispanics are released to Immigration and Naturalization Services. However, after eliminating those individuals from the study, the Hispanic jail population was 25% which is still 9% higher than the 16% Hispanics in the Corrections population. Thus, Whites who are arrested and booked appear to continue into the corrections system at a rate higher than the booking rate (65.5% of those booked and 71.9% of those in the corrections system) while Hispanics appear to have a lower rate continuing into the corrections system (25% of those booked and 16% of those in the corrections system).

Pre-Sentencing Process

The sentencing process was to be studied by matching as many characteristics as possible-criminal history, degree of offense, age and sentence across race and ethnicity. Review as many as possible (50 being the minimum number needed before conclusions might be drawn from the study) in the time still remaining for the Task Force Research. Only 14 reports were made available to the research team and therefore conclusions about racial or ethnic bias within the PSI process could not be drawn from this sample.

The team did report the process to the Task Force. The PSI is conducted by pre-sentence investigators who are hired as contract employees by the Adult Probation and Parole division of the Department of Corrections. In-house staff are also utilized for the drafting of PSI's, especially outside of Salt Lake County. Due to time limitations only the Salt Lake Office could be contacted. At the time of the study all of the 18 investigators of Salt Lake County AP&P were White. One investigator is bilingual (Spanish speaking). Attempts have been made to recruit minority persons for PSI writing, but have not, according to AP&P officials, been successful. (There are at least two minority PSI writers outside of the Salt Lake area).

The PSI is a powerful document. When a guilty plea is entered a PSI is requested. This plan is used in sentencing, supervision, prison classification, treatment while in the system, and probation/parole conditions. The Salt Lake County Office does 80-100 cases per week.

Investigators are randomly assigned defendants. The goal of the investigation is to aid in the sentencing process by gathering personal information on the defendant.

Investigators use interpreters when necessary. There was not consensus among those interviewed as to the impact of interpreters on the PSI especially those interpreters not of the same cultural background. Investigators were also split on their willingness to perceive biases in the reports. There are safeguards in the system to check bias since all PSI's are reviewed by colleagues, a supervisor, the defense, prosecution, and the judge.

The PSI takes 30-45 days to complete and goes to the court (judge), prosecuting attorney, and defense attorney three days prior to sentencing.

This is an area of future research. A much larger sample needs to be drawn and the impact of interpreters and culture of interpreters and investigators on PSI information gathering and reporting need to be determined.

Community Resources

The research team examined to what extent culturally relevant community resources are available and how effective are they in meeting the needs of clients in the Utah corrections system?

Focus groups were conducted with line staff and with minority clients in community programs. The line staff groups were comprised of 38 individuals, mostly Caucasian. There were two Hispanic female participants. In the minority client focus groups 34 individuals participated; 17 Hispanic/Latino, 10 African-American, 4 Native American, 0 Asian, 1 Pacific Islander, 1 Italian/Iranian, 1 Jewish American.

Both staff and minority clients had difficulty in recalling instances where behavior or materials were disrespectful or insensitive to their culture. Education and language were viewed as areas of concern. Recommendations included an increase in Spanish-speaking programs and greater awareness from the courts to culturally sensitive programs in the community. The need for more multi-lingual counselors and education materials that were culturally sensitive was stressed. In addition, many minority clients and staff felt that effective means of addressing racial bias was not readily available.

Jury Selection Process

The possibility of bias within the jury selection process is very real; however, highly limited data and confidentiality requirements make it a difficult subject to research. Chapter 46 of the Utah Judicial Code contains the rules and procedures for jury selection. 78-46-2 of the code clearly outlines the initial jury pool make-up as being a "fair cross-section of qualified citizens." A juror database is constructed using Department of Motor Vehicles (DMV) and voter Registration records. These two databases may not constitute a "fair cross-section." Minorities may be citizens but they may not be driving or voting citizens.

Bias may occur when prospective jurors are sorted out through various procedures including voir dire, the process of questioning a juror's ability to serve. There are limited safeguards in place against racial and ethnic bias and the interpretation of the law could lead to minority under representation within the jury selection process.

It is recommended that race/ethnicity of prospective jurors, and final jury make up be coded to facilitate future analysis.

Summary

- A comparison of ethnic groups in the Criminal Justice System shows minorities are over-represented in the system, are more likely than Whites to be in prison or on parole rather than on probation, are more likely to be convicted of drug crimes or crimes against persons, are convicted of more serious crimes, have more severe criminal histories, and have more disciplinary actions.
- A comparison of jail bookings to the Corrections population show that a larger percentage of Hispanics are booked into jail than their proportion in the Corrections System.
- The length of stay in prison for specific offenses appears to be similar for minorities and Whites.

- While there is a surprisingly high agreement between the PSI and actual sentence, the guidelines do not agree as well with either the actual sentence or the PSI recommendations.
- Comparisons between PSI and guideline recommendations show that when the guidelines recommend probation, the PSI recommends prison approximately twice as often for minorities as for whites.
- The results indicate that once an individual is convicted of a crime and placed under the supervision of the Department of Corrections, ethnicity makes little difference in how an individual is treated.
- These data do not answer questions about whether plea bargaining is equal for minorities or whether minorities receive adequate representation by the legal system. One way to determine whether racial bias occurs in the judicial system would be to follow a group of individuals who are arrested for the same crime through the system. Information would be collected about their arrest, conviction, sentencing, supervision by Department of Corrections, and their release.
- The pre-sentence investigation, PSI, is a powerful tool in the sentencing process. The reports are mainly written by contract employees, who are predominantly Caucasian. Minority overrepresentation within the system suggests a need to review the impact of racial bias and/or cultural awareness both in the writing and interpreting of PSI's. The time frame was short and the sample small in this initial study. Conclusions could not be drawn. The recommendation is for further study in this area.
- Focus groups were held with staff and minority clients of the Department of Corrections community programs. Education, cultural awareness and language were stressed as barriers for minorities within the criminal justice system. In addition, participants expressed a need for additional venues to address issues of racial bias when they are encountered.
- The Jury selection process is carefully outlined in the Utah code. Its restriction to master lists made up of Motor Vehicle Registration and Voter Registration however may lead to bias. Further study is necessary and recommended.

Minority Overrepresentation in the Utah Juvenile Justice System

EXECUTIVE SUMMARY

The purpose of this study is to examine the extent of overrepresentation (disproportionality) of juvenile minorities in the Utah Juvenile Justice System and to determine if systemic racial bias is present.

- The Juvenile Justice Information System database (JIS), the Bureau of Criminal Identification (BCI)¹⁷⁹ and selected social files were utilized in this analysis. In addition 200 youth (100 Minority and 100 Caucasian) were randomly selected to examine their offending histories and to track them through the juvenile justice system. Twenty-four (24) focus groups were held state-wide composed of one hundred and one (101) youth and eighty-five (85) system personnel. Additionally, thirty-five (35) exit interviews were conducted at the Scott M. Matheson Courthouse and the Cornell Detention Center. Representatives of three (3) law enforcement agencies were interviewed for their response to the focus group discussions. Major findings include the following.
- Disproportionality begins at the point of arrest and continues throughout the system. It increases as youth progress through the system. It is the highest in Observation and Assessment (O&A) and secure care.
- People of color (of all ages), including Whites of Hispanic origin, were 14.6% of the population of Ogden, Salt Lake City, and Provo in 1990 (last date of general census). Yet youth of color represented 30% of all youth arrested for prison offenses and 19 percent of all youth arrested for property offenses in Ogden, Salt Lake City, and Provo¹⁸⁰. A total of 21.8 percent of all youth arrests, are minorities.
- Certain minority youth, after factoring in offending histories, do receive slightly more severe dispositions than do other youth. That is, considering only the number of each youths' felonies and misdemeanors, Hispanic youths received slightly more severe dispositions than did all other youths.
- Over a third (37 percent) of the youths received dispositions that were equal to that recommended by the sentencing guidelines. Of the remaining youths, 48 percent received dispositions that were less than that stated in the guidelines, and 15 percent received dispositions that were more severe than that indicated by the guidelines. (This study was unable to consider the influence of aggravating and mitigating circumstances on youths' dispositions. The Courts are currently collecting these data.)
- Focus groups were held with youth and system personnel across the state. The majority of youth and personnel interviewed do feel that youth of color are the subjects of racial bias.
- Both youth and staff believe that racial stereotyping practiced by personnel at multiple points in the system and by school system personnel leads to more severe sentencing for minority youth.
- System personnel stated that system staff exhibit biases in the areas of cultures, languages, and religions.
- Personnel assert that their discretionary use of aggravating and mitigating circumstances results in racial bias.
- Both youth and personnel perceive that minority overrepresentation is due at least in part to racial profiling by police.

- Youth perceive that, at various points in the system, Caucasian youth receive privileges that are not available to minority youth.
- Personnel assert that minorities do not have adequate representation in court, since they often do not have the financial means to hire competent attorneys.
- Personnel assert that bootstrapping (the alleged practice of stacking offenses on a single incident) is practiced by police, probation officers, and school system personnel.
- Personnel demonstrated apparently unintentional racial and social class bias during the focus groups.

RECOMMENDATIONS

Based on this study's findings, the study authors recommend that the following steps be taken.

- Modify and improve the JIS and BCI Databases. Lack of complete data prevents a thorough understanding of the extent of racial bias in the system. The JIS needs to improve coding of race and ethnicity by the courts and law enforcement, and to track socio-economic status (SES).
- Replace or supplement the aggravating and mitigating circumstances portion of the 1997 juvenile justice sentencing guidelines with a strengths-based approach. The current use of aggravating and mitigating circumstances is perceived to be weighted against youth of color and youth of lower socio-economic classes. (Increase cultural competence of system personnel).
- Hire additional minority staff.
- Expand the operating hours of the Court to accommodate work responsibilities of many Court clients.

FUTURE STUDIES

Study authors recommend that the following areas receive further study.

- Profiling of minority youth and targeting minority communities by law enforcement must be more thoroughly examined as a continuation of this Court initiative.
- The relationship of aggravating and mitigating circumstances to dispositional practices of court personnel must be understood. Appendix I is an example of the concept. It is not intended to be a replacement for the current aggravating & mitigating portion of the guidelines. A period of study utilizing a strengths based approach in place of or in addition to aggravating and mitigating circumstances is recommended. (These data are currently being collected by the Court.)
- Examine the extent to which chronicity scores contribute to the overrepresentation of minority youth. Traditionally the system has strengthened sanctions as offending increases. The compounding of offenses and its impact on sentencing, especially for those who enter the system at a young age, needs to be better understood.
- Examine relationship of social class to arrest and incarceration, due to the fact that other studies have found very high correlations in this area. Socio-economic data are not currently being collected.
- Continue to examine the relationship of availability and quality of minorities representation in juvenile court.
- The alleged practice of bootstrapping and its relationship to self-fulfilling prophecies, (expectation of being arrested and incarcerated because of race, poverty, underclass), as expressed by many participants in this study must be more thoroughly examined. (Addendum to this report, due in late 1999, will hopefully add to understanding these two phenomena.)

Whenever organizations possess authority and discretion it is inevitable that biases will be manifested. The two areas where the potential for bias is the greatest is at the point of arrest and in sentencing practices.

Discretion within the juvenile court system is fundamental to the notion of the court acting in the best interests of the child. The progression of charges and the aggravating of instant offenses with chronicity scores, however, make it very difficult for youth to exit the system. Utah is just beginning its experience with revised sentencing guidelines for juveniles. The careful review of that process, with special consideration of the use of aggravating and mitigating circumstances, and the replacement or addition of a strengths-based approach seems especially warranted given the additional information this study provides to policy-makers.

EXECUTIVE SUMMARY

Introduction

The Utah Task Force on Racial and Ethnic Fairness in the Legal System held interviews with attorneys who are women of color in March 1999, as part of a larger effort to examine racial and ethnic fairness in Utah's criminal justice system. The interviews were designed to obtain additional perspectives from those already gained at public hearings. Approximately 10 attorneys self-selected from approximately 40 known women of color attorneys who were invited to take part in two group interviews. Participants included Mexican-American, Latin-American, Asian-American, and African-American attorneys.

Overview

Participants were asked to respond to broad questions regarding fairness of treatment, expectations of behavior, and prospects for change faced by women of color in the legal profession. Participants were also asked about fairness of treatment of victims and defendants who are women of color, but the very small amount of discussion on this issue was consistent with the report on the public hearings and the report on interviews with attorneys and judges, and has not been repeated here.

The main part of the discussion was in two areas: the various experiences of living in *our own world*, and the various experiences of being kept out of or moving into *the other world*. Our own world refers to the world of minorities, a non-homogeneous world subject to the same divisions and issues as exist between our own world and the other world. The other world is everything that the female attorney of color feels in her professional life to be not a natural part of. Obtaining entry to this world therefore creates a contradiction which is expressed as uncertainty in many matters. A small amount of discussion touched on a third area, describing some mechanisms for *change*.

In addition to these main topics, the participants viewed all the discussion through three lens, or viewpoints. These are *context*, *networks*, and *labeling*. The lens of context refers to a reluctance to simplify, make generalizations, or attribute causes with certainty, based in part on feelings of uncertainty as to how to interpret or evaluate one's experiences. The lens of networks sees situations in terms of belonging or not belonging to various groups of inter-connected individuals. The lens of labeling interprets communications and situations in terms of labels or categorizations that are placed on one without one's consent, and which lead to a variety of unwanted consequences.

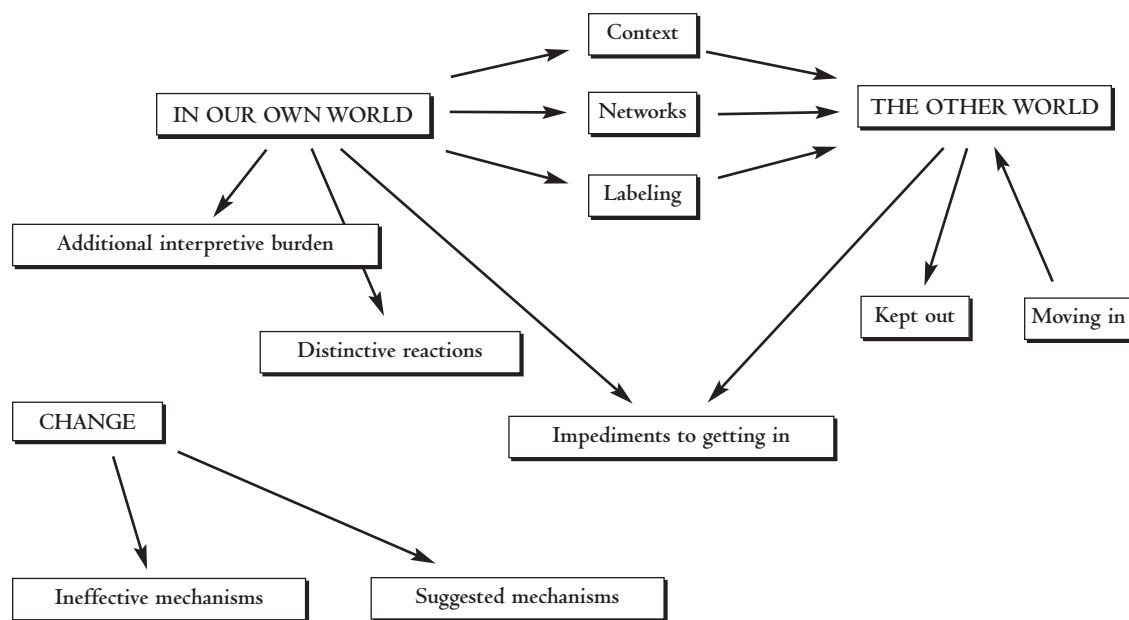


CHART I: Overview

In Our Own World

Three topics dominated discussion of our own world. First, *additional interpretive burden*, was the unique burden on women of color in interpreting interactions and situations to evaluate whether gender or ethnicity or both was a biasing factor. This interpretive burden was a messy matter, involving uncertainties, sensitivities, and contradictions. The second topic was the set of *distinctive reactions* of women of color to the situations they faced in the legal profession. The third topic was the *impediments to getting into* the other world that were created by women of color themselves. The most significant impediment was the choice of many women of color to be un-involved with minority institutions and communities, and to forego mentoring or assisting other women of color, even though this need was forcefully expressed in other areas of the report.

Additional interpretive burdens comprised two areas. First was the issue of whether *gender or ethnicity* was the primary factor in any communication or situation. Gender bias was generally described as the more important issue, although more reported experiences referred to ethnic issues. The second area was *heightened sensitivity*, particularly to labeling. Participants expressed the preference not to be labeled, such as a recipient of special programs, or as the disliked term “women of color”, or even to draw attention to oneself as an accomplished person within the minority community. Labeling sometimes led to downplaying differences in order to avoid the discomfort of being labeled a woman of color. Another concern was *over-sensitivity*, expressed as uncertainty as to whether bias in any given situation is in reality present at all.

Distinctive reactions to being in our own world were both psychological and behavioral. The main psychological reactions were *surprise at the reality* of gender and ethnic bias in the legal workplace, often because participants had been brought up to assimilate and not notice such differences; feelings of *intimidation* from being in predominantly male, majority work environments; and feelings of *offense* at various behaviors found in the other world. The main behavioral reactions were the need to *monitor and control behavior* for fear of further labeling, and the need to *fight harder* than others to enter and be perceived as competent in the other world.

Impediments to moving into the other world are in two groups: *our impediments*, created by women of color wanting to move in, and *their impediments*, created by those already in. Impediments created by women of color themselves were both passive and active. Passive impediments included the unavoidable influence of *cultural differences* that are in conflict with the rules of the other world, and in some cases lead to a *reflexive uninvolvement*, or reluctance or inability to change roles and be involved in helping oneself and others into the other world.

The active impediments are conscious characteristics of women of color. The first is the most supported concept of this report, the *choice to be uninvolved* in minority institutions and communities, and thereby withhold the needed mentoring and assistance that have been emphatically called for throughout the report. Respondents felt strongly that involvement is a highly personal, contextual matter, and were generally uncomfortable with the unwanted expectations of the minority community to behave and work in certain ways. Responses to this contradictory dilemma varied from standing firm to the personal nature of this choice, to exhorting more established women of color to take responsibility for mentoring and offering others help, whatever their preferred choice in this matter. The second active impediment is a minor issue of not throwing stones when one lives in a *glasshouse*.

The Other World

Participants discussed both the experience of being *kept out* of the other world, and the experience of *moving into* the other world. The dominant experience of being kept out is the pervasive experience of being an *outsider looking in*, a situation that renews itself in each new situation even once one is apparently in the other world. Outsider status is particularly noted in the *hiring and promotion* context, with women of color feeling that they are always outside the networks that are required to know of jobs or get an interview. However, once past the interview barrier, experience was mixed, depending greatly on the context and the individuals involved.

The final aspect of being kept out is the *impediments created by the other world*. The first impediments is the *cultural narrowness* of persons who have not had much contact with other cultures, and was especially noted among those who have not traveled outside the homogeneous State of Utah. Cultural narrowness naturally leads to uncertainty as to how to label those who are different. Such *labeling confusion* includes uncertainty in identifying the ethnicity of another, expectations of behavior based on ethnicity or gender, and confusion over one's own ethnic identity. This in turn prevents acceptance into networks, and in some cases is an *insurmountable barrier* no matter what is done to ameliorate it. These three impediments suggest that change may require broader cultural exposure rather than only education or institutional change.

The fourth impediment concerns a pervasive theme throughout the discussions, the need for something unusual to occur, typically the help of another in providing knowledge, mentoring, contacts, etc, in order to get into the other world. The common experience was that *no-one was there to help*. Participants considered that help was not intentionally withheld, but simply may not occur to the non-minority individual as important. The woman of

color then defaults to a position of self-labeling as inadequate for moving into the other world. The final impediment was a small issue of insensitivity of the other world to the limited *economic* resources of many women of color in the legal system.

Moving into the other world occurred through a variety of means. *Downplaying differences* was one strategy, although some reported that downplaying differences is ineffective in overcoming the insurmountable barriers mentioned above, and is also in contrast to the experience of others who prefer to maintain cultural integrity and pride while still seeking entry to the other world. A second strategy was to take advantage of various *catalysts* that presented themselves. One catalyst is *knowing the rules* of how the other world works, typically gained from a *mentor*. One concern with mentoring is that it is ineffective unless it is long term and starts early; for example, it is no use a mentor assisting a law student several weeks before graduation in how to handle oneself at an interview or cocktail party: knowing the rules implies a growth process rather than an exchange of information. Other catalysts included good advice from *established women of color*, serendipity, or the or the unexpected intervention of a person into a situation.

A small amount of discussion concerned *inconsistent treatment* in the other world that was both gender and ethnic specific. These experiences were consistent with those reported by other groups of respondents.

Change

Change was a minor area of discussion, and concerned the *ineffectiveness of existing mechanisms* for change, and how they might be supplemented. A wide variety of examples were given of mechanisms that are in place to help women of color, but that are ineffective, for example, the inability of minority institutions to appeal to women of color, the lack of data on attorneys who are women of color, preaching to the choir instead of reaching out to and involving all lawyers in working to break down barriers, and ineffective mentoring. *Proposals for change* were not discussed extensively, other than incidental calls for education and training to broaden cultural awareness, greater judicial diversity, and less confrontational styles of communication.

EXECUTIVE SUMMARY

INTRODUCTION

The Utah Task Force on Racial and Ethnic Fairness in the Legal System held interviews with defense attorneys, prosecutors, and judges from throughout the state during November-December 1999, as part of a larger effort to examine racial and ethnic fairness in Utah's criminal justice system. The interviews were designed to obtain additional perspectives from those already gained at public hearings. Approximately 30 attorneys self-selected from approximately 100 defense attorneys and prosecutors who were invited to take part in three group interviews. Most participants were Caucasian, with a small number African-American, Hispanic, and Asian-American. Anonymity was assured, with the result that the interviews were extremely frank. Eighteen judges were individually interviewed from random selections from all judges in each district within the state.

PART I: INTERVIEWS WITH ATTORNEYS AND PROSECUTORS

OVERVIEW

Participants were asked for their perspectives on racial and ethnic bias issues in the entire legal system, including judges, prosecutors, attorneys, defendants and victims. Whereas in the public hearings no amount of requests from the moderators was able to divert discussion for long from the police, the attorneys responded to this request, and only about 10% of their discussions involved the police. In general, the attorneys required no encouragement and little direction from the moderator, and the meetings are more accurately described as discussions rather than interviews. In contrast to the public hearings, which were primarily descriptive reports of personal experiences of racial unfairness, the attorneys' discussions were primarily interpretations and proposed explanations of unfairness. Many of the proposed explanations were contradictory, highlighting the complexity of the topic.

The unstated ethos of the discussions was that while racism is pervasive in the justice system, and is often subtle, denied, or hidden, it was substantially absent from those present. Whether this is itself a denial, or due to self-selection of unbiased attorneys, or due to the presence of minority attorneys at the discussions, is unknown.

The bulk of the discussions were indirect, that is, about racial unfairness borne by the attorneys' minority clients. (A very brief final section of Part I concerns direct experiences of racial unfairness borne by minority attorneys themselves). Discussions of unfairness facing clients were in two areas: first, discussions about the *existence and extent* of unfairness in the legal system, and what may lead this to *change*; and second, speculations about the underlying nature of racial unfairness that have been presented in the report as *three potential theories* of racial unfairness.

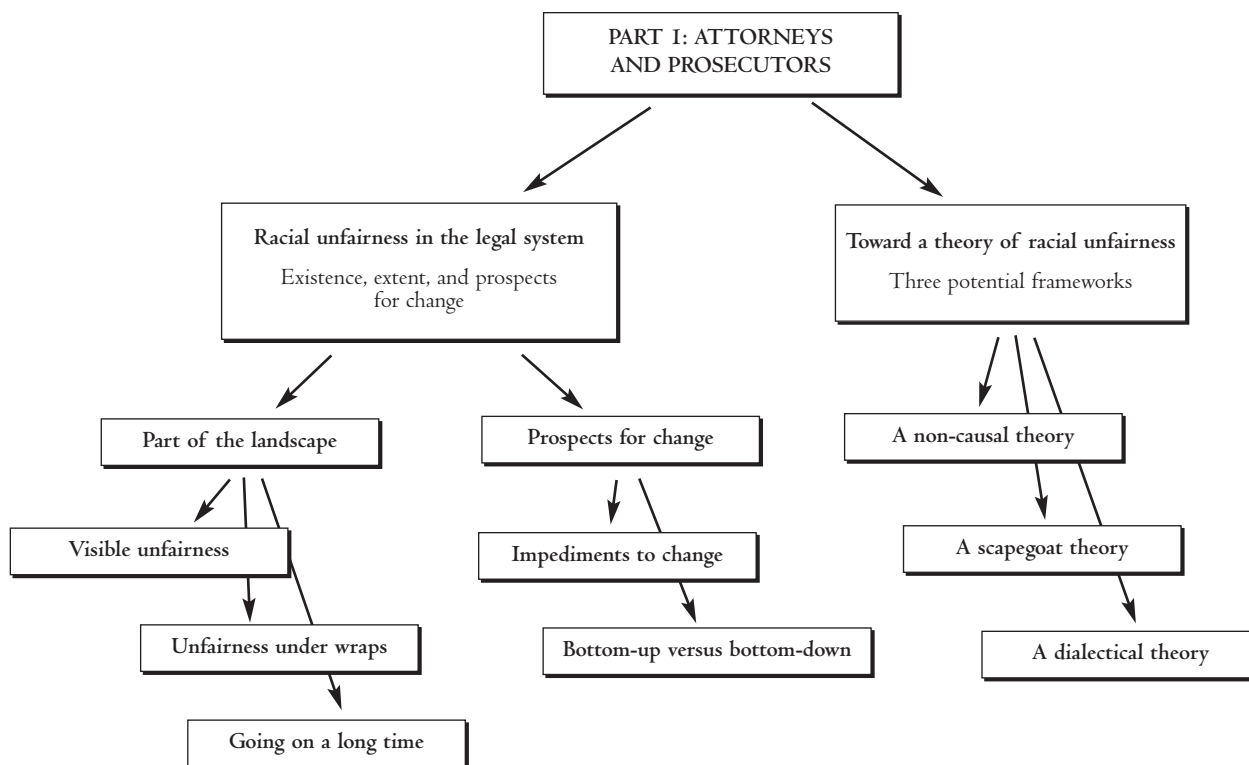


CHART I: Overview of Part I

The first area of discussion, concerning the existence and extent of racial unfairness, is largely descriptive, and a counterpart of “How Things Are” in the report on the public hearings. Attorneys considered racial unfairness an established *part of the landscape*, with *visible aspects*; with aspects that are *denied or hidden under wraps*; and with guarded optimism that although racism has been *going on a long time*, things are changing for the better. Attorneys also discussed the *prospects for change*, including *impediments to change* and the reasons for needing to *attend first to the front end* of the system.

In the second area, numerous propositions were made and discussed to explain the pervasive racial unfairness in the legal system. These have been synthesized into three potential theories or frameworks: a *non-causal theory*, in which race is proposed as not a cause, but as a correlate of other factors, that lead to unfairness; a *scapegoat theory*, in which race is blamed for unfairness caused by other factors; and a *dialectical theory*, in which both cultural differences and closeness lead to both lenient and tough treatment, creating contradictory dynamics of racial unfairness.

PART OF THE LANDSCAPE

The attorneys discussed the visibility of what was, to almost all of them, the obvious, that racial bias is visible everywhere in the system. The first topic was racism, including many examples of *overt racism*, particularly by judges and juries, and also more subtle expressions of *covert racism* in the behavior of people in many parts of the system.

The second topic concerned the *main actors* in situations of racial unfairness, focussing on five groups: primarily judges, and secondarily prosecutors; juries; attorneys and the police. *Judges* were to the attorneys and

prosecutors what the police had been to the public: the primary focus of interaction with the justice system. A notable aspect of relations with judges was the highly judge-specific treatment of minorities. Regarding *prosecutors*, a consistent theme was assertions of the fairness and colorblindness of prosecutors in their decision making capacities. *Juries* as a primary source of racial unfairness and inconsistency treatment were the third most significant group to be discussed. Two themes regarding *attorneys* were the large differences between private and public defender representation, and the experiences of minority attorneys. The majority of stories concerning the *police* were very similar to those of the public hearings.

The third topic was manifestations of unfairness, descriptions of unfairness that were broadly similar to the public's descriptions. To avoid the redundancy of illustrating again the various categories of unfairness reported in the public hearings, this report only includes the categories of unfairness (namely, inconsistent treatment and profiling), in which the attorneys spoke extensively and with different emphases from the public hearings.

Regarding *inconsistent treatment*, whereas the public hearings emphasized situations when the wrong person suffers, when minorities are never given a break, and counter examples of favorable treatment to non-minorities, the attorneys emphasized: *inconsistent outcomes for similar situations*; inconsistency based on the *victim's ethnicity*, favorable treatment *between Mormons*; and concerns that remedies for inconsistency are *worse than the problem*. The latter involved a lengthy discussion expressing concerns for correctives to inconsistency and bias that cause greater injustices by imposing inappropriately harsher sentences on all defendants in an effort to be fair.

Regarding *profiling*, the public hearings reported profiling as a common experience based on both personal appearance and on being out of place. The attorneys also expressed a belief that racial profiling by the police was standard operating procedure, but emphasized other types of profiling: *profiling by judges and prosecutors*, and the increase in profiling cases *since the Lopez case*. Many contradictory statements were made regarding whether or not prosecutors screen for police stops based on profiling.

In addition to these visible aspects of racial unfairness, the attorneys also described the *denial* or *hiding* of racial unfairness that is nonetheless present. They also discussed the history of racism, and the direction of changes in recent years. As in the public hearings, the attorneys were unanimous that racism has had a *long history* in the justice system in Utah. But the public reported that in general things have got worse, whereas the attorneys expressed guarded optimism that if things have changed at all, they have been for the better.

PROSPECTS FOR CHANGE

In contrast to the previous section which reported changes for the better, the attorneys simultaneously reported various impediments to eliminating racial unfairness from the legal system. First was *resistance and lack of will* to change, particularly on the part of judges. The most common explanation for the lack of will in eliminating racial unfairness was the effect of selective *media coverage* of crime. The final comments about impediments to change referred to a *lack of information* on race in police records. A significant amount of discussion called for changes at the front end of the legal system, or *bottom-up change*, as top-down change could not bring about fairness if minorities had already been irrevocably and unfairly pre-selected when suspects.

TOWARDS A THEORY OF RACIAL UNFAIRNESS: A non-causal theory

Attorneys distinguished between causes and correlates of unfairness. They identified *four causes of unfairness*, all of which are correlated with race, and for which race is improperly blamed.

The first and most important cause is *low socio-economic status*. Several mechanisms were proposed. Of the three most important, the first is where low socio-economic status is the *direct cause*, because wealthier defendants are simply treated better, or have access to, for example, evaluations and support services that can lead to

mitigation. The second mechanism is where low socio-economic status *precludes access* to high quality private representation, an issue also emphasized at the public hearings. The third concerns minority *victims* with low socio-economic status who are as unfairly treated as defendants and suspects with low socio-economic status.

The second cause of unfairness is where race is *one of many inseparable components* that make up a human being, and race cannot be separated out as a single responsible factor for the treatment a person receives. This theory is contradicted by many experiences reported at the public hearings in which professional, educated, and highly-placed minorities also received unfair treatment.

Two other causes of unfairness that are correlated with race were *language barriers*, which were also mentioned frequently in the public hearings, and *gang membership*, which leads to special treatment in the legal system irrespective of race. Because minorities are over-represented in gangs, race may be improperly blamed for the unfairness really due to gang membership.

TOWARDS A THEORY OF RACIAL UNFAIRNESS: A scapegoat theory

Here, race is blamed for unfairness where another factor is in fact the cause. The primary example is when race is *intentionally used as a strategy* by an attorney in the proper performance of his job. Thus race may be used in, for example, jury selection, but is not considered a racial judgement but rather *fulfilling the professional requirements* of one's job in using all possible arguments to benefit one's client or the state. However, attorneys noted the *unfavorable reaction of judges* to the introduction of the race card.

Another example of a scapegoat is where unfairness based on race is *blamed but none exists*. The most significant example is of prosecutors who it is asserted routinely act in a colorblind fashion for both practical and ethical reasons, but are not recognized to do this. A third example occurs when race is used as an *excuse* for unfair treatment, but is in fact based on the choices of the minority, for example to commit crime or to join a gang.

Other examples of scapegoating occur due to *over-generalizing*, or stereotyping, in which conclusions are drawn about all the members of a group based on the behavior of an unrepresentative sample; and *under-generalizing*, when race is blamed for unfairness instead of a broader principle of which it is an example, such as the effect of cultural similarity or shared experience.

TOWARDS A THEORY OF RACIAL UNFAIRNESS: A dialectical theory

The dialectical theory of social change concerns inherent contradictions that are present within social phenomena. The social phenomena in question here are cultural differences between minority and non-minority people. The attorneys described many circumstances in which persons of both different and similar cultural backgrounds displayed both lenient and tough treatment towards others, producing four types of interaction. While every description of an interaction was based on race, the common denominator was not race itself but felt differences in cultural background and shared experiences.

The contradictions represented in these interactions suggest that a dialectical process may be involved, so that when changes in comfort and partiality between people of different races occurred after sufficient contact had taken place, treatment may shift from either lenient to tough or vice versa. Examples of all four situations were given by the attorneys, although no connection between them, such as a dialectical model, was suggested.

DIRECT EXPERIENCES OF MINORITY ATTORNEYS

A small number of minority attorneys were present at the interviews, and so their direct experiences of racial unfairness were limited and comprise more of an addendum to the report. Two categories of experience were reported, distressing experiences with judges, and miscellaneous experiences with *clients*.

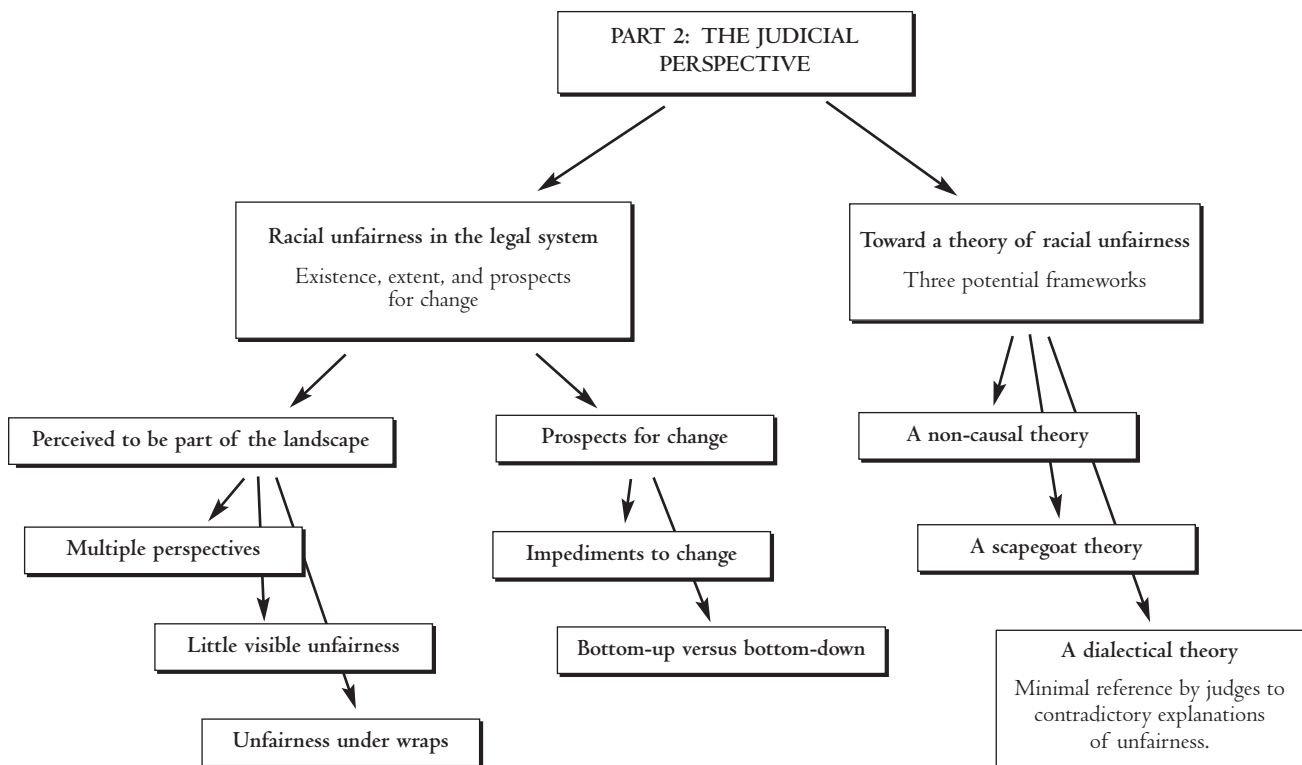
PART 2: INTERVIEWS WITH JUDGES

OVERVIEW

Judges were asked to respond to a set of open-ended questions about the differential treatment of minorities and Caucasians in their court and throughout the legal system. Each interview varied greatly in the extent of responses, from interviews with short, guarded statements, to those with informative and insightful discussions similar in style to the attorneys. However, almost all the interviews displayed a remarkable similarity of opinion. In general, judges' responses were less information-rich than attorneys', and the number of data segments identified and analyzed from the 20 judicial interviews was approximately the same as from the three attorney group interviews. Judges generally limited their comments to the courts, and in contrast to the attorneys and the public, did not focus on the police, attorneys, or any other groups.

The stated ethos of the discussions was that courts are fair to minorities, and the contradictory views of various other groups are only perceptions and alternative perspectives that may be understandable, but contrast with reality as they see it. Most judges expressed pride in the racial fairness of their own courts, and their active efforts to ensure appropriate treatment to all.

CHART 2: Overview of Part 2



Judges were cautious in expressing opinions, stating concern that anecdotal evidence was too unreliable a basis for opinion in the absence of any personal experience of unfairness occurring in their own courts. Some acknowledged the possibility that unfairness might exist even though they are not personally aware of it, and these comments could be interpreted as an acceptable way to acknowledge racism. In general, the marked contrast between the attorneys' views that bias and racism are pervasive in the justice system, and the judges' views that they are not, are of special interest as most judges were former attorneys. This could be interpreted as suggesting that current professional role rather than personal characteristics or life experience play a part in determining views on racism. All responses were indirect, that is, about the treatment of others in the courts. For purposes of comparison, the analysis of the judges' data was placed within the same basic conceptual framework as the attorneys', as shown in Chart 2.

Where the first major topic of the attorneys was racial unfairness as *part of the landscape*, for the judges this became *perceived to be part of the landscape*. The first theme in this section, *multiple perspectives*, did not emerge at all in the attorney discussions. Another difference is in the second theme, which changed from *visible unfairness* to *little visible unfairness*. The only other major difference at this level of detail is the lack of contradictory explanations of unfairness in the dialectical theory. Only a single example from the judges' data bears on this perspective.

At lower levels of detail, the themes and sub-themes vary in their correspondence to the attorneys' themes. See the comparison table and overview charts following the Executive Summary.

PERCEIVED TO BE PART OF THE LANDSCAPE

Whereas attorneys described the various forms of pervasive unfairness in the justice system, the judges emphasized the different perceptions on fairness and unfairness. The first topic, *multiple perspectives*, contrasted the widespread *perception of bias*, whether valid or misguided, with the *actuality of fairness* that judges experienced in their courts. They emphasized the *active role* they play in ensuring that minorities are treated as any other defendant in similar circumstances, and that if unfairness does occur, it is certainly *unusual and infrequent*.

The second topic concerned the *small amount of visible unfairness*. The only theme of *unfairness manifesting* in the system concerned profiling issues of the police. Regarding the *main actors* in situations of unfairness, judges did not focus on any particular group, but where groups were mentioned in stories or examples, the most frequent were the *police* and *public defenders*. Also, when referring to minorities and their attitudes towards them, judges almost always distinguished clearly between *specific minority groups*, rather than to minorities in general as did the attorneys and public.

The third topic, *unfairness under wraps* was discussed very differently from the attorneys. Whereas the attorneys described the denial or hiding of racial unfairness, the judges expressed no knowledge of racially motivated unfairness in themselves or other judges. Some indicated that *unfairness could theoretically exist* in other courts without their knowledge, and others suggested that if racism existed in their colleagues, it was kept well *hidden*.

PROSPECTS FOR CHANGE

Judges emphasized the need for minorities to increase their knowledge of the system and of their *rights and responsibilities*, rather than looking to the removal of impediments to change in the system. Even if *resistance to change* is present in the system, judges pointed out that such change cannot be legislated, but requires individuals to change themselves. Two suggestions for change were offered. First, increased *minority representation*, especially in attorneys, was felt to be most important in adequately serving the needs of minorities. Second, various proposals were made for *transformative education* for court personnel.

The concept of *bottom-up change* was expressed by one judge in different terms from the attorneys. Attorneys focused on the initial interactions between minorities and police as the source of disproportionate representation

in the system that could never be eradicated at later stages. The judge emphasized that an early history of disproportionate arrests due to socio-economic factors leads to an arrest history that is appropriately considered by judges in giving later inconsistent treatment. Thus the focus of change should not be on relations with police but on socio-economics.

TOWARDS A THEORY OF RACIAL UNFAIRNESS: A non-causal theory

Judges distinguished between causes and correlates of unfairness in the same manner as attorneys. As with the attorneys, *low socio-economic status* was considered the prime cause of unfairness, but the judges emphasized the *cultural aspects* as strongly as the economic. While the judges agreed with the attorneys that low economic status precludes access to the best representation, they also felt that the public defense system is excellent, and it is those *in the middle*, of any race, who cannot afford the best attorneys but also do not qualify for public defense that have the least access to good representation.

More than the attorneys, judges emphasized language barriers as a primary cause of unfairness that is correlated with race, with issues of interpreters uppermost in judges' minds. The judges noted that interpreters can never compensate fully for a lack of English skills, typically do not have the critical skill of understanding the culture as well as the language, and vary greatly in quality of interpretation.

TOWARDS A THEORY OF RACIAL UNFAIRNESS: A scapegoat theory

In the scapegoat theory, race is blamed for unfairness when another factor is responsible. Of the three attribution errors discussed by attorneys, only *race as excuse* was mentioned by judges. Several examples of other factors were identified, including the role of the law in separating people according to their behaviors, and the natural desire of people to find reasons for their punishment. Judges also noted the problem of the natural tendency to *stereotype*, when judges see many similar cases in their courts with defendants of the same ethnicity. Other causes of unfairness improperly blamed on race include deficiencies in the *legal system* itself, and deficiencies in *social programs* that have failed to help minorities increase their socio-economic status.

COMPARISON TABLE OF ATTORNEY AND JUDGES

The following table, whose sections follow the sequence of the report, summarizes some major differences between the responses of attorneys and judges. The attorneys' views appears on the left, and the judges' on the right.

Attorneys	Judges
THE INTERVIEW DATA	
Three group interviews were held, each based on a brief introductory question with little direction from the moderator.	Twenty individual interviews were held, ranging from Appeals Court judge to Commissioner. Responses to seven open-ended questions were much briefer than the attorneys responses, and ranged about equally from guarded.
Discussions were lively, and included proposing and countering each other's arguments, and presenting ideas that had apparently been percolating for some time.	

GENERAL COMMENTS

TYPES OF RESPONSE AND AREAS OF FOCUS

In contrast to the public hearings, which described but did not attempt to explain unfair treatment, the attorneys primarily explored the causes of bias. And while the public focussed almost exclusively on the unfairness of police, attorneys focused largely on judges.

Judges were cautious in their responses, citing a lack of personal experience of unfairness in their own courts, and the lack of empirical data.. Judges did not focus on any one particular group.

PERVASIVE ETHOS

The unstated assumption was that racism was pervasive in the justice system, but not in those present at the interviews. Prosecutors particularly asserted their own colorblindness.

The stated assumption was that courts are fair to minorities, and those that feel otherwise are only expressing perceptions or perspectives rather than fact. Judges were proud of the racial fairness of their own courts.

FINDINGS: Racial Unfairness As Part Of The Landscape

VISIBILITY OF UNFAIRNESS

Attorneys considered unfairness highly visible, emphasizing profiling and inconsistent treatment by the police; the racism of juries and others; the judge-specific nature of unfairness; and the difficulty of minorities in obtaining good representation.

Judges contrasted the widespread perception of unfairness with the actuality of fair treatment to all groups in court. Fair treatment is in part due to judges' own active measures to ensure fairness.

UNFAIRNESS UNDER WRAPS

Attorneys described much denial and hiding of racial unfairness.

Judges accepted theoretically that some racial unfairness may exist, but if it does, it is kept well hidden.

GOING ON A LONG TIME

Attorneys indicated unfair treatment has a long history, but expressed guarded optimism that things were improving.

Judges indicated that where unfairness had been seen, it was unusual and infrequent.

IMPEDIMENTS TO CHANGE

The main impediment to change is judicial lack of courage and resistance to change, exacerbated by biased media coverage.

Change must begin with police, at the point where minorities are unfairly over-represented into the system. Later top-down change can never counter this unfairness once it is established.

Judges placed responsibility for change on minorities themselves, particularly in better understanding their legal rights and responsibilities.

To facilitate change, judges proposed more minority representation in the system, and more effective social programs to raise the socio-economic status of minorities.

FINDINGS: Towards A Theory Of Racial Unfairness

A NON-CAUSAL THEORY

Race correlates with many factors that are the true cause of unfairness, but is improperly blamed as the cause. The main true causes are: low socio-economic status, race as only one component of many of an individual, and language barriers.

Judges agreed with the attorneys' theory, but cited as the true causes of unfairness: the cultural aspects of socio-economic status, problems with interpreters, and how an early track record of arrests leads to a lifetime of inconsistent treatment.

A SCAPEGOAT THEORY

Race is blamed for unfair treatment where in reality an entirely different factor is the true cause, e.g. where race is properly used as a legal strategy, or where race is used as an excuse by a minority criminal.

Judges agreed with the attorneys' theory, and also cited as the true causes of unfairness: the difficulty of avoiding racial stereotyping, and blaming bias on individuals rather than a flawed system.

A DIALECTICAL THEORY

Attorneys described contradictory situations in which culturally close and culturally different people may be variously tough and lenient with each other.

Judges did not describe any comparable situations.

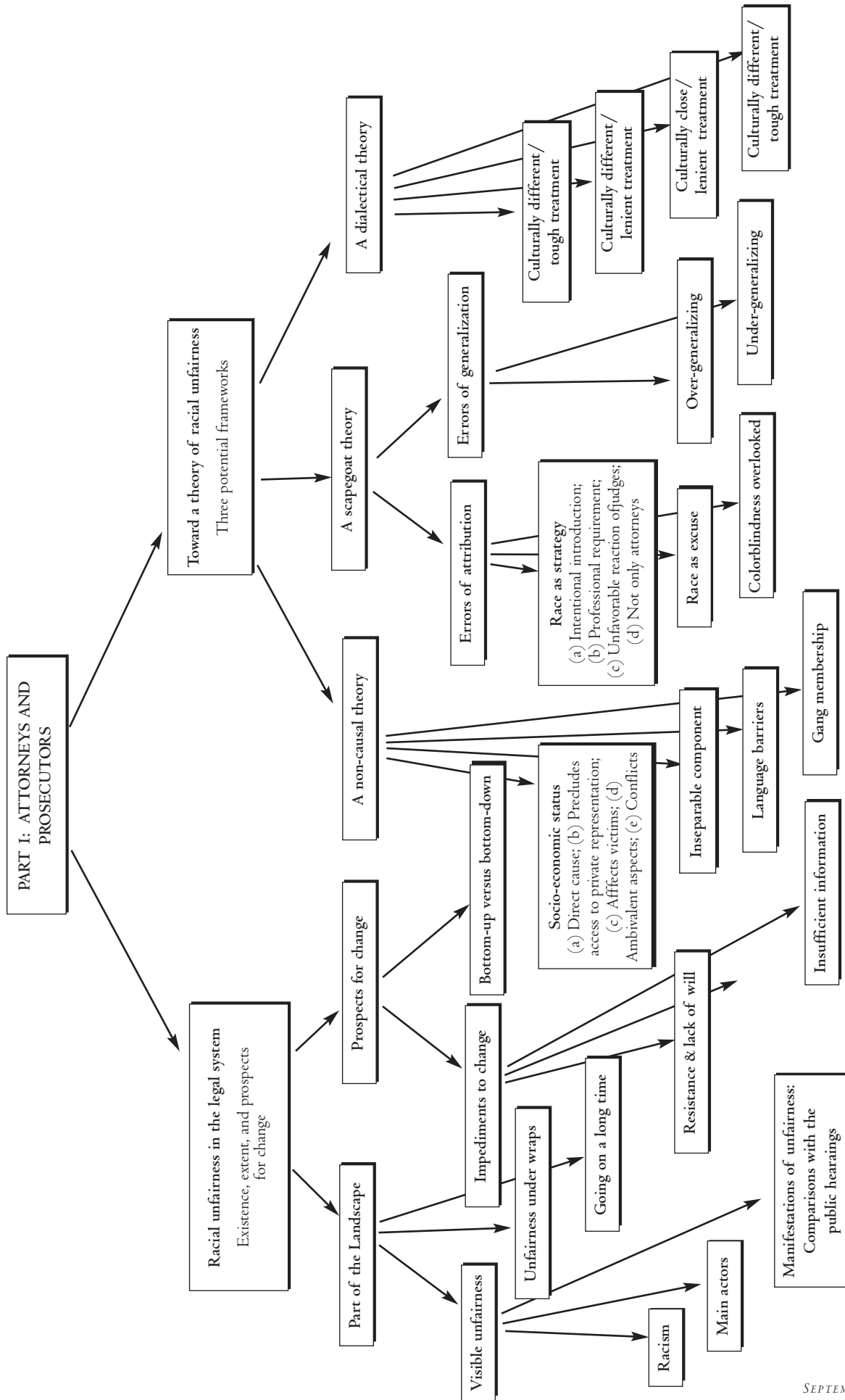


CHART 3: Detail Chart of Part I

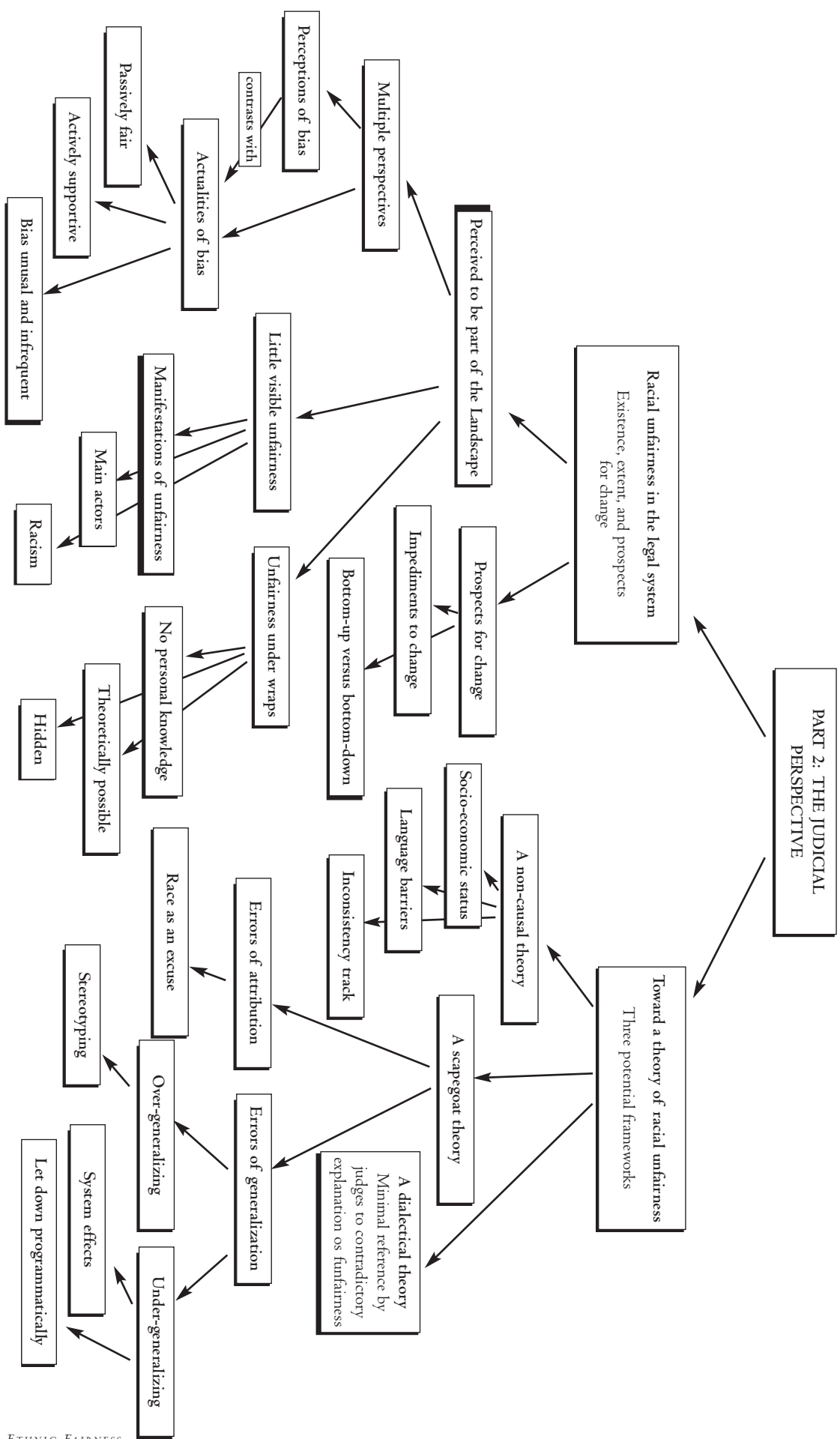


CHART 4: Detail Chart of Part 2

EXECUTIVE SUMMARY

The Utah Task Force on Racial and Ethnic Fairness in the Legal System held 19 public hearings between July 16, 1998, and March 26, 1999 as part of an effort to examine racial and ethnic fairness in Utah's criminal justice system. The hearings were held throughout the state in minority neighborhoods; one hearing was held at a state prison. Approximately 1,200 community members attended the hearings. Participants were invited to offer experiences of unfairness that they or people they knew had experienced in Utah. The hearings were not intended to establish facts, but to identify perceptions of unfairness from the perspective of the minority person. Transcripts of the hearings were analyzed to identify themes expressed consistently throughout the hearings.

The majority of the experiences provided by participants described how things are; a smaller number offered descriptions and proposals for how things should be; and a small minority of people offered explanations of the root causes of unfairness. **The overall sense of the stories is that unfair and oppressive treatment is pervasive, long standing, and getting worse.**

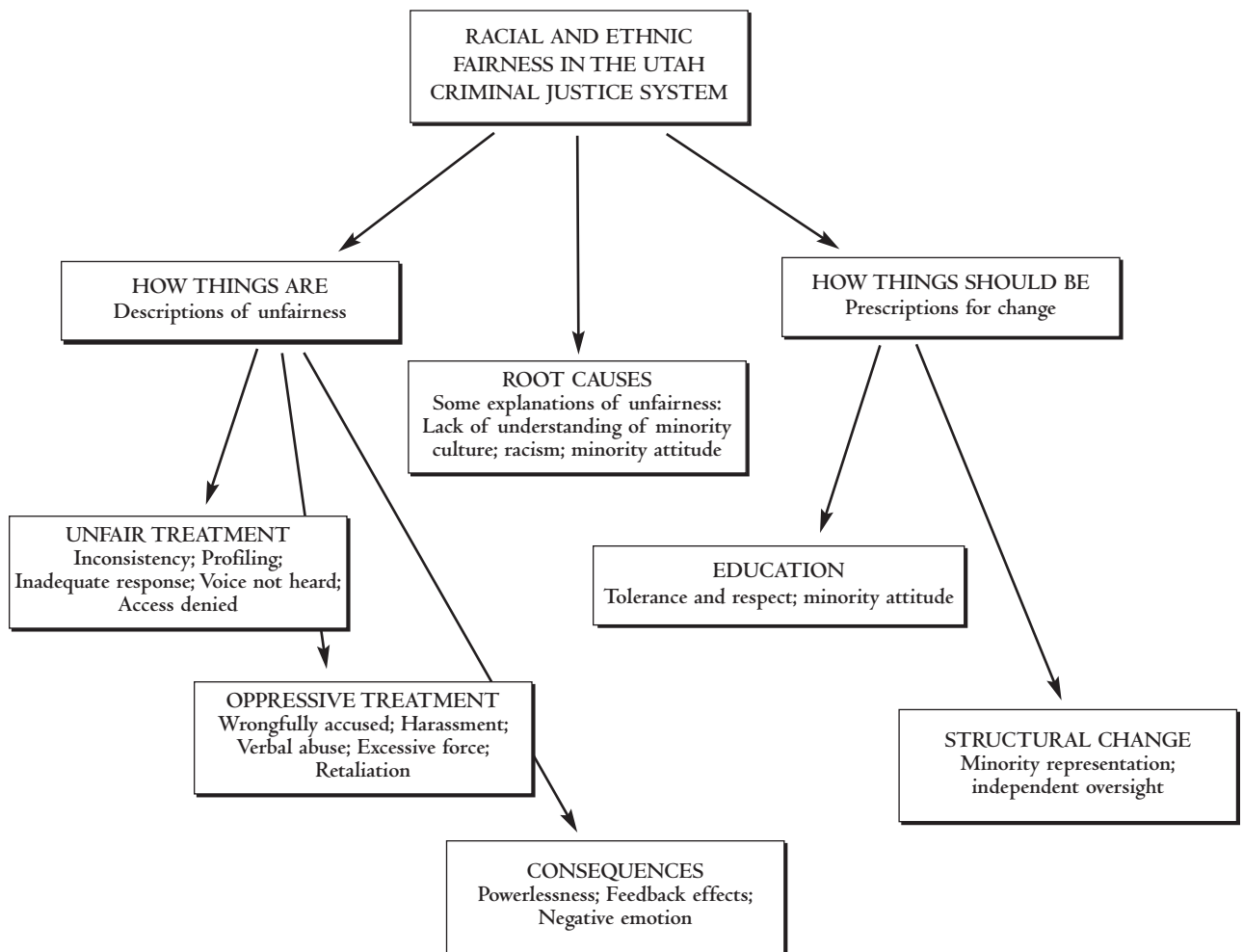
Despite repeated requests from Task Force members to hear stories relating to all aspects of the justice system, including the police, judges, courts, attorneys, probation officers, the juvenile system, etc., the majority of experiences concerned the police force. While most of the experiences with the police indicated mistreatment, a small number described courteous or helpful experiences, and expressed understanding of the different perspective of the police.

Many reports of unfairness were outside the scope of the report and have not been included. These include grievances with the justice system that did not refer to differential minority treatment, and reports of unfair treatment unrelated to the justice system, for example, mistreatment by employers, co-workers, businesses, and administrators and peers in schools.

The report has three parts. Part I, the largest part, deals with participant's perceptions of how things are. Part 2, the smallest part, deals with perceptions of root causes. Part 3 deals with participant's views of how things should be.

PART 1: HOW THINGS ARE

The three most consistent themes of how things are were **unfair treatment** (of which inconsistency and profiling were most significant); **oppressive treatment** (of which wrongful accusation and harassment were most significant); and **consequences** (of which powerlessness was most significant). In order to easily track the topics and issues that emerged from the analysis of the hearings, the main topics are in bold and the subtopics are underlined throughout the Executive Summary and the main body of the report.



PRIMARY THEMES OF THE PUBLIC HEARINGS ON UNFAIRNESS IN THE JUSTICE SYSTEM

Unfair treatment

Unfairness, in general, refers to differential treatment between minorities and non-minorities, and was reported as a pervasive feature of minority life. Several different types of unfairness were reported and are described below.

Inconsistent treatment was the most commonly cited type of unfair treatment. This refers to a minority being treated differently from a non-minority in the same situation or set of circumstances. Three types emerged. The first is where non-minorities were perceived to share equal blame or be the guilty party in a situation, yet the minority was blamed or punished. The second type was that in situations of uncertainty over wrongdoing, the minority would never receive the benefit of the doubt, such as when a minority woman in the company of non-

minority man is assumed to be a prostitute. The third type, in which it was perceived that non-minorities received treatment that would never happen to a minority, served as a constant reminder that unfair treatment is reserved for minorities.

The second most commonly cited type of unfair treatment was *profiling*. Profiling was used to describe experiences of being harassed or singled out on the basis of appearance or being in the wrong location, without any suggestion that a specific wrongdoing has occurred. Profiling was described as the normal, every day experience of minority life, regardless of social standing or position. Many indicated that profiling has increased in recent years, and leads to great emotional strain. Typical emotions were anger, sadness and dismay that this is occurring in America, conflict with feelings of cultural pride, and frustration that a minority group has to suffer as a whole because of the behaviors of a small number of its members.

Several other themes of unfair treatment were also mentioned, for example, *inadequate responses* to requests for information, assistance, or redress of grievance led to significant frustration. Two types of inadequate responses were distinguished: 1) those that were improper, like unprofessional standards of behavior by attorneys or judges, and 2) those considered a matter of neglect, in which the minority perceives being pushed too far down the list of priorities to ever receive adequate response or attention. Of particular note were inadequate responses to complaints against the police. Other areas of unfair treatment included a sense of *not being heard*, and experiences of *access denied*. Access denied or lack of access typically referred to receiving adequate legal representation. Language barriers were also mentioned consistently as contributing to a lack of access. This included the lack of availability of interpreters, but more importantly the unfairness caused by interpreters who are familiar with the minority language but not the dialects, colloquialisms, or minority culture that are necessary to properly represent a person's side of a story in a courtroom.

Oppressive treatment

Oppressive treatment refers to the manner in which minorities experienced the justice system, rather than the fairness of the treatment itself. Many accepted that their behaviors merited punishment, but felt wronged at the harshness or insensitivity of their treatment.

By far the largest category of oppressive treatment was perception of *wrongful accusations*, primarily by the police, but also by attorneys and within the court system. Wrongful accusation referred to accusations made without any reasonable justification, followed by either no charge, or a charge perceived as clearly unfounded. Many minorities reported this experience to be frequent and regular. Closely related to wrongful accusations were experiences of *harassment*, situations in which minorities are repeatedly stopped or questioned by the police without being accused of any specific wrongdoing. Both wrongful accusations and harassment were often accompanied by *verbal abuse*, which was described as rude or offensive speech that often led to emotional distress. Verbal abuse was the one area that a number of speakers implied was currently less severe than it was in the 1960's and 1970's. Stories of *excessive force* were another common theme. This exclusively concerned the police. Speakers did not characterize force as being either excessive or reasonable in itself, but rather the excess was in the contrast of force between the reported actions of the minority and the reported actions of the police. Thus excessive force is also closely related to unfair as well as oppressive treatment.

A final experience of oppression was that of retaliation. Only a single actual example of perceived retaliation was presented. However, fear of retaliation by judges and police, rather than retaliatory acts themselves, was a frequent theme. At the prison hearing, *fear of retaliation* was expressed more strongly as an everyday experience. While fear of retaliation may or may not be warranted, it is a real, personal experience expressed by a number of speakers.

Consequences

Powerlessness is the most significant of several themes considered broadly as the consequences of unfairness in the justice system. The general sense of the hearings was that minorities experienced extreme powerlessness in the face of a justice system that they did not understand and that did not understand them. Two aspects of powerlessness were most significant. The first was the pervasive lack of knowledge about the workings of the justice system, of minority rights, and of the host culture that compounded the power differences between minorities and those in authority. The second aspect of powerlessness was its manifestations as resignation and inertia. Inertia referred to not taking action in the face of an overwhelming adversary. Experiences of inertia were closely related to a lack of trust in the justice system.

Several additional consequences of unfairness emerged as themes. One was the presence of *feedback or system effects* which increase the criminality of minorities rather than reduce it, are counterproductive to their intended goals, or increase rather than decrease the differences between minorities and non-minorities. For example, efforts to educate minorities about the justice system fail to reach those most in need of it, due to the fear, lack of trust, etc. that the education is intended to address. Another consequence was the generation of significant *negative emotion*, particularly pessimism, humiliation, fear, frustration, anger, and distress. The concept of pessimism captures a variety of experiences that describe the low expectations of minorities that the justice system will treat them fairly. This included the sub-themes of lack of trust in the system, and expectation that bias would remain as a permanent fact of life.

Certain groups faced specific sets of issues: those with low socio-economic status, illegal immigrants, women, and the non-English speaking. A consistent theme of the illegal immigrants was that the functions of immigration and criminal justice agencies should not be mixed, and that unnecessary distress is caused when they are.

PART 2: ROOT CAUSES

Fewer experiences were offered to explain the causes of unfairness than to describe the experience. Of several themes in this area, the most important was lack of *understanding of minority culture* by police and others in the justice system.

Lack of understanding

Two sets of causes were proposed: 1) those based on the behavior of minorities, and 2) those based on the behavior of representatives of the justice system. Regarding the behavior of minorities, a number of speakers suggested that an *unhelpful minority attitude* contributed to unfair treatment. Some told stories of helpful attitudes that were considered to have mitigated or eliminated unfair treatment. Many stories of unhelpful attitude did not draw a direct connection between an unhelpful attitude and unfair treatment received. There is clearly a wide range of views about the role of *minority attitude* as it relates to unfair treatment.

Unawareness and Racism

Regarding representatives of the justice system, cultural *unawareness and racism* were the main themes. Cultural unawareness was the most consistent factor, for example, understanding the importance of culture-specific practices and needs, and the importance of subtlety of language in understanding a foreign culture. Racism was both overt (racism expressed without apology) and internalized (in which a member of minority group comes to believe the racist thoughts about him or herself or group.)

PART 3: HOW THINGS SHOULD BE

Prescriptions for change in the justice system were offered in two areas: education and structural change.

Education

The most consistent theme of education was a call for training police officers in *tolerance and respect*. One strongly held view was that minorities are not treated as human beings, whereas non-minorities are treated with a much higher degree of respect. Other educational needs were to inform minorities of the legal system process, and to change *minority attitudes* regarding accepting responsibility and seeing the other's point of view.

Structural Change

In the area of structural change, participants called for increased *minority representation* in all facets of the justice system. This includes increasing the number of minority police, attorneys, judges, review boards, and administrative personnel. Minority representation came closest to being the silver bullet that would ease unfairness system-wide. A second theme was *independent oversight* of police. Participants voiced the opinion that the current system would not adequately address their concerns about police abuse and discriminatory behavior.

ENDNOTES

- [1] Woolf, Nicholas, et al. *Report on the Public Hearings of the Utah Task Force on Racial and Ethnic Fairness in the Legal System*. University of Utah Graduate School of Social Work Social Research Institute, 1999, p. 80.
- [2] Ibid., p. iv.
- [3] Ibid., p. 69.
- [4] Woolf, Nicholas. *Report on Interviews with Attorneys and Judges on Racial and Ethnic Fairness in the Legal System*. University of Utah Graduate School of Social Work Social Research Institute, 1999, p. vi, xi.
- [5] Pre-Adjudication Committee. *Pre-Adjudication Committee Report to the Utah Task Force on Racial and Ethnic Fairness in the Legal System*. Utah Administrative Office of the Courts, 1999, p. 25.
- [6] Representation Committee. *Representation Committee Report to the Utah Task Force on Racial and Ethnic Fairness in the Legal System*. Utah Administrative Office of the Courts, 1999, p. 38.
- [7] Courts Committee. *Courts Committee Report to the Utah Task Force on Racial and Ethnic Fairness in the Legal System*. Utah Administrative Office of the Courts, 1999, p. 44-45.
- [8] Disproportionate Minority Confinement Committee. *Disproportionate Minority Confinement Committee Report on the Juvenile Justice System to the Utah Task Force on Racial and Ethnic Fairness in the Legal System*. Utah Administrative Office of the Courts, 1999, p. 22.
- [9] Ibid., p. 30.
- [10] Van Vleet, Russell K., et al. *Minority Overrepresentation in the Utah Juvenile Justice System: Report of a Research Project submitted to the Juvenile Committee on Disproportionate Minority Confinement, a Subcommittee of the Utah Task Force on Racial and Ethnic Fairness in the Legal System*. University of Utah Graduate School of Social Work Social Research Institute, 2000, p. 79.
- [11] Community Resources Committee. *Community Resources Committee Report to the Task Force on Racial and Ethnic Fairness in the Legal System*. Utah Administrative Office of the Courts, 1999, p. 15.
- [12] Woolf, et al., *Report on the Public Hearings*, p. 26.
- [13] Woolf, *Report on Interviews with Attorneys and Judges*, p. 100.
- [14] Diaz, Yvette Donosso. *The Perceptions and Experiences of Female Attorneys of Color in Utah's Judicial System*. Brigham Young University J. Reuben Clark Law School, 1999, p. 10.
- [15] Van Vleet, Russell K. et al. "Report on the Pre-sentencing Process," in *Adult System Research*. University of Utah Graduate School of Social Work Social Research Institute, 1999, p. 12.
- [16] Ibid., p. 11.
- [17] Ibid., p. 12.
- [18] Ibid., p. 13.

- [19] Client Committee. *Perceptions of Racial and Ethnic Fairness in the Criminal Justice System: Listening to Utahns. A Client Committee Report on the Public Hearings of the Utah Task Force on Racial and Ethnic Fairness in the Legal System*. Utah Administrative Office of the Courts, 1999, p. 107.
- [20] Woolf, et al., *Report on the Public Hearings*, p. 5.
- [21] Ibid., p. 16.
- [22] Ibid., p. 18, 26.
- [23] Van Vleet, et al., *Minority Overrepresentation in the Utah Juvenile Justice System*, p. 102.
- [24] Representation Committee, p. 29.
- [25] Initial Guideline Information, Utah Department of Corrections, October 18, 1999.
- [26] Woolf, et al., *Report on the Public Hearings*, p.18.
- [27] Ibid., p. 25.
- [28] Ibid., p. 39.
- [29] Woolf, *Report on Interviews with Attorneys and Judges*, p. 31.
- [30] Jenson, J.M., Yaffe, J., & Associates. *Racial Disproportionality in the Utah Juvenile Justice System [Final Report]*. University of Utah Graduate School of Social Work Social Research Institute, 1995.
- [31] RAND is an organization that seeks to improve public policy and decision making through research and analysis. The organization was established shortly after World War II by the US Air Force to provide consultation on issues of national defense. Since then RAND has broadened its efforts and works with public policy makers, the private sector, and public individuals on issues such as education, community development, and criminal and civil justice.
- [32] Woolf, et al., *Report on the Public Hearings*, p. 5.
- [33] Client Committee, p. 17.
- [34] Juab County, Salt Lake County, Uintah County, Washington County, Weber County.
- [35] Pre-Adjudication Committee, p. 35.
- [36] Ibid., p. 36-37.
- [37] Respondents include Salt Lake County Sheriff's Office, Midvale P.D., Salt Lake City P.D., Sandy P.D., South Salt Lake P.D., and West Valley City P.D.
- [38] Respondents include Uintah County Sheriff's Office and Naples P.D.
- [39] Respondents include St. George Police Department.

[40] Respondents include Weber County Sheriff's Office, Harrisville P.D., North Ogden P.D., Ogden City P.D., Plain City P.D., Pleasant View P.D., Riverdale P.D., Roy P.D., and Washington Terrace P.D.

[41] Pre-Adjudication Committee, p. A-2. Category names are consistent with those reported by SLPD.

[42] The protective service category of employees includes more than just sworn law enforcement officers. According to the Equal Employment Opportunity Commission, to which the city's data categories comply, protective service workers include, "[o]ccupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police patrol officers, fire fighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, game and fish wardens, park rangers (except maintenance), and kindred workers." EEOC Form I64, State and Local Government Information (EEO-4) Instruction Booklet.

[43] Comment document addendum provided to the Task Force, March 2000.

[44] Representation Committee, p. I4-2I.

[45] Disproportionate Minority Confinement Committee, p. 26.

[46] Office of Human Resource Management, Administrative Office of the Courts, October 1999.

[47] Data received from Office of Human Resources, Administrative Office of the Courts, April 2000.

[48] Woolf, *Report on Interviews with Attorneys and Judges*, p. 92.

[49] Courts Committee, p. 29.

[50] *Ibid.*, p. 25.

[51] Data available through 1990.

[52] Data begins 1988.

[53] Data begins 1987.

[54] Post-Adjudication Committee. *Post-Adjudication Committee Report to the Utah Task Force on Racial and Ethnic Fairness in the Legal System*. Utah Administrative Office of the Courts, 1999, p. 23-25. Data include many of the common job positions at the Utah Department of Corrections but does not include every position in the agency.

[55] *Ibid.*, p. 25.

[56] Information provided to the Task Force, April 2000.

[57] Van Vleet, et al., *Minority Overrepresentation in the Utah Juvenile Justice System*, p. 39.

[58] *Ibid.*, p. 55.

[59] *Ibid.*, p. 107.

- [60] Van Vleet, Russell K., et al. "Community Resources Focus group report," in *Adult System Research*. University of Utah Graduate School of Social Work Social Research Institute, 1999, p. 4.
- [61] Woolf, et al., *Report on the Public Hearings*, p. 80.
- [62] See for example, Client Committee, p. 98; Community Resources Committee, p. 14; Courts Committee, p. 18; Disproportionate Minority Confinement Committee, p. 20; Post-Adjudication Committee, p. 11; and Pre-Adjudication Committee, p. 27.
- [63] Courts Committee, p. 24.
- [64] Disproportionate Minority Confinement Committee, p. 26.
- [65] Pre-Adjudication Committee, p. 32.
- [66] Community Resources Committee, p. 18.
- [67] Van Vleet, Russell K., et al. "Community Resources Survey Administrator Form," in *Adult System Research*. University of Utah Graduate School of Social Work Social Research Institute, 1999, p. 5.
- [68] *Ibid.*, p. 6.
- [69] Community Resources Committee, p. 15.
- [70] Van Vleet, et al., "Report on Community Resources Focus Group," p. 1.
- [71] *Ibid.*, p. 11.
- [72] *Ibid.*
- [73] Van Vleet, et al., *Minority Overrepresentation in the Utah Juvenile Justice System*, p. 70.
- [74] *Ibid.*, p. 100.
- [75] *Ibid.*, p. 101, 103.
- [76] *Ibid.*, p. 106.
- [77] Woolf, et al., *Report on the Public Hearings*, p. iv.
- [78] *Ibid.*, p. 69.
- [79] Woolf, *Report on Interviews with Attorneys and Judges*, p. vi, xi.
- [80] Woolf, Nicholas. *Interviews with Women of Color in the Legal Profession*. University of Utah Graduate School of Social Work Social Research Institute, 2000, p. 27.
- [81] Van Vleet, et al., "Pre-sentencing Process," p. 2.
- [82] *Ibid.*, p. 12.

- [83] Ibid., p. 13.
- [84] Pre-Adjudication Committee, p. 25.
- [85] Representation Committee, p. 38.
- [86] Courts Committee, p. 44-45.
- [87] Disproportionate Minority Confinement Committee, p. 22.
- [88] Ibid., p. 30.
- [89] Van Vleet, et al., *Minority Overrepresentation in the Utah Juvenile Justice System*, p. 79.
- [90] Van Vleet, et al., "Report on the Community Resources Focus Group," p. 4.
- [91] Ibid., p. 4.
- [92] Woolf, et al., *Report on the Public Hearings*, p. 26.
- [93] Ibid., p. 27.
- [94] Woolf, *Report on Interviews with Attorneys and Judges*, p. 41.
- [95] Ibid., p. 100.
- [96] Diaz, *Female Attorneys of Color in Utah's Judicial System*, p. 10.
- [97] Van Vleet, et al., "Report on the Pre-sentencing Process," p. 12.
- [98] Ibid., p. 11.
- [99] Ibid., p. 12.
- [100] Ibid., p. 13.
- [101] Client Committee; Woolf, et al., *Report on the Public Hearings*.
- [102] Woolf, et al., *Report on the Public Hearings*, p. vii.
- [103] Ibid., p. viii.
- [104] Woolf, *Report on Interviews with Attorneys and Judges*, p. 89.
- [105] Van Vleet, et al., "Report on the Community Resources Focus Group," p. 3.
- [106] Van Vleet, et al., *Minority Overrepresentation in the Utah Juvenile Justice System*, p. 109.
- [107] See recommendations by the Client Committee, p. III-112.
- [108] Woolf, *Interviews with Women of Color in the Legal Profession*, p. 48.

- [109] Woolf, *Report on Interviews with Attorneys and Judges*, p. 92.
- [110] Woolf, et al., *Report on the Public Hearings*, p. 76-78.
- [111] *Ibid.*, p. 80.
- [112] Pre-Adjudication Committee, p. 43.
- [113] *Ibid.*, p. 44-45.
- [114] Client Committee, p. 107.
- [115] See also Pre-Adjudication Committee and Client Committee reports.
- [116] Woolf, et al., *Report on the Public Hearings*, p. 5.
- [117] *Ibid.*, p. 4.
- [118] Woolf, et al., *Report on the Public Hearings*, p. 16.
- [119] Woolf, *Report on Interviews with Attorneys and Judges*, p. 24. The Lopez case concerns “a 1994 Utah Supreme Court decision that rejected the pretext doctrine for determining the reasonableness of a vehicle stop under the 4th amendment. Under this doctrine, if the pretext of a stop is in reality suspicion of a more serious crime, it can be suppressed. The Court found that the doctrine was flawed ... The practical result according to the attorneys was to encourage racially motivated stops based on the most minor of traffic violations.” p. 25.
- [120] *Ibid.*, p. 77.
- [121] Van Vleet, et al., *Minority Overrepresentation in the Utah Juvenile Justice System*, p. 101.
- [122] Social Research Institute. *Law Enforcement Data Collection Proposals*. University of Utah Graduate School of Social Work Social Research Institute, 2000.
- [123] *Ibid.*
- [124] Woolf, et al., *Report on the Public Hearings*, p. 18, 26.
- [125] Van Vleet, et al., *Minority Overrepresentation in the Utah Juvenile Justice System*, p. 102.
- [126] Representation Committee, p. 29. According to 1996 U.S. Census estimates, the percentage of minority population in Carbon, San Juan, Tooele, and Uintah counties is higher than the percentage of minority population of the state as a whole.
- [127] *Ibid.*, p. 14.
- [128] Courts Committee, p. 24.
- [129] *Ibid.*, p. 18.
- [130] Van Vleet, et al., “Pre-Sentencing Process Report,” p. 12-13.

- [I31] Initial Guideline Information, Utah Department of Corrections, October 18, 1999.
- [I32] Van Vleet, et al. "Courts Sentencing Analysis," in *Adult System Research*. University of Utah Graduate School of Social Work Social Research Institute, 1999, p. I.
- [I33] Ibid., p. 3.
- [I34] Ibid., p. 5.
- [I35] Ibid., p. 7.
- [I36] Ibid.
- [I37] Social Research Institute. "Pre-Sentence Investigation Report," in *Research Proposal Outlines for Further Study*. University of Utah Graduate School of Social Work Social Research Institute, 2000.
- [I38] Woolf, et al., *Report on the Public Hearings*, p.18.
- [I39] Ibid., p. 25.
- [I40] Ibid., p. 39.
- [I41] Van Vleet, et al., *Minority Overrepresentation in the Utah Juvenile Justice System*.
- [I42] Ibid., p. 24.
- [I43] Cassell, Paul G. and Smith, Linda F. *Victims Research*. University of Utah College of Law, 2000.
- [I44] Woolf, *Report on Interviews with Attorneys and Judges*, p. 32.
- [I45] Social Research Institute, Law Enforcement Data Collection Proposals.
- [I46] Social Research Institute. "Prosecutorial Discretion," in *Research Proposal Outlines for Further Study*. University of Utah Graduate School of Social Work Social Research Institute, 2000; Social Research Institute. "Public vs. Private Legal Representation Research Outlines," in *Research Proposal Outlines for Further Study*. University of Utah Graduate School of Social Work Social Research Institute, 2000.
- [I47] Van Vleet, Russell K., et al. "Jury Selection Process," in *Adult System Research*. University of Utah Graduate School of Social Work Social Research Institute, 1999.
- [I48] Social Research Institute. "Analysis of Juries: Representation by Race/Ethnicity," in *Research Proposal Outlines for Further Study*. University of Utah Graduate School of Social Work Social Research Institute, 2000.
- [I49] Social Research Institute, *Research Proposal Outlines for Further Study*.
- [I50] Woolf, *Report on Interviews with Attorneys and Judges*, p. 31.
- [I51] Ibid., p. 89.
- [I52] Ibid., p. 21.

[153] Stone, Christopher. "Race, Crime, and the Administration of Justice," *National Institute of Justice Journal*. U.S. Department of Justice: Washington, D.C., 1999, p. 28.

[154] According to the Committee, institutional racism is when people of color do not have equal access to services, when racial insensitive remarks are made without challenge, when people of color lack an effective grievance process, and whenever people of color are treated differently from the majority population.

[155] *The Burdens of Both, the Privileges of Neither* (Joint report of the Multicultural Women Attorneys Network and the American Bar Association), August 1994, at 5.

[156] *Id.* At 6-7

[157] The Utah State Bar has some statistics on gender, ethnicity and race. The statistics are self-designated and done strictly on a voluntary basis, so they are not accurate. However, according to these statistics, including the category of "other," there are about 55 female attorneys of color practicing in the state of Utah. The break down is as follows: four African-Americans, four American-Indians, seven Asian-Americans, zero Pacific Islanders, twelve Hispanics and twenty-eight "other"

[158] *The Burdens of Both, the Privileges of Neither* at 13.

[159] *The Burdens of Both, the Privileges of Neither* at 15.

[160] Katherine S. Magnan, *Stanford Law School Faces Tension Over Issues of Race and Gender*, *The Chronicle of Higher Education*, March 12, 1999, at A12.

[161] *Id.*

[162] Arthur S. Hayes, *Color-Coded Hurdle*, *National Bar Association Magazine*, January/February 1999, at 30.

[163] *Id.*

[164] For this report, the term "women of color" refers to U.S. citizens who are of African-American, Asian-American, Hispanic, Native American, or Pacific Islander descent, as well as immigrants who consider themselves to be racial or ethnic minorities. It should be noted that the women self-define their ethnic identity.

[165] MWAN had three defined goals: 1) to identify issues which multi-cultural women lawyers view as important, 2) explore possible solutions to these issues, and 3) educate the ABA as to its role and responsibilities to address these issues. See *Burdens of Both, Privileges of Neither* at 6.

[166] Round table discussions were held in Atlanta, Georgia; Washington, D.C.; Dallas, Texas; San Antonio, Texas; Atlantic City, New Jersey; and Seattle, Washington. See *Id.* at 7.

[167] *Id.*

[168] *Id.*

[169] *Id.* at 9.

[170] When I called the Commission of Women in the Profession to inquire about MWAN, no one in the office was able to provide concrete answers; nor direct me to someone with more information. I was told most of

the current staff is relatively new and has no experience with MWAN or its research. For more information, contact the Commission on Women at (312) 988-5668.

[171] We recommend that race and ethnicity data be consistent with that used by the 2000 U.S. Census.

[172] We recommend that race and ethnicity data be consistent with that used by the 2000 U.S. Census.

[173] Only these three counties have computerized their citations.

[174] Paper citations are generated in those counties that do not yet have computer capabilities. These citations are located in twelve field offices across the state.

[175] We recommend that race and ethnicity data be consistent with that used by the 2000 U.S. Census.

[176] We recommend that race and ethnicity data be consistent with that used by the 2000 U.S. Census.

[177] This field would allow “yes” and “no” responses.

[178] This field would allow officer to indicate whether the search followed motorist’s consent, vs. whether the officer had the authority to conduct an involuntary search based on evidence.

[179] Two limitations arise from use of the bureau of Criminal Identification (BCI) database. That is, these data are known to be inconsistent across counties and to be affected by software changes such as occurred in Salt Lake City between 993 and 1997. Nevertheless, these data are the best available. Further, in order to replicate Jenson’s study using 1993 data, relative risks of arrest were calculated only for Ogden, Provo, and Salt Lake City. Findings cannot be generalized to other geographical parts of Utah.

[180] In order to replicate Jenson’s study using 1993 data, relative risks of arrest were calculated only for Ogden, Provo, and Salt Lake City. People of color (all persons) including White’s of Hispanic origin were 14.6% of the populations of Ogden, SLC, and Provo in 1990 (Last date of General Census). Findings cannot be generalized to other geographical parts of Utah.



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