

Judicial Council Meeting Minutes

JUDICIAL COUNCIL MINUTES

December 20, 1999
Judicial Council Room - Matheson Courthouse
450 South State - Salt Lake City, Utah

Chief Justice Richard C. Howe, Presiding

Members Present:

Hon. Richard C. Howe, Chief Justice
 Hon. Lyle Anderson
 Hon. Russell Bench
 Hon. Lynn Davis
 Hon. L.A. Dever
 Hon. Michael Glasmann
 Hon. Ronald Hare
 Hon. Scott Johansen
 Hon. Kay Lindsay
 Hon. Clair Poulson
 Hon. Leonard H. Russon
 Hon. Anne M. Stirba

Staff Present:

Daniel J. Becker
 Myron K. March
 Jerome Battle
 Matty Branch
 Holly Bullen
 D. Mark Jones
 Richard Schwermer
 Tim Shea
 Jan Thompson
 Adam Trupp
 Ray Wahl
 Jennifer Yim
 Cathie A. Montes

Excused:

Hon. Stan Truman
 Scott Daniels

Guests:

Hon. Christine M. Durham, *Associate Chief Justice Utah Supreme Court*
 Hon. Michael D. Zimmerman, *Utah Supreme Court*
 Hon. Pamela T. Greenwood, *Utah Court of Appeals*
 Hon. Tyrone E. Medley, *Third Judicial District Court*
 Hon. Mark Andrus, *Chair, Board of Juvenile Judges*
 Steven Stewart, *Executive Director, Judicial Conduct Commission*
 Esther Chelsea-McCarty, *Associate General Counsel*
 Office of Legislative Research & General Counsel
 Mary Boudreau, *Utah Children*

Welcome/Approval of Minutes

Chief Justice Howe welcomed all those in attendance. The minutes of the Council's November meeting were reviewed and discussed; in particular, page 7 of the minutes, with regard to the first motion made by Judge Michael Glasmann.

It was suggested that the end of the first sentence of the first motion on page 7 read as follows: ". . . , and that a structural change will not be part of the charge to the Standing Committee, unless it is so directed by the Judicial Council." The following motion was made accordingly.

Motion

A motion was made for the minutes of the Council's November meeting to be amended as outlined above. The motion was seconded and carried unanimously.

Report from the Chairman

Chief Justice Howe reported that the Utah Supreme Court is working toward issuing all its cases currently under advisement before the departure of Justices I. Daniel Stewart and Michael D. Zimmerman. If the court is successful in doing so, it will be the first time that the court will have no cases under advisement.

Chief Justice Howe thanked those administrative staff personnel and members of the judiciary who have participated in the legislative outreach meetings, and indicated that their contribution has helped to make these meetings successful.

Report from the Administrator

Dan Becker began his report by introducing Jerome Battle, the new director of the Data Processing department for the Administrative Office of the Courts. Mr. Battle officially assumed his position as director as of the date of this meeting (December 20th). Mr. Becker also recognized Esther Chelsea-McCarty, Associate General Counsel, from the Office of Legislative Research and General Counsel, in attendance at the Council's meeting. Following these introductions, Mr. Becker noted the items listed below:

- The Governor's announcement on December 7th of a spending plan for the tobacco settlement, and his announcement of a crime package. Copies of the proposed spending plan were circulated to the Council. Mr. Becker indicated that the Governor chose to make his announcement from the Farmington court location, where Judge Jon Memmott operates a drug court. Prominent in the Governor's proposals for the expenditure of drug funds is \$5 million for statewide expansion of drug courts. Mr. Becker reviewed other areas which are targeted to receive a portion of this settlement money. They include: a pilot drug board; a DUI enforcement

and pilot DUI court. During its interim, the Legislature formed a task force on crime reduction. This task force focused on drug and alcohol abuse, and it will likely advance to the Legislature the expansion of drug courts statewide. Mr. Becker also informed the Council that he has spoken with other court administrators in the country and, to the best of his knowledge, Utah is the only state where the courts are a party to discussions on the use of the settlement funds.

With regard to the crime package, he noted that the Governor will recommend funding for the following areas: juror/witness and interpreter fees; justice court automation; and leases and contracts. The Governor has also included the probation officer market analysis in the amount of \$318,000, as part of the salary selective package.

- The Commission on Criminal and Juvenile Justice (CCJJ) is expected to formally act on four pending grant requests made by the courts. These include advancing the continuation of the courts' case management project; continuation of the Third District case management positions for the drug court and domestic violence court; the fourth and final year of grant funding for the Third District Juvenile Drug Court; and a study for justice court automation.

Subcommittee Reports

Judge Stirba reported to the Council on behalf of the Management Committee. At its last meeting, the Management Committee received an update from Third District Presiding Judge Frank Noel and other district staff. He discussed with the Committee issues related to the move to the Matheson Courthouse, consolidation, and the implementation of the CORIS system. Various issues have been raised both internally and externally, and the district has worked with the members of the State Bar to reconcile these issues. However, an article which recently appeared in the Family Law Newsletter was brought to the attention of the Management Committee by Judge Lynn Davis. This article was critical of the Third District and the manner in which it processes and handles the filing of domestic-related documents. Judge Noel reported that the concerns which were raised in the article have been investigated, and he is preparing a response to the article which will address these concerns and criticisms.

She reported that the Management Committee received the report and recommendations from the Courts and Judges Committee to the Bar Commission. This report also lists areas of concern in the Third District. Judge Noel reported that he has reviewed the report, and that the Third District is working with members of the Bar to address these concerns, and remedy those problems which can be resolved. One major problem which was reported was that of the telephone system. However, representatives of the Third District indicated that the state-provided telephone service (ITS) has been given a period of six months in which to resolve existing problems or make necessary improvements in their service.

Judge Stirba reported to the Council on the following additional items:

- She has suggested that Scott Daniels should be requested to update the Council on the activities of the Bar Commission. She discussed this with Mr. Daniels, Chief Justice Howe, and the Management Committee, and all are supportive of the idea. Accordingly, reports from Mr. Daniels will be incorporated as part of the subcommittee reports to the Council on a monthly basis. In the event that monthly reports are not necessary, than these reports will be presented quarterly.

- The Committee approved a request from the Education Standing Committee to seek a one-time grant from the State Justice Institute (SJI) in the amount of \$6,000 to host a planning meeting for the Standing Committee. The meeting will incorporate portions of a conference which was attended earlier this year by Dr. Diane Cowdrey and other committee members.

- The Committee recommended the appointment of Brent Bowcutt, Sixth District Court Executive, to replace Paul Sheffield as the new court executive representative to the Technology Standing Committee.
- The Committee received and approved the year 2000 Audit Plan, as submitted by the Audit Department of the AOC. The Committee also received reports on the short audit conducted in the Fourth District, Wasatch County court location, and the 1999 audit summary.

The final item which the Management Committee discussed was the issue of the clerk allocation being conducted more than once yearly, due to the recent creation of the administrative law courts in West Valley City and Salt Lake City. At its annual budget and planning session, the Council approved the proposed allocation process for court clerk staff. Following discussion of this issue, the Committee agreed to continue the application of the clerk allocation process on a yearly basis, regardless of any internal changes within a district or districts.

Judge Michael Glasmann reported that the Policy and Planning Committee met on December 10th, and reviewed the proposed changes to the Personnel Policies and Procedures Manual. The committee recommended the approval of the proposed changes, and the advancement of same to the Council's consent calendar.

Justice Leonard Russon reported to the Council on behalf of the Liaison Committee. He stated that preparations are underway for the forthcoming 2000 legislative session. That further, discussion of additional items is deferred to a presentation later in the meeting.

Classification of Divorce Records as Private

Tim Shea presented this item to the Council for its action, following the Council's request to the Policy and Planning Committee to investigate the policy of classifying all divorce records as private. He noted that the Council currently has a rule which classifies as private those financial records which are a part of divorce cases. This rule is in accordance with the provisions of the Government Records and Management Act (GRAMA). However, these records are usually filed within a file which is defined as public. The Policy and Planning Committee recommended that the Council amend its existing rule, thus allowing these records to be classified as public. He indicated that a similar problem may arise with other information which is classified as private by GRAMA, such as medical records. However, this problem may be avoided by an amendment of the rule.

There was discussion of mental health evaluations and other documents, e.g., criminal information, which are considered confidential, and where they should be placed within a file. Mr. Shea indicated that it is not the location of a document within a file which determines the classification, but the rule itself. The rule identifies medical information as private or confidential. In the criminal context, this may be contrary to the existing constitutional case law from the Utah Supreme Court. The Court has ruled that the public has a constitutional, conditional right of access to pretrial hearings and the associated records therein. Mr. Shea also stated that if documents are in a case file, it is the obligation of the court to review the file and remove those documents which are not public before it is accessed by the public.

There was additional discussion of high-profile cases which may be accessed by the public, such as divorce cases, involving high-profile persons. It was pointed out that the courts are currently making an effort to make the divorce process less adversarial, and that allowing certain records to remain accessible to the public might conflict with those efforts. Clarification was sought on the process for sealing records, and on the level of difficulty connected with this process. Mr. Shea indicated that the records may be sealed by the courts upon a motion of either of the parties. Two concerns were expressed with regard to the sealing of files: 1) whether the court, in sealing certain portions of files, is in conformance with the statute and how much of the file is sealed; and 2) the process which the deputy clerks follow when portions of domestic or criminal files are sealed. Based on these concerns, the following motion was made.

Motion

A motion was made that an assessment of the proper procedure for sealing files should be made, and that a determination should be made by court executives and clerks of court of whether all districts are in conformance with the statute. That further, administrative staff is directed to coordinate with the court executives in developing a uniform practice for sealing these files, that this practice should be in compliance with the statute and adopted and followed statewide, and that training and follow-up should be to ensure compliance with the statute. The motion was seconded and carried unanimously.

A second motion was then made.

Motion

A motion was made to approve the recommendation of the Policy and Planning Committee to amend Rule 402.02 to delete subparagraph (3)(D). There was discussion on this motion.

It was clarified that the rule change would make an individual's financial records public data, if such records are contained in the court file. There was extensive discussion on which documents might be classified as public, e.g.,

an individual's salary information; information on money that is set aside for FLEX, retirement, etc. GRAMA provides that judicial records are public, unless they fall within one of the protected classifications (by the Council, Supreme Court, or the Legislature). There are four classifications: public, private, controlled, or protected. Tim Shea once again asked whether the Council wants to rely on what has been a legislative determination that certain types of records should be kept from public scrutiny, or should the judiciary create a "balancing test". He recommended that the Council should rely on what has been done by the Legislature. There was additional discussion on which documents are considered judicial and administrative records. Following this discussion, the first motion was withdrawn and the following motion was made.

Motion

A motion was made to direct the administrative staff to draft the necessary amendments to the rule which will ensure compliance with the statute. That further, any document filed within a case file is public information, subject to a motion by either of the parties. The motion was seconded and carried unanimously.

Dan Becker clarified that by an approval of the aforementioned motion, the Council's action would reduce it to a rule which would be published for comment, and would be subsequently returned to the Council for additional consideration.

Complaint Review Process

Steven Stewart, Executive Director of the Judicial Conduct Commission, presented a report to the Council. He began by reporting that the Judicial Conduct Commission Handbook was mailed to the members of the judiciary; he reported a favorable response from judges to the handbook. He added that two articles concerning ex parte communications will be mailed to the members of the judiciary. These articles are published by the American Judicature Society (AJS).

He next reviewed a statistical report which was mailed to the Council, and noted that there are currently 33 total cases open with the Conduct Commission. This number is down from as many as 80 cases; 34 complaints have been filed since July 1st. No other comments were offered with regard to statistical information. Mr. Stewart was requested to provide statistical information on a yearly basis, maintaining anonymity, on the number of complaints which are related to racial and ethnic issues.

Mr. Stewart informed the Council that the Conduct Commission recently voted on a letter which will be sent to judges. This letter will be sent pursuant to the dismissal of complaints which are filed against judges and a determination is made of insufficient evidence of misconduct. He indicated that the letter will not be sent in every case, and added that the Commission was of the view that providing such a letter might assist judges to avoid similar problems in the future. He then reviewed with the Council the complaint review process conducted by the Commission. He emphasized that a letter to the judge from the Commission which indicates that a preliminary investigation is being conducted does not constitute a charge of misconduct. Mr. Stewart was asked whether any special masters were being used in any of the cases. He indicated that the Commission has not used and has no plans to use special masters in any of the open cases. He was asked about the preliminary process and whether there is any point for judges to contact the Conduct Commission if that judge becomes aware of a complaint which has been filed prior to the judge being notified of this action. Mr. Stewart clarified that the Commission does not disclose complaints, papers, or testimony, and that generally, if there is insufficient reason to notify the judge, the complaint is usually dismissed.

Mr. Stewart also stated that the Commission is currently considering ethical standards for its members. A first draft was reviewed by the Commission members at the last meeting. These standards address the conduct of the members of the Conduct Commission. One proposed provision is the disqualification provision, similar to the provision contained in the Code of Judicial Administration. He also reported on a matter which was raised at a joint meeting of the Judiciary Interim Committee. This matter, addressed in the form of a letter from Rep. Katherine Bryson, expressed her concerns regarding what she perceives to be a lack of accountability for the judiciary in the areas of demeanor, temperament, discourtesy, etc. He indicated that he has informed the Interim Committee and the Constitutional Revision Commission that the Conduct Commission gives serious consideration to such issues as they relate to Canon 3 (b)(4). He stated that Rep. Bryson continues to propose an increase in the percentage of votes required for judicial retention election, from 50% to 65%. However, it is unknown to what extent this will be pursued. In concluding his report, Mr. Stewart indicated that he will continue to provide the Council with a summary of complaints which the Commission has dismissed.

Report: Committee on Improving Jury Service

Justice Christine M. Durham, Associate Chief Justice of the Utah Supreme Court, updated the Council on the activities of the Committee to Improve Jury Service, which she co-chairs along with Third District Judge William Thorne. She clarified that this committee was intended to be a long-range committee, charged with taking a comprehensive look at quality and nature of jury service in Utah, and to advance recommendations to the Council regarding rule-making and other areas of interest to the legal community. A final report is scheduled to be submitted to the Council in July. However, Justice Durham indicated it is not likely that all areas which the

committee is examining will have been addressed in this report, due to the work that must be done in these areas. The recommendations for legislative changes will be modest, and some rule changes will be recommended to the Council. She said that much emphasis will be placed on the necessity for support of continuing education on jury service for judges, the Utah Bar, and the public.

Justice Durham reviewed all the issues which the committee has discussed and on which comments or recommendations for change will be made. The committee examined the juror source lists, and substantial improvements have been noted in the quality of the statewide data. The committee has also discussed alternative source lists and reviewing additional data in terms of the future composition and diversity of juries. Juror qualifications are also being examined, and the committee has recently learned that some states are not limiting jurors solely to English-speaking qualifications.

Justice Durham informed the Council that there is a strong commitment on the part of all committee members to examine, address, and make the recommendations they feel are necessary to improve jury service. She was asked whether the committee has considered the issue of removal of prospective jurors for hardship. She responded by saying that the committee has examined the hardship language in the statute, and will recommend some revisions which will, hopefully, increase flexibility and judicial discretion.

She was also asked whether the committee will retain any data with respect to how minorities are being challenged for cause, or peremptorily. She said that one strong recommendation which will be made is for a step which has already been taken by the Administrative Office of the Courts, that being the retention of such data. Judge Lyle Anderson noted that data with respect to race has been collected in San Juan County over the past three years. That further, he has personally tracked the statistics concerning challenges for cause and peremptory challenges in particular. However, he expressed some reservations regarding whether collection and maintenance of this data should be permanent. Concern was expressed that the courts may be sending a message that race is being overemphasized. Justice Durham stated that in order to gauge the proximity from the goal which the courts are striving to achieve regarding racial and ethnic fairness, an understanding must be gained of the race issue as it relates to the courts' current practices. While it is hoped that the data collected will be used for constructive purposes, it is hoped that this will not be a permanent feature or focus of the system.

Judge Anderson indicated that the data he has gathered is relevant mainly to the Native American community, and that there may be an entirely different set of problems with regard to the Hispanic and Black population.

Update: Court Improvement Project

Judge Pamela Greenwood, of the Utah Court of Appeals, presented an update to the Council on the Court Improvement Project. By way of background, she indicated that this committee, which is involved with the child welfare system, was formed in 1975 and has been funded through federal grants. The major project which the committee has undertaken is the Child Welfare Mediation Program; this project has been successful. Among the projects with which the committee is currently involved: improving the efficiency of case processing; drug treatment programs in child welfare cases; and providing continued funding of the Child Welfare Mediation Program, until the end of this fiscal year. The committee will be active for at least two more years.

The committee is also working closely with the juvenile re-engineering project to ensure that the project takes into account the Child Welfare Act, in addition to the delinquency aspect of the courts. Another major effort which the committee has undertaken is to provide legal counsel for parents in termination cases. This assures that the parents, as a party in such cases, receive adequate legal representation. Salt Lake County has provided the funding. Judge Greenwood was asked whether a portion of the focus of the newly-created Standing Committee on Children and Family Law would overlap with the focus of the Court Improvement Committee. The composition of the new standing committee includes representation by some of the same groups connected with the Court Improvement Committee. She indicated that the two committees will coordinate their efforts in order to avoid possible duplication or conflicts. Judge Glasmann will be invited to attend the next meeting of the Court Improvement Committee.

Judge Greenwood concluded her report by noting another accomplishment which the committee achieved: initiating the idea of having teams of attorneys in the various courts. This has alleviated scheduling problems and has eased the stringent time constraints imposed by the new Child Welfare Act.

Report from the Board of Juvenile Judges

Judge Mark Andrus presented to the Council a report on behalf of the Board of Juvenile Judges. He began by thanking the Council for the new juvenile court judges in the First and Seventh Districts. These judges are Hon. Larry Jones (First District), and Hon. Mary Manley (Seventh District). He also expressed appreciation to the Council for its leadership role within the judicial branch in the family law process and the results which were achieved at the conclusion of the process. Finally, he thanked the Council for its ongoing support for and through the juvenile re-engineering process. He reported that the juvenile court system is currently undergoing changes pursuant to two legislative audits, one which extensively reviewed the system and the other which examined the timeliness in

which cases are processed within the system. Some of these changes include the development and implementation of a case management plan, which expedites cases through the courts whenever possible. This has resulted in better service to the public.

Judge Andrus noted that the overall juvenile crime rate in the state has decreased, and emphasized that the juvenile court is committed to maintaining this decrease. He outlined areas which the Board feels are areas for future consideration by the Council. They are as follows:

1) the need for additional clerk staff; 2) the computer re-engineering process, which will take an additional three to four years to complete, and will result in improved technological communications between district and juvenile courts; 3) space and facilities needs, and

4) continued security needs in all juvenile court locations. Judge Andrus stated that if the re-engineering process is successful, the Utah juvenile court system could be the model for other courts across the country. That further, to the best of his knowledge, no other states have a system in place whereby various levels of district and juvenile courts can exchange information electronically. This system will also assist in resolving existing problems in the area of family law. Judge Andrus was asked about the extent of the security in the juvenile court locations. He indicated that the levels and quality of security vary from location to location, from satisfactory in the Ogden location, to unsatisfactory in locations such as Provo. The Provo juvenile court has no perimeter security. Judge Andrus concluded his report by answering follow-up questions from the Council.

Rule: Standing Committee on Children and Family Law

Tim Shea reviewed with the Council Rule 1-205, the rule on standing ad hoc committees. Following this review, he presented to the Council the draft of Rule 4-908, entitled, "Committee on Children and Family Law". This draft included the intent, applicability, and statement of the rule. He also reviewed the composition of the committee, and outlined three items which were suggested as additions, as follows: 1) the Director of the Office of the Guardian ad Litem or designee. The suggestion was made so that, rather than designate by title, the Director is allowed discretion to designate a person to appear or attend on the Director's behalf; 2) a proposal that one of the two district and juvenile court judge members would serve as co-chairs of the committee. This was not discussed at the Council's last meeting, and Mr. Shea stated that the Council typically appoints the committee chair and would do so in this case; however, this would merely provide for the committee to be co-chaired by one judge from each court; 3) in its discretion, the committee may appoint non-members to serve on its subcommittees. Mr. Shea explained that this would permit the committee as a whole to form any subcommittees it deemed necessary to address specific subject matters, e.g., mediation, and return recommendations to the entire committee. The Council was informed that all other provisions which apply to standing committees would apply to this committee as well.

Mr. Shea clarified that this rule has not been formally presented to the Policy and Planning Committee, since there was a specific request that the draft of this rule be brought back to the Council for review at its December meeting. The following motion was then made:

Motion

A motion was made to approve the rule. The motion was seconded, at which time a motion to amend the rule was made.

Judge Scott Johansen proposed that the language contained in Paragraph (2) of

Rule 4-908, be amended to read as follows: ". . . develop and recommend solutions, including rules and statutes, to those problems, and excluding structural reorganization of the courts; . . ."

The motion to amend the rule was seconded and carried unanimously.

Judge Glasmann reported to the Council, for informational purposes, that he followed up on communication by Karma Dixon, Division Chief of the Child and Family Support Division of the Attorney General's office, to Tim Shea. Judge Glasmann informed the Council that the Attorney General's office is of the view that there are issues concerning family law on which the Division would have a unique voice. The matter was discussed in further detail, and a motion was subsequently made.

Motion

A motion was made to amend the language regarding the representative listed, from

"one attorney with experience representing parents in the juvenile court" to, "one attorney with experience in dependency, neglect, and abuse cases in the juvenile court . . .".

The motion was seconded and carried unanimously.

Chief Justice Howe called for the Council's vote on adoption of Rule 4-908, as amended. The rule was adopted unanimously.

Tim Shea informed the Council that thus far, three applications have been received from two commissioners and one district judge for the judicial positions on this committee. Announcements for the other committee positions will be sent out shortly. Mr. Shea was requested to update the Council at its next meeting on any additional applications received by the Administrative Office.

Update on Legislative Outreach Meetings

Before beginning his report on the legislative outreach meetings, Dan Becker mentioned two additional items:

- Beani Martinez has been selected to replace Mike Strelbel as the Second District Juvenile Court Executive. Ms. Martinez is currently a supervisor in the Third District Juvenile Court, and has previously worked in the Second District. She will begin her new employment in February.
- The Council received for its information and review copies of the proposed customer service plans from each of the districts and the appellate courts, along with a cover memo from Mr. Becker which explains the purpose of these plans. The plans enact the public service initiative which the Council authorized earlier in the year, and stems from the courts' efforts to enhance public trust and confidence.

With regard to the legislative outreach meetings, Mr. Becker informed the Council that all meetings have now been concluded. He reported better than 50 percent attendance by legislators in most of the districts, and nine Council members attended one or more of the meetings. The majority of the discussions centered on family law issues, specialty courts, the tobacco settlement, child welfare mediation, and decriminalization of traffic violations. He received several comments stating that the meetings were helpful, and all feedback received was positive. It was recommended that these meetings be held on an annual basis, and that consideration should be given to holding next year's meetings in the latter part of November, in order to become acquainted with the new members of the Legislature.

Legislative Preview

Richard Schwermer and Mark Jones presented to the Council a preview of the 2000 Legislative session. Various bill requests were reviewed, and Mr. Schwermer noted that the numbering process for the legislation is underway. Five bills from the courts will be advanced. One bill to be advanced which was not discussed during the August planning session

concerns the re-location of the district court site from Park City to Silver Fork. This change requires legislative approval in the form of a resolution. The other bills are:

- The Guardian ad Litem bill
- The Child Welfare Mediation bill
- Housekeeping bill
- Justice Court Auditor bill

Two other bills which will be advanced, but not directly from the Council are: the justice court technical planning bill; and the online assistance bill. The latter bill essentially allows for the placement of the QuickCourt application to the Internet. The goal is to enhance accessibility of information for court users.

Mark Jones pointed out that a pay increase for public employees will also be considered. The Governor has recommended a four-percent increase, which includes benefits. A six-percent increase in educators' salaries has also been recommended. Mr. Schwermer reviewed a list with other bills which have been numbered and will be considered. Among the topics of these bills:

DUI courts; weapons restrictions; convictions/civil commitments; potential discipline of judges; and the tobacco settlement.

Update on the Racial and Ethnic Fairness Task Force Retreat

Justice Michael D. Zimmerman and Judge Tyrone E. Medley, Co-Chairs of the Task Force on Racial and Ethnic Fairness in the Legal System, appeared before the Council to report on the results of task force's retreat. The retreat was held on December 9th and 10th. Justice Zimmerman offered a brief background on the creation of the task force. He said the idea of this task force, which was similar to that of the Gender and Justice Task Force, was discussed for several years. In 1996, the Racial and Ethnic Fairness Task Force was formed pursuant to the Council's approval, support, and funding requirements on an ongoing basis. Much effort was given to the selection of the task force, and much focus was placed on maintaining the composition of the group.

He explained the research efforts undertaken by the task force, and noted that one focus of these efforts is that of "institutional bias". This was defined as the cumulative effect of decisions made throughout the legal system and how the institution operates, as opposed to decision-making by individuals. The task force experienced much

criticism from various groups during the course of its research. One issue which Justice Zimmerman discussed with the Council was the release of the preliminary subcommittee reports to the press. He explained the operation of the 30-member task force, and the work done by various subcommittees in researching various functions and processes related to the legal system. These subcommittees were comprised of over 120 individuals, few of whom were task force members. These subcommittees were chaired by members of the task force. The subcommittees examined all areas of the legal system, e.g., law enforcement, prosecution, defense, probation and parole, courts, jails, etc. Following their examination, each subcommittee prepared a report and advanced recommendations to the task force as a whole. The Task Force also met with and obtained feedback from representatives from law enforcement. The Task Force has taken this feedback into consideration.

Following the retreat, the Task Force reviewed the recommendations of the subcommittees and selected those recommendations which will be included in its final report. Justice Zimmerman stated that a draft of the final report with recommendations will be prepared for the various areas within the criminal justice system. The various constituencies who have offered feedback (e.g., courts, prosecutors, corrections, defense, etc.) will then be given an opportunity to respond to this report before the release of the final report.

Judge Medley offered a brief presentation to the Council as well. He summarized the activities of the Task Force, saying that 27 public hearings across the state were conducted by the Task Force, the purpose of which was to gain an understanding of the minority community's

perception of race and ethnic fairness in the justice system. The results were compiled into data which reflects the perspective offered at the hearings. Focus groups were also conducted with women of color, and service providers in an effort to determine the cultural sensitivity of those who provide service in the criminal justice system. Sentencing guidelines, sentence reports and recommendations, and actual sentences and their variances were also reviewed, as well as the impact of the aforementioned on minorities and whites in the criminal justice system. Judge Medley reported that 300 recommendations resulted from the subcommittees, which were consolidated during the Task Force's retreat. A summary of the recommendations was distributed to the Council.

The Council was informed that the target date for the preliminary report is January 16th, with the review to be conducted on January 13th. The Task Force plans to meet with the various groups within the criminal justice system subsequent to the release of the preliminary report, solely for purposes of reviewing and receiving comments on the report. Included in these groups are the Council and the Boards of Judges. Following the review process, the release of the final report is expected to occur in late spring or early summer. The Task Force is currently awaiting additional data, if it is available, on various research issues. There are no plans to advance any requests or recommendations to the Legislature.

Judge Medley stated that although one phase of the work of the Task Force is concluding, a more important phase - that of implementation - has just begun. Justice Zimmerman defined "implementation" as further completion of the charge of the Task Force; monitoring those issues which allow for collection of data; and continuing to establish or maintaining a working relationship with these groups. He indicated that some agencies (e.g., the Department of Corrections) have already begun to make procedural improvements per discussions and recommendations. The Council was also informed of those judges who are Task Force members, in addition to Justice Zimmerman and Judge Medley: Hon. Lynn Davis; Hon. Glenn Iwasaki, Hon. William Thorne; Hon. W. Brent West; Hon. Andrew Valdez; and Hon. G.A. "Jody" Petry, of the Justice Court in Uintah County. There was also discussion of media reporting of these issues, and the impact of same on the public's perception of the issues surrounding racial and ethnic fairness in the criminal justice system.

Judge Medley concluded by stating that all the Task Force members have been strongly committed to both their charge and to the concept throughout this process. That further, it is their hope that this work will bear more positive results in the future.

Amendments to Nominating Commission Manual

Tim Shea presented this matter to the Council. The Appellate Nominating Commission has requested that two amendments be made. The first change concerns candidates to provide information that can be released to the media. Mr. Shea indicated that the current rule maintains as private the applications of candidates, and also of the nominees. The proposed amendment would allow the Administrative Office of the Courts to release a brief summary of the professional qualifications of candidates if the names are released for public comment prior to nomination.

The second amendment concerns further screening and selection of interviewees, and would change the manner in which the number of candidates to interview is calculated. Mr. Shea noted that the Council made a previous amendment which provides for the advancement of the names of 12 candidates in the event there is only one vacancy, and no more than 16 if there are two vacancies. The proposed amendment provides advancement to be more advisory in nature than mandatory. Myron March clarified that the proposed amended language still leaves discretion with the nominating commission to proceed as it deems necessary, while narrowing the number of candidates for serious consideration. There was brief discussion of the matter, after which a motion was made.

Motion

A motion was made to adopt the first proposed amendment, contained in subpart (f), and strike the language in paragraph E as it relates to the issue of the number of candidates that may be interviewed, and leave discretion with the nominating commission. The motion was seconded and carried unanimously.

Other Business

One issue was raised with the Council, which concerns the matter of more complex matters being brought before the Small Claims court, e.g., soft tissue injuries. It was pointed out that these cases can last an entire day and involve expert witnesses.

It was suggested that any further discussion of this matter be deferred to the next meeting, if the need for further discussion remains.

Prior to concluding, Chief Justice Howe requested that Council members advise the Administrative Office if they are unable to attend either the Council meeting or subcommittee meetings, in order to ensure a quorum for all meetings. The following motion was then made:

Motion

A motion to adjourn was made. The motion was seconded, carried unanimously, and the meeting adjourned thereafter.