

PRE-ADJUDICATION COMMITTEE

REPORT TO THE

**UTAH TASK FORCE
ON RACIAL AND ETHNIC FAIRNESS
IN THE LEGAL SYSTEM**

FINAL DRAFT VERSION – FOR COMMENT ONLY

OCTOBER 25, 1999

**REPORT PREPARED BY THE PRE-ADJUDICATION COMMITTEE
OF THE UTAH TASK FORCE ON RACIAL AND ETHNIC FAIRNESS IN THE LEGAL SYSTEM**

PRE-ADJUDICATION COMMITTEE CO-CHAIRS:

Honorable Glenn K. Iwasaki
Judge, Third Judicial District
Jeanetta Williams
President, Salt Lake Branch NAACP

PRE-ADJUDICATION COMMITTEE MEMBERS:

Ross "Rocky" C. Anderson, Esq.
Anderson & Karenberg
Diane E. Cowdrey, Ed.D.
Director, Education Department, Administrative Office of the Courts
Ginger L. Fletcher, Esq.
Pre-Trial Services, Salt Lake County Criminal Justice Division
James H. Gillespie, Jr.
Northern Utah Community Correctional Center
Larry A. Houston
Community representative and L-3 Communications, Inc.
Sheriff Aaron D. Kennard
Salt Lake County Sheriff's Office
Lieutenant Phil H. Kirk
Salt Lake City Police Department
Theresa A. Martinez, Ph.D.
Associate Professor, Department of Sociology, University of Utah
G. Fred Metos, Esq.
McCaughey & Metos
C. Dane Nolan, Esq.
Salt Lake District Attorney's Office
Ross I. Romero, Esq.
Jones Waldo Holbrook & McDonough
Lieutenant Kelly Rushton
West Valley City Police Department
Eric P. Swenson
Attorney at Law

WITH THE ASSISTANCE OF TASK FORCE STAFF:

Claudia R. Gálvez
Task Force Intern
Jennifer M.J. Yim
Task Force Director

SPECIAL THANKS TO:

Terry Allen, Ph.D.
Adjunct Assistant Professor, Department of Sociology, University of Utah
John Collette, Ph.D.
Associate Professor, Department of Sociology, University of Utah
Raul Martinez
Student volunteer, University of Utah College of Law
Tricia Smedley, Esq.
Task Force Intern

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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-recognition 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.

INTRODUCTION

The Pre-Adjudication Committee of the Utah Task Force on Racial and Ethnic Fairness in the Legal System was given the following mandate by the Task Force: 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.

Committee members began by learning from one another about pre-adjudication segments of the criminal justice system process. Guest speakers addressed the committee and informational videos were viewed on relevant topics. Committee members selected and then prioritized a long list of issues for review by the Committee. While the Committee recognized that many issues warranted examination, the following top issues were selected by the members:

- Law Enforcement Profiling
- Provision of Competent Interpreters in Law Enforcement
- Law Enforcement Workforce Diversity Training
- Law Enforcement Workforce Diversity and Recruitment Efforts
- Law Enforcement Complaint Process
- Public Defender Contract Award Process
- Pre-trial Non-Bail Release Decisions
- Bail and Pre-Charging Decisions
- Hate Crimes

Committee members then assembled into three work groups to examine these issues further. Work Group A examined profiling, interpreting diversity training and workforce diversity and recruitment efforts. Work Group B examined the public defender contract award process, pre-trial non-bail release decisions, and bail and pre-charging decisions. Work Group C examined complaint processes within law enforcement. The full Committee reviewed issues related to hate crimes. Committee members relied on information gathered by staff, presentations by Committee

members and guest speakers, and data collection conducted by volunteer research experts. Some of the Committee's priority issues await results from the research consultant for the full Task Force. The Committee reserves the right to comment on the results of that research and present additional findings and recommendations upon completion of that research.

Two additional issues deserves attention. First, the Committee members had numerous discussions about the connection of pre-adjudication decisions points to the rest of the criminal justice system. Many of the recommendations found in this report have similar applicability to the courts, representation issues, and post-adjudication segments of the justice system. While the members limited their inquiry to the pre-adjudication assignment given by the Task Force, the Committee notes the need to examine and eliminate racial and ethnic bias throughout the criminal justice system.

Second, in the course of its work the Committee learned about many existing programs that work to improve the quality of fairness received by racial and ethnic minorities that deserve mention. The Committee therefore chose to include a section of its report dedicated to outlining several noteworthy programs that are already in existence. Committee members expressed the importance of highlighting positive efforts that currently exist within the pre-adjudication segment of the criminal justice system.

This report begins with a brief overview of the full Task Force. The next section represents the examination efforts of the Committee, its findings and recommendations on each priority issue. Although individual members drafted different segments of the report, the findings and recommendations are those of the full Committee. Consensus was the chosen goal of committee members, though dissent is noted in the narrative where applicable. The Committee then includes its section on noteworthy programs and provides concluding remarks. Finally, appendices are attached for additional information on issues throughout the report.

Utah Task Force on Racial And Ethnic Fairness in The Legal System

BACKGROUND INFORMATION

The Judicial Council established the Utah Task Force on Racial and Ethnic Fairness in the Legal System on March 6, 1996 to examine issues of racial and ethnic fairness in Utah's criminal justice system. The Task Force is chaired by Supreme Court Justice Michael D. Zimmerman and two co-chairs, Third District Court Judge Tyrone E. Medley and John T. Nielsen, senior counsel for Intermountain Health Care and chairman of the Utah Sentencing Commission. Members were approved by the Judicial Council and include representatives from Utah's communities of color and from all aspects of the criminal justice system, including judges, law enforcement, prosecution and defense attorneys, corrections officials, and juvenile corrections officers. Members are listed below.

William P. Afeaki, *Office of Polynesian Affairs*
Daniel J. Becker, *State Court Administrator*
Paul W. Boyden, *Statewide Assn. of Prosecutors*
Susan V. Burke, *Governor's Commission on
Criminal & Juvenile Justice*
Jerry G. Campbell, *Salt Lake District Attorney's
Office*
Reverend France A. Davis, *Calvary Baptist Church*
Judge Lynn W. Davis, *Fourth District Court*
David Dominguez, *BYU, College of Law*
Christine R. Fox-Finlinson, *Callister Nebeker &
McCullough*
James H. Gillespie, Jr., *Northern Utah Community
Corrections*
H.L. "Pete" Haun, *Utah Department of Corrections*
F. John Hill, *Salt Lake Legal Defenders Association*
Judge Glenn K. Iwasaki, *Third District Court*
Sheriff Aaron D. Kennard, *Salt Lake County Sheriff*
Donna Land Maldonado, *KRCL Community Radio*

Dan Maldonado, *Division of Youth Corrections*
Judge Tyrone E. Medley, *Third District Court*
Chris J. Martinez, *Image de Utah*
Charlotte L. Miller, *Past-President, Utah State Bar*
Haruko T. Moriyasu, *University of Utah, Asian Pacific
American Studies*
John T. Nielsen, *Intermountain Health Care*
Judge G.A. Petry, *Uintah County Justice Court*
Ileana M. Porras, *University of Utah College of Law*
Michael R. Sibbett, *Utah Board of Pardons & Parole*
Jesse M. Soriano, *Utah Coalition of La Raza*
Senator Pete Suazo, *Utah Legislature*
Judge William A. Thorne, *Third District Court*
Filia H. Uipi, *Attorney at Law*
Judge Andrew A. Valdez, *Third District Juvenile Court*
Judge W. Brent West, *Second District Court*
Jeanetta Williams, *Salt Lake Branch NAACP*
Michael D. Zimmerman, *Utah Supreme Court*

Task Force Mission

Task Force members developed a mission statement to guide the Task Force's activities and state its purpose clearly. The mission statement is as follows:

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

The Task Force chose a subcommittee structure that roughly follows the criminal justice system process. An Operations Committee provides oversight and coordination.

- 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 Committee: to examine the juvenile justice system for real and perceived bias due to race or ethnicity.

Subcommittees are generally co-chaired by two Task Force members and include about 15 others selected for their ability to offer a wide range of perspectives and ideas. The Task Force has over one hundred people involved in its overall efforts. The Task Force will receive reports from each subcommittee as it completes its work.

Research Agenda

The Task Force developed a research agenda for the adult and juvenile systems. The research is conducted separately for each system. Juvenile research includes focus groups and exit interviews. A quantitative study duplicating earlier research on minorities in the juvenile justice system will provide comparative data. The adult system research includes focus groups and key informant interviews. Quantitative efforts in each segment of the criminal justice system will help to determine the existence and extent of racial and ethnic bias.

Time Line

The Task Force aims to complete its research and publish a final report in early 2000. The final report will be submitted to the Utah Judicial Council, the Utah Legislature, member agencies on the Task Force, other Task Force partners, and the general public. This Pre-Adjudication Committee report will be received by the full Task Force and be used in the preparation of its final report.

LAW ENFORCEMENT PROFILING

“Stats Show Latinos, Blacks More Likely to Be Ticketed” -- *Salt Lake Tribune*, May 10, 1998

“Meth Car Illegally Searched, Magistrate Rules. Indictment against driver is dismissed. He is still in custody to resolve question of immigration status.” -- *Salt Lake Tribune*, September 14, 1998

Introduction

Articles published by the ACLU and other media coverage concerning “DWB” or “Driving While Black (or Brown)” and police profiling are frequently news headlines. Without question, concerns over police profiling are real and valid. This fact was confirmed in many of the Task Force public hearings. Participants reported holding perceptions that “Law enforcement abuses its authority when dealing with people of color and treats them poorly,” and, “Hispanics are often mistaken to be criminals and are therefore harassed and abused simply because they fit the description.” To all people regardless of race, their perception is their reality. If a person is contacted by the police during a traffic stop or criminal investigation and he/she thinks the contact is based on the color of his/her skin, he/she may leave the interaction with a negative outlook toward law enforcement. Likewise, if an officer perceives a violation committed by a member of a minority community, several things can happen. If the violator responds positively and there are no problems the officer will likely leave with no less regard for the minority group stopped. If however the officer is told, “you’re just giving me this ticket because I’m (*race/ethnicity*),” the interaction may detract from the opinion held by the officer for that minority group.

Committee members conclude that there are some law enforcement officers who allow their personal bias and feelings to affect their decisions. A section of *The Law Enforcement Code Of Ethics* says, “I will never act officiously or permit personal feelings, prejudices, political beliefs,

aspirations, animosities or friendships to influence my decisions.”¹ It should be the desire of law enforcement agencies to hire officers who can make non-biased decisions. Since we are all products of our environment, it would likewise be equally noble for law enforcement officers to be able to keep the same attitude throughout a career of dealing with the ills of society.

Most law enforcement contacts involve officers and citizens who have no prior knowledge of each other. This fact may often stand in the way of meaningful communication. Law enforcement officers who consistently profile those they contact will not likely allow for positive communication. A citizen from a minority community will also not allow for positive communication if he/she enters into the contact with the opinion that all officers are prejudiced and stopped him/her based solely on race. 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 being racist when their actions were based on observation of illegal conduct.

Discussion of Data

Several sources of data address the issue of law enforcement profiling by race. As stated earlier, profiling has been highlighted by the media with increasing regularity. For example, according to Shawn Foster’s 1998 article in the Salt Lake Tribune (see Appendix A-1),

Whites represent 81.5% of the driving-age population in Salt Lake City but received only 67% of the tickets. Latinos made up 9.6% of the population but received 22% of the citations. Blacks comprised 2% of the city’s drivers but received 3.7% of the tickets. Asians and Pacific Islanders represented 5% of the drivers and got 5% of the tickets.

In many locations across the nation, profiling has gone beyond a media concern to become specific legal battles. A story highlighted by CNN on June 2, 1999 stated that,

¹ “Law Enforcement Code of Ethics,” Utah Peace Officer Standards and Training, Law Enforcement Code of Ethics, Statement of Understanding and Intent, 4139L.

[r]acial profiling has been spotlighted recently in a New Jersey case. Prosecutors filed a motion to dismiss charges against 21 people arrested by two state troopers accused of singling out minority drivers for traffic stops. The officers were indicted on charges that they falsified their records to hide their alleged practice of targeting minorities.

In the state of Maryland, “In June of this year, the ACLU filed a class action suit on behalf of the Maryland NAACP and 11 minority motorists charging state troopers with pulling over a disproportionately high percentage of African American motorists on I-95 to search for drugs” (see Appendix A-2). Relying on Maryland State Police (MSP) statistics, the ACLU is asserting that the MSP continues “to use discriminatory racial-profiling techniques in stopping drivers along Interstate 95.” The lawsuit charges that four of every five I-95 motorists the MSP detain and search are minorities, even though minorities comprise only about 22% of motorists traveling on I-95.

The lawsuit identified 13 troopers who consistently stopped and searched black motorists. The data also revealed that the MSP searched black motorists traveling I-95 more than twice as often as black motorists traveling other Maryland roadways. According to the ACLU, in spite of the disproportionate number of minorities stopped, the rates for drug finds were the same for black and white motorists.²

In addition to the ACLU’s lawsuit against the Maryland State Police, similar suits have been brought against Illinois, Indiana, New Jersey, North Carolina, Pennsylvania and Rhode Island. Indeed, federal legislation has been proposed to attempt to assess the use of racial profiling by law enforcement. According to data provided by the Connecticut General Assembly website,

[i]n 1997, Representative John Conyers, D-Mich introduced H.R. 118, the *Traffic Stops Statistics Act*, with Justice Department and bipartisan support. The bill required the Justice Department to collect and analyze data on routine traffic stops made by police officers nationwide. It prohibited the use of the Justice Department’s statistics in race discrimination lawsuits. It required the department to look at:

1. the number of people stopped for routine traffic violations;
2. the alleged traffic infraction that led to the stop;
3. identifying characteristics of the people stopped, including race, ethnicity, and approximate age;
4. whether a search was instituted as a result of the stop;
5. how the search was instituted;
6. the rationale for the search;
7. whether any contraband was discovered;
8. the nature of such contraband;
9. whether any warning or citation was issued as a result of the stop; and

² Connecticut General Assembly website, <http://www.cga.state.ct.us/olr/hotreports/racialpr.htm>.

10. the benefit of traffic stops as they relate to drug interdiction and drug trafficking proceeds, including the approximate quantity of drugs and value of drug proceeds seized annually.³

The bill originally passed the House but stalled in the Senate. Representative Conyers reintroduced the bill on April 15, 1999 as H.R. 1443. The bill has served as a model for several states trying to pass similar bills.

While no lawsuits or legislation have been proposed in Utah regarding racial profiling, there is evidence that the issue concerns many Utahns. For example, at many public hearings held by the Task Force, a number of individuals stated their perception of having been targeted by police due to race or ethnicity. Some of the statements included the following:

This individual was arrested for speeding while taking his wife to the doctor. She had an appointment because she was pregnant and was having pains. The police delayed the trip by searching the car, although they had no right. He was stopped only for speeding but now he has to go to court on drug charges (Park City Public Hearing).

There needs to be a liaison between the community and the judicial system. These people are afraid of talking to the judicial system. They don't even know who you are. They're afraid to talk to the judges or afraid to talk to the lawyers or to talk to the police. You know they will not say anything to a police officer because they're afraid to be put in jail for it. Until we start being friends with the police, with the community, and joining them, we'll never be trained, we'll never get along (Sorenson Center Public Hearing).

As I drive to school every morning, every day, I make the trip down 900 East, and I drive right by a golf course, which is probably about 2500 South, where, the traffic cops are there on a daily basis behind the bushes, you know, just waiting to get people. So I'm aware of that and I've gotten pulled over twice. The second time, there was a van in front of me, another car on the side of me, a car in front. It was prime time where the traffic is going that way so I knew I wasn't driving any faster or slower than anybody else. I got pulled over and I asked the officer for an explanation. He couldn't give me a decent explanation. Actually, I have a court date next week to contest this ticket. But I just couldn't help but wondering in that instance, you know, it was bright as day, (where) we could see the drivers of the vehicles. What made him decide to pull me over out of six or seven other cars all around me (University of Utah Public Hearing).

In fact, an overall conclusion of the public hearing report by the Client Committee states that the:

predominant perception from the public hearings was one of abuse by law enforcement. This abuse is demonstrated through state-wide statements of profiling, harassment, verbal and physical abuse, and abuse of power. Minority groups perceive that they are targeted,

³ Ibid.

seen as being guilty until proven innocent, and denied due process. The perception exists that racial and ethnic minorities are targeted because they are perceived to fit criminal profiles. Minorities reported being stopped routinely by police without reason.⁴

In addition to the public hearing statements, the Committee assessed the workforce of law enforcement to determine if the diversity of workforce composition might impact the tendency to profile by race and ethnicity. Some committee members stated that an all-White law enforcement agency may be more likely to make “us” and “them” categories based on race and ethnicity than an agency with a diverse workforce. In the P.O.S.T. Certified Officers Survey conducted by the Committee, 52.6% or 79 agencies responded (see Appendix A-2). The survey indicated that

[o]f the total responses received, 37 out of 79 law enforcement agencies indicated that agency staff are 100% White. Twenty-six (26) out of 79 law enforcement agencies that responded indicated that agency staff are 90-99% White.

Of the 2,228 officers in the survey, the following race/ethnicity information was tabulated:

Two thousand forty-two (2,042) officers or 91.7% identified themselves as White.

Twenty (20) officers or 0.9% identified themselves as Black.

Seventy-seven (77) officers or 3.5% identified themselves as Hispanic.

Thirty-eight (38) officers or 1.7% identified themselves as Asian or Pacific Islander.

Twenty-two (22) officers or 1.3% identified themselves as Native American or Native Alaskan

Twenty-nine (29) officers or 1.3% left the question blank.

Ninety-one (91) officers or 4% said they were fluent in Spanish.

Of those responding to the survey, only 272 or 15% had received cultural diversity training since their initial P.O.S.T. training.

In addition to these data, the Committee also sent a Task Force intern on ride-alongs with officers from Salt Lake City Police Department and West Valley City Police Department. The

⁴ *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*, Administrative Office of the Courts, forthcoming.

intern's conversations with officers included the topic of racial / ethnic profiling by law enforcement. A summary of that research is included in Appendix A-3.

While these statistics certainly do not point definitively to the existence of law enforcement profiling in Utah, the issue remains of great concern to the Committee. If law enforcement is to be regarded as a protective factor for communities, law enforcement must be perceived as treating all people fairly regardless of race and ethnicity. The public hearings suggest that this perception is not held by many Utahns. To address this concern, the Committee makes the following findings and recommendations with respect to the issue of law enforcement profiling.

FINDINGS

- There is a strong public opinion based on Task Force public hearings and the frequency of media coverage that police profiling occurs on a regular and consistent basis.
- The majority of law enforcement officers in the state of Utah are predominately White, with many agencies having no cultural diversity.
- Cultural diversity or cultural contacts training for in-service officers is very minimal and does not appear to have any cohesive structure.
- The federal government as well as several states have attempted to enact legislation related to police profiling. Several agencies and officers have lost lawsuits and or been indicted for profiling activities.
- There is a great deal of improvement that can be made to bridge the communications gap that now exists between law enforcement and the general public.
- There have been false complaints made to law enforcement agencies by minority individuals.
- Overall, citizens do not trust the process by which they can file a grievance or address their concerns about the actions of law enforcement officers.

RECOMMENDATIONS

- Law enforcement agencies throughout the state should recruit and hire qualified minority officers to provide a workforce that is representative of the communities they serve (see also, Law Enforcement Workforce Diversity and Recruitment Efforts recommendations).

- P.O.S.T. and/or individual law enforcement agencies should screen carefully prospective officer candidates for any predisposition towards racial or ethnic bias and prejudice.
- Law enforcement should assemble a curriculum for in-service training related to cultural diversity (see also, Law Enforcement Diversity Training recommendations).
- Law enforcement agencies should consider opening lines of communication with racial and ethnic communities by sponsoring citizen academies in languages other than English (see Noteworthy Programs section). A speakers bureau of officers to address a variety of citizen groups in their native tongue would assist in building bridges to ethnic communities.
- Law enforcement agencies should provide opportunities for various ethnic groups to teach in-service officers about their culture, including the do's and don'ts of their culture (see also, Law Enforcement Diversity Training recommendations).
- The Utah Legislature should enact legislation to require law enforcement agencies to track the following information:
 1. the number of people stopped for routine traffic violations;
 2. the alleged traffic infraction that led to the stop;
 3. identifying characteristics of the people stopped, including race, ethnicity, and approximate age;
 4. whether a search was instituted as a result of the stop;
 5. how the search was instituted;
 6. the rationale for the search;
 7. whether any contraband was discovered;
 8. the nature of such contraband;
 9. whether any warning or citation was issued as a result of the stop; and
 10. the benefit of traffic stops as they relate to drug interdiction and drug trafficking proceeds, including the approximate quantity of drugs and value of drug proceeds seized annually.
- The Task Force should provide law enforcement agencies with a model Citizens Review Board that without exception investigates each and every police complaint. This model review board should put emphasis on selecting a board that is representative of the community (see also, Law Enforcement Complaint Process recommendations).
- Law enforcement agencies should be able to file criminal complaints against those who make malicious and false complaints against law enforcement officers related to racial or ethnic prejudice, where there is evidence to support such a charge.
- Video cameras with audio capability should be used in patrol vehicles and micro cassette recorders should be utilized on citizen contacts away from the patrol vehicle in order to ensure against profiling based on race and ethnicity.

PROVISION OF COMPETENT INTERPRETERS

THERE IS NOTHING MORE
IMPORTANT THAN UNDERSTANDING...
AND BEING UNDERSTOOD.

Introduction

Unless we are able to communicate at every level of the criminal justice system, the system will fail those individuals unable to communicate. If the goal of the system is to change the behavior of offenders to conform with the norms of society, then education, among other things, must happen. Without the ability to communicate, everything in the system grinds to a complete stop. Victims, suspects, police officers, attorneys, court officers and every other person in the system is frustrated by the inability to communicate. Speaking in English very loudly and slow will not help someone who only speaks Spanish to understand!

Language barriers is an old problem that has not received a great deal of attention during recent years. Based on current projections, the scope of the problem is only going to increase as the number of non-English speaking people in the state increases dramatically. Some concern is warranted as to how non-English speaking people can receive equal protection under the law if they are unable to communicate effectively. In the criminal justice system, where many already fear becoming personally involved, the fear is heightened by the presence of language barriers.

Discussion of Data

The Task Force public hearings demonstrated that many participants hold common perceptions regarding language barriers and the criminal justice system. While these perceptions may or may not hold true across specific law enforcement agencies, they are consistently held perceptions across the 27 public hearings. The following statements are examples:

I think there's a real problem with communication and I think the police force becomes frustrated because they can't communicate with these individuals and the individuals can't communicate with

them, so they become so frustrated that they just basically throw the book at them and write them up for every charge that they can think of (Migrant JTPA Hearing, Ogden).

Even when they do communicate they don't want to believe. They won't listen to anything any Hispanic person has to say or, they just won't listen to their side of the story. Even when there was no communication problem, they don't want to hear what they have to say (Migrant JTPA Hearing, Ogden).

In federal district [court] you get called to interpret for federal halfway houses. There was an individual that was transported there, [who] did not speak English at all. One Sunday morning he incurred some medical problems. He could not tell the individual at the front desk what those problems were. So they called me about 11:00 [p.m.]. It took at least 45 minutes to get to the federal halfway house, and when I got there, the guy was on his back, laid down. They had not called the ambulance because they didn't know what to tell the ambulance. I would think that it was obvious that this guy was in medical need, he was throwing up blood (Sorenson Center Public Hearing).

Language is a very integral part of communication and education, and the underlying problem between discrimination or being biased towards another person or towards another group of people is the way we communicate and the way we understand other people's words. And if you know a foreign language, you'll understand that maybe in Spanish or in French, whatever language you may choose, there's different way's of saying things that have different connotations, and when people go to speak to another individual, say, a Native American to a Caucasian, they may say things in English and not be understood correctly because they're translating from their language because English is their second language. I think that's very important and language is one of the first places that we should start to build those bridges so that our people can come together (Cedar City Public Hearing).

In Roy almost three years ago, a police officer was summoned to a residence by someone from the neighborhood who made a call. The police officer came into this house and shot a man to death. The neighbor had called 911 because he saw a man chasing his brother around the house and the neighbor thought they were in a big fight. The police had knocked on the door, jumped into the house and shot him. He was carrying a knife, I understand that, but I knew that he was not intending to harm anybody, and he especially didn't even see the police officer. And the police officer saw the knife and shouted "Drop the knife." He didn't understand (English) at the time, and he was killed (Sorenson Center Public Hearing).

According to the Client Committee's report to the full Task Force,⁵ the following overall perceptions were noted:

- Most of the problems in the legal system related to race and ethnicity have to do with the lack of communication and understanding between minorities and "the system."
- Racial and ethnic minorities, whose native language is not English, often find themselves defenseless when dealing with law enforcement, and more often than not, do not get the assistance they need.

⁵ Ibid.

- Non-English speaking minorities are given unfair punishment and are often defenseless due to language barriers. They are usually “blamed” for not being able to communicate in English.
- Reasonable representations and constitutional rights are not given to many non-English speaking minorities due to communication barriers with law enforcement.
- Law enforcement officers discriminate by disbelieving or not listening to racial and ethnic minorities.
- Language barriers prevent officers from learning the true nature of events they investigate, and interpreter services are not often utilized.

Overall, many perceive that legal system workers display little patience, assistance, and understanding. This problem runs through the entire system from someone needing information about how to take care of a parking citation to being released from prison. Every step in the system is compounded by the inability to communicate. An officer who stops a non-English speaking person for a traffic violation may choose not to issue a citation based on his/her inability to communicate. The same officer might also choose to issue a citation and include a violation for no registration even though the individual may have had it in his/her possession but didn't understand that the officer wanted it. The decision points for officer discretion and the potential for disparate treatment based on race/ethnicity on this topic are almost endless. Whenever information is wanted or needed and the exchange does not take place due to a language barrier then there is a likelihood that bias will be perceived.

One way to examine the increasing need to eliminate language barriers is to look at the racial and ethnic diversity in Utah's overall population. According to the 1999 United States Population Data Sheet Diversity Indicators for Utah⁶ in 1997:

African American, non-Hispanic	14,000
Hispanic	133,000
Asian & Pacific Islander, non-Hispanic	48,000
American Indian, Eskimo & Aleut	26,000

⁶ Population Reference Bureau web site, <http://www.prb.org/prb/pubs/usds99/usds99b.htm>.

Estimates from the same source for the year 2015 are as follows

African American, non-Hispanic	24,000
Hispanic	210,000
Asian & Pacific Islander, non-Hispanic	89,000
American Indian, Eskimo & Aleut	47,000

Despite the obvious fact that not all racial and ethnic minorities have difficulty speaking English, the growing diversity of the state's population does indicate that culture and language differences faced by Utahns will continue to expand.

In addition, the Committee conducted a survey of P.O.S.T. certified officers throughout the state (see Appendix A-2). Forty-one (41) of the seventy-nine (79) law enforcement agencies who responded to the survey had no Spanish speaking officers. Thirty-one (31) of the seventy-nine (79) had no officers that spoke any foreign language. These survey results point to the need for increased linguistic diversity in law enforcement personnel throughout the state especially when considered in light of the expected population growth expected in Utah in upcoming years.

Findings

- Comments from those participating in the Task Force community meetings strongly indicate that the inability to communicate in all areas of the criminal justice system is a major problem for non-English speaking individuals.
- The problem of competent interpreters as it now exists will be compounded by the continued growth of non-English speaking minorities.
- At present, law enforcement agencies are not prepared for or capable of taking care of non-English speaking citizens adequately.
- AT&T provides interpreter services telephonically for many different languages. The language line has telephone interpreters available that speak over 140 different languages. Rates vary depending on the language required.

Recommendations

Based on the discussions of Committee members and the results of the research completed by the Committee to date, the Committee suggests the following recommendations to address language barriers between law enforcement and racial and ethnic minority communities.

- Law enforcement agencies across the state should recruit and hire qualified individuals for all positions in law enforcement that are multi-lingual and are familiar with different cultures.
- Law enforcement agencies should become familiar with, and utilize when needed, the AT&T Language Line.
- Law enforcement should approach racial and ethnic minority groups about a volunteer program of interpreters in every community. Qualified volunteers, who pass background investigations, could be given training in the different aspects of the legal system. They could then be called on to assist with their knowledge of the language and culture, facilitating effective communication.
- Law enforcement agencies should pursue grants and other financial opportunities to provide language training (i.e., conversational Spanish) for officers. Tuition reimbursement programs and in-house training are two possible strategies to increase second language proficiency among officers.
- Standards for certification of second language skills among officers should be established. Those officers who meet these standards should be provided a pay incentive for their additional skills.

LAW ENFORCEMENT DIVERSITY TRAINING

Introduction

It is imperative that law enforcement personnel in Utah have training in cultural awareness, often called “diversity training.” The reasons are obvious.

First of all, the population of the state of Utah is diversifying. Latinas/os, for example, only made up 4.6% of the state’s population in 1990, but now make up 6.3% of the state’s population.⁷ (The U.S.’s Hispanic population was responsible for 35% of the national population growth in the last two decades.)⁸ Moreover, Salt Lake County has an even larger percentages of Latina/o citizens at 8%.⁹ According to the Salt Lake City School District, “Fall Enrollment Report,”¹⁰ Latina/o students in some elementary and middle schools make up as much as 35% or more of total school populations. For example, 88% of the students at Guadalupe Elementary are Latina/o, and 64% of Franklin Elementary’s students are Latina/o. The School District report also documents that 43% of Glendale Middle School students are Latina/o, and 35% of the students at Northwest Middle School are Latina/o.

A second point deserves mentioning. While race as a genetic fact does not exist, cultures *are* different. Races can not be distinguished genetically, according to leading scientists, who find that there are more genetic differences within so-called races than between them. However,

⁷ U.S. Census Bureau. 1999, “1990 to 1998 Time Series of State Population Estimates By Race and Hispanic Origin,” Population Division Administrative Records & Methodology Research Branch.

⁸ Exter, Thomas. 1999. “Who are we? Hispanics constitute 35% of the nation’s poulation growth over the last two decades; the demographic shift will be widely felt in the coming two decades,” *Hispanic Business*, April, v21 i14 p38 (3).

⁹ U.S. Census Bureau. 1999, “1990 to 1998 Time Series of State Population Estimates By Race and Hispanic Origin,” Population Division Administrative Records & Methodology Research Branch.

¹⁰ Salt Lake City School District. 1999. “Fall Enrollment Report,” edited by Gary Smith. Salt Lake City, Utah: Salt Lake City School District.

cultures are very different, exhibiting different habits, behaviors, and ways of looking at the world. For example, Mexican Americans may place a strong emphasis on extended family, with several generations living in one home; while European Americans often rely on the U.S. nuclear family norm, that is, only parents and their children in one household. This will, then, lead to different family behaviors and expectations. Cultural differences also extend to ways of looking at time, language differences, unique food preparation patterns, and ways of organizing the home, among other ways.

Third on the list, while cultural difference does not inherently lead to conflict, conflict does seem to arise, usually motivated by greed, fear, and insecurity. In fact, some cultures begin to judge other cultures as inferior, developing an ethnocentric standpoint, and a sense of in-group versus out-group, with other cultures relegated to out-groups. This kind of thinking can often lead to what Malcolm X referred to as the “cancer” of racism.¹¹ When racist ideologies take hold, much more serious and dangerous interactions between cultures can result. One need simply look at American history to see the rise of racist organizations, from the Knights of the Klu Klux Klan to the White Aryan Resistance movement, to Aryan Nations, and various neo-Nazi Skinhead groups. Three recent incidents to add to our nation’s history books reflect the profound impact of racism on behavior: the school shootings at Columbine High School where Dylan Klebold and Eric Harris hearkened back to a “proud” Nazi past and singled out jocks and also children of color; the murder spree of Mr. Smith, who clearly went after people of color to victimize, claiming membership in the Church of the Creator which holds that people of color have no soul;¹² and most recently Buford Furrow is alleged to have gone on a shooting spree at the Jewish community center in Los

¹¹ Page 382 in Malcolm X. 1964. *The Autobiography of Malcolm X*. New York, Ballantine.

¹² “The Hateful Agenda of Ignorance,” *The New York Times*, August 15, 1999 s4 pWK14(N) pWK14(L) col 1 (10 col in).

Angeles and to have murdered an Asian American postal worker. Furrow is a known member of the Aryan Nations which is also an organization which believes that people of color are “mud people” or soulless people.¹³

Why is this important to law enforcement? Most simply and directly, with all these major changes and issues facing our country and our state, how could law enforcement, who are the agencies mandated to fight criminal activity and protect citizens, afford to be unaware of the issues facing the community?

Moreover, law enforcement personnel are also individuals who can not help but be influenced by their own past training, socialization, and cultural ways of knowing. Each individual carries with him/her a past history and sociobiography made up of his/her experiences as a person who has a race, a class, and a gender. It is when these factors appear invisible, that the history is the most fascinating. For example, if you ask a middle class White person about his/her own experience of class, he or she will often ask to what you are referring. However, if you ask a White person who was raised in poverty about his/her experience of class, the results are amazing. They recall and recount sad histories of being humiliated by class mates, teachers, and others because of the way they dressed. To take another example, if you ask a woman what she does when she leaves her workplace, she will usually spend some time in her account with details about getting her keys ready, looking carefully about the parking lot -- no matter the time of day -- too make sure no suspicious people are about, etc. Whereas, if you ask a man, he rarely thinks of these things and so doesn't describe them. Women and men have very different views of the need for personal safety.

All of this leads to a further point. Law enforcement personnel may be blinded about some issues and farsighted about others depending on their own personal and cultural experience.

¹³ Ibid.

They may focus on some groups, while leaving others unquestioned. They may also find themselves more easily provoked by some groups and not by others. Our socialization, our biases, our cultural background, influence how we see and react to the world, and police are no exception. Ignoring cultural difference and the biases it may generate can have serious consequences. Recent images in the media of police profiling, the Rodney King incident, and police brutality toward Abner Louima in New York come to mind. (In the Louima case, one officer plead guilty and another was convicted of sexual assault and abuse).¹⁴ Law enforcement, once informed, can work toward reducing the influence of these biases and cultural differences on their treatment of citizens.

In sum, it makes good strategic sense for crime fighters and those who deal with citizens day-to-day, to know best practice on handling issues related to diversity in the community they protect, including cultural differences and biases present. At the same time, it makes sense to know best practice on identifying and avoiding their own cultural biases. As recent news can attest, these issues will surely come up. Yearly, consistent training in topics related to diversity can aid in this endeavor.

Discussion of Data

Data on the topic of diversity training were received from Peace Officer Standards and Training (P.O.S.T.), ethnographic research, a survey of P.O.S.T. Certified Officers, and public hearing comments. Results are included below.

P.O.S.T. Course Description

A description of a 4 hour course on “Cultural Diversity” was received from P.O.S.T. The learning goals for the course are as follows (see Appendix B-1).

¹⁴ “Fried, Joseph P. 1999. “Judge refuses to overturn conviction in Louima case,” *The New York Times*, July 29, 1999, pB3(L) col 5 (35 col in).

- The student will understand a law enforcement officers role as it relates to cultural diversity, prejudice, bigotry, and discrimination and will develop a multicultural perspective that will enable him/her to value diversity and become effective and efficient on the job.
- The student will understand the facts and implications of growing cultural diversity in the U.S. labor force as well as in offender populations.
- The student will understand the basic concepts pertaining to cultural diversity including prejudice, stereotypes, discrimination, racism, ethnocentrism, and sexism.
- The student will understand how prejudice and stereotyping are by-products of an individual's socialization and how prejudice prevents a law enforcement officer from making an unbiased judgment.
- The student will learn how to manage personal prejudices and stereotypes.
- The student will demonstrate understanding of cultural diversity by actively participating in role-plays and/or by analyzing case studies.

It is apparent that although this class may be effective for initial educational awareness on the topics of cultural bias and prejudice, this training seems to be one of the only opportunities for diversity training that officers receive.

Preliminary Ethnographic Research

In separate ride-alongs with a traffic officer and a patrol officer, the researcher found that outside of P.O.S.T. almost no diversity training for officers takes place (see Appendix A-3).

P.O.S.T. Certified Officers Survey

A survey of Utah law enforcement asked if officers had received cultural diversity training since their initial P.O.S.T. training and were asked for a description of the training. It was discovered that of the 1,816 respondents, 273 officers or only 15% indicated that they had received cultural diversity training after initial P.O.S.T. training (see Appendix A-2).

A sampling of responses from the survey is included in Appendix B-2. Some of these officers make it clear that they received no diversity training after P.O.S.T. At the same time, it is apparent from at least one of the comments that diversity training is resisted by some officers.

Public Hearing Comments

Public hearing participants commented on the need for diversity training within law enforcement. An example of those statements follows:

I was driving my car back to my home when I was stopped by a police officer. After stopping me he aimed his flashlight into my van and then he asked me to roll down my window. Asian people have a habit of smiling before speaking. He asked me, "Anything funny?" [Probably he thought] I was showing a bad attitude towards him. I understand police sometimes have to work under pressure in this difficult critical situations and because of this, I kept silent . . . I want to explain my case to you and I want to be judged fairly. The police officer should understand the minority community and especially the bad habit that we bring to the United States of smiling before speaking to someone else. Something like that may easily make him get mad when he runs into a [similar] situations (Asian American Male Participant, New Hope Center Public Hearing).

Findings

The Pre-Adjudication Committee finds that P.O.S.T. 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. Both ethnographic and survey data bear out these findings.

Recommendations and Concluding Remarks

- P.O.S.T. 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.
- The four hours (4) of diversity training should be distributed throughout the year, on a quarterly basis if possible. Racial and ethnic issues arise regularly throughout the year for officers, and training distributed throughout the year will offer a more consistent opportunity for learning about working with people of diverse cultural backgrounds. At a minimum, the four hours (4) of diversity training should include more than one training in a calendar year.
- Administrative personnel, including chiefs and sheriffs, should be required to complete additional training regarding issues related to managing a workforce diversity. Ideally, this training should be distributed throughout the year.
- Upcoming annual conferences scheduled for chiefs and sheriffs should have diversity issues as a main focus. Unless supervisors and administrative personnel take diversity issues and diversity training seriously, line officers will not take them seriously. Department leadership must model behavior and lead the way to best practice.

- Law enforcement diversity training should follow principles of sound educational practice. That is, diversity training should be interactive and not simply in a lecture format; it should be offered in an atmosphere of open communication and discussion, where ground rules are laid out to enhance dialogue; the material should be dynamic in nature, and where possible, mixed media should be used to enhance the learning environment.
- Law enforcement diversity training should be non-repetitive and offer a variety of lesson plans throughout the year. The Committee created a list of recommended diversity training workshops which address a broad range of topics. Some suggested topics include:
 - 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?
- P.O.S.T. should coordinate the establishment of a statewide clearinghouse for curricula and resources on diversity issues. The names of various 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 offered on P.O.S.T.'s website for access by law enforcement agencies across the state.¹⁵
- P.O.S.T. should assist in the offering of diversity training throughout the state to enable officers in smaller law enforcement agencies to comply with these new continuing education training recommendations.

In sum, law enforcement must be kept informed of salient issues concerning any citizen population it is mandated to protect, and must be trained to identify their own and others' biases. A further point: Any person who has taken the time to live in another culture can tell you that understanding different cultures takes time and effort. We don't automatically understand differences just because we see them. In fact, it often takes years to develop a keen understanding of someone we live with let alone an entirely different culture. Finally, respect is a key issue between cultures. Where it doesn't exist, you can be sure violence will follow. Moreover, fostering respect for other cultures among law enforcement can only raise this level of respect in the community.

¹⁵ See for example, Pomerville, Paul A. *Cultural Contacts: A Professional Police Response to Cultural Differences*. Cultural Contacts Training Institute, P.O. Box 1046, Poulsbo, WA 98370, 1997.

LAW ENFORCEMENT WORKFORCE DIVERSITY AND RECRUITMENT EFFORTS

Introduction

This section will deal with the areas of recruitment and workforce composition by race in law enforcement organizations. The Committee started with an assumption that it is desirable for law enforcement entities to reflect the racial composition of the community that they serve. A diverse workforce provides several benefits, the foremost being that the agencies reflect the racial composition of the community in which they are located. Members of a minority group may be more sensitive to and aware of issues facing minority community members, and this sensitivity would be reflected in more culturally appropriate behavior with community members. Additionally, having minority officers on the force may help in overcoming language barriers if the officer is bilingual. A number of academic and business sources attest to the positive value of diversity in the workforce.¹⁶ Data from the public hearings show a diversity of public opinion on this subject: some Utahns feel it is important to have more minority law enforcement representation, and others feel that minority law enforcement are harsher toward members of their own group.

Discussion of Data

A written survey was developed to assess recruitment policies, applicant pools, and the current racial composition of officers and administrators. Rather than survey all law enforcement

¹⁶ See for example: (No author), 1997. *The Economist*, v. 345, Nov. 22, 76; Backer, Octave. 1996. "The Manageing Diversity Movement: Origins, Status, and Challenges." 139-156 in *Impacts of Racism on White Americans* (2nd ed.), edited by Benjamin P. Bowser and Raymond G. Hunt. CA: Sage Publications, Inc.; Carlton, Melinda, et al. 1997. "Affirmative Action and Affirming Diversity." *Public Management*, v. 79, Jan, 19-23; Colvin, Geoffrey. 1999. "The 50 Best Companies for Asians, Blacks, and Hispanics: Companies that pursue diversity outperform the S&P 500. Coincidence?," *Fortune*, v.140, no. 2, July 19, 53-57; and Robinson, Edward and Jonathan Hickman. 1999. "The Diversity Elite," *Fortune*, v.140, no. 2, July 19, 62-70.

entities across the state, the committee chose to sample a smaller population which represented the state. Surveys were sent to the following law enforcement entities:

Juab County	(Juab County, Nephi)
Salt Lake County	(Salt Lake County, Midvale, Salt Lake City, Sandy, South Salt Lake, South Jordan, West Jordan, West Valley City)
P.O.S.T.	(Racial composition information only)
Uintah County	(Uintah County, Naples, Vernal)
Washington County	(Washington County, St. George, Hurricane)
Weber County	(Weber County, Harrisville, North Ogden, Ogden, Plain City, Pleasant View, Riverdale, Roy, South Ogden, Washington Terrace)

Surveys were mailed to the police chief, county sheriff or agency head, who either filled out the questionnaires or delegated this task to someone else in the department. The survey and letter are attached as Appendix C-1 and C-2. Some of the entities surveyed did not respond. Follow-up efforts were made to non-respondents. All non-respondents were sent a second survey, and if they did not respond to this, they were called by project staff. There was a substantial effort to obtain a good data sample.

Police Officer Recruitment

Survey results indicate that most law enforcement agencies in the sample do not track the racial composition of their applicant pool. Most respondents did not answer this survey question. Those who did include the information were P.O.S.T., Naples, North Ogden, Roy, Midvale, Sandy, West Valley City, Salt Lake County, and Utah County. The data include the type of applicant pool during the past year but do not indicate if minorities were hired from that pool. Most agencies surveyed do not keep the data, thus it is impossible to determine the effect of race in hiring.

In terms of recruiting minorities to law enforcement, there were three major categories of responses from the surveys: (1) no response or an inappropriate response; (2) a response of no specific recruitment of minorities; and (3) a response of targeted recruitment of minorities. Some responses in the third category were non-specific and undocumented; thus, there may be a higher

number in this category than is deserved. It is assumed that the high number of responses in the first category (no response or inappropriate response) shows that these organizations do not have specific minority recruitment efforts or answers would have been provided.

Of the 24 responses that were given, 29% said that they had no specific recruiting efforts for minorities. The largest group percentage of respondents, 37%, fell into the, "No answer or inappropriate answer" category. In other words, given the answers provided the Committee has not been able to determine any actual minority recruiting efforts. Only 33% of the responses indicated that they had any specific recruiting for minority applicants. Below is a chart with the three types of responses, the cities who responded in that category, and a sampling of some of the comments from the surveys:

POLICE DEPARTMENT RECRUITMENT OF MINORITIES

NO ANSWER OR AN INAPPROPRIATE RESPONSE	NO SPECIFIC RECRUITMENT EFFORTS	SPECIFIC RECRUITMENT EFFORTS
Naples, South Jordan, Hurricane, Harrisville, Ogden, North Ogden, Plain City, Juab County, Uintah County	Midvale, Murray, Pleasant View, Riverdale, Roy, Washington Terrace, Utah County	P.O.S.T., Sandy, South Salt Lake, St. George, West Valley City, Salt Lake County, Salt Lake City, Weber County
No answer. "Unknown." "Our agency does not actively recruit." "I feel that money and the unwilling (sic) to take risks may be two of the factors why minorities do not put themselves through a police academy . . . " "We had no applicant pool currently."	"We recruit using local papers." "Equal opportunity." "None."	"P.O.S.T. offers a minority scholarship and reserves one slot per session for such." ". . . We also have an ad in the NAACP magazine and run all job openings through the local newspapers as well as various other organizations including job services, religious organizations, high schools and universities, and many other public and private organizations."

		<p>“ . . . Additionally, in the past we have approached minority groups with information regarding employment with this Department.”</p> <p>“ . . . We are currently seeking applicants that would bring diversity to our department . . . ”</p> <p>“ . . . We utilize minorities and women in outreach and recruitment activities to demonstrate our commitment to equal employment opportunity.”</p>
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In addition to the survey data, there were some qualitative data taken from the public hearings. Some comments indicated a perception that the treatment of people of color in the legal system could be improved if there are more people of color working in the system. For example:

The army, the navy, the air force goes into the schools and recruits the young kids to go into the military. Why can't the police officers do the same thing? Why can't they do that? You know what they tell me? “We don't want no Mexicans in our units.” “Why?” I ask. They say, “Because they are all related to gang members’ (Migrant JTPA Public Hearing).

We need to hire more cops that are Hispanic and have those cops going to West Ogden where Hispanics live, they need to learn respect (Migrant JTPA Public Hearing).

In areas such as West Valley, where there' a concentration of Polynesian people, is there a drive to perhaps recruit more Polynesian police officers or more ethnic minorities? That would perhaps make communication and liaison between the ethnic groups and the . . . force officers perhaps a lot more open and on a more friendly basis (West Valley City Hall Public Hearing).

Why don't we have Tongans or Samoans as police officers in Utah County? Right here in Orem there is probably only two minorities [on the police force], and the same way in Provo. There is no one [of minority descent] in the sheriff's department. That's why we are not treated right, because they don't have some of our people in there that know us, that know our culture, and that know how to handle us. I don't think we have one single Tongan on our police force. Things are not balanced here. As a Tongan, I understand my culture, I understand my people, I know how to handle my people, and I know how to talk to my people so that we won't have any conflicts. The problem starts from the leaders. If the leaders open up and make things fair, then things are going to work. We need more people from ethnic groups to be in the police department. We need people from our

ethnic groups to be involved in our city council or whatever. That's why we have such a problem cause we don't have enough [minority] people in there. Whoever has authority here from the government, don't underestimate us. Please open up. Bring the opportunity to our community so that our people can apply. (Orem High School Public Hearing).

Moreover, there is a perception that the police departments are not interested in hiring minority applicants:

Who's in charge of hiring? We have one African American policeman, and he's new. I have seen him maybe for the last, what three months, I think. I was very surprised. I could almost swear that he's the only minority policeman that we have in Cedar City, Utah, Why is that? Who hires them? Are they the only ones qualified? (Cedar City Public Hearing).

I have two sons that went into criminal law and justice here at SUU. They did apply [to the police department], okay, but however, there was some issues that were brought up to them that because [they are] minority and that they weren't highly qualified even though they passed their test. Now, I want to know why and what happened then? But they went back twice, and when they did return to the Job site, they were told that the Job was already filled. As a matter of fact, when they were taking their classes for criminal law and Justice, they even rode with patrol officers. They've done every program that they allow for them to do, and even got good grades and not failed, but they never got the job (Cedar City Public Hearing).

I asked both counties and the Roosevelt Police Department, why can't they hire minority officers? They say they don't have the funds (Ft. Duchesne Public Hearing).

On the other hand, there were comments that suggested that minorities on the police force did not necessarily signal better treatment for minorities, and might mean quite the opposite.

We have several probation officers who are minorities, and I'm finding that they tend to be harder on their own people. We've had to bring this into a check and balance, because if you let it go, I don't think minority kids in the juvenile justice system will be given fair treatment. So we try to create a balance by mixing it so we hopefully offset that (Layton Public Hearing).

When I see a policeman of color, I know you have a vicarious situation because you're trying to represent the people. But you have to deal with the good old boys, so you're kind of pinned up, your hands are tied and you can only go so far. So when I see Polynesian policemen, African American police, I view them the same way. To me, they've got in that system and they now know their hands are tied, and eventually they become part of that system. Sometimes, they are even more oppressive than the White. I mean, I've encountered Polynesian officers who treated me worse than a White officer because they get caught up in that system and they know that now they have become part of that system. To sustain their livelihood, they have to maintain being part of that system or they'll lose their jobs. That's why, to me, the whole situation is we have to deal with perceptions and deal with diversity training (University of Utah Public Hearing).

This police officer is not a police officer of Salt Lake P.D. or Sheriff. He still works for the state assigned to the gang unit. And he happens to be a person of color. And he also has a long history of pulling over Tongans, or Polynesians, African Americans, Chicanos and Mexican Americans. His mode of operation is to handcuff kids, pull their shirts over their heads and then proceeds to slug it out. And from what I understand on the street, this kid this police officer, continues to do this (Central City Community Center Public Hearing).

Officer Lucero went up to my kid and twisted his arm, He ran to [me], then he accused me of contributing to a minor. He pushed me out of the way and twisted my son's hand, The rest of the family came out to see what was going on. By that time, he had his hand way up to almost his neck. He called the whole police force to Adams Street. I called for a tape, a record or something because he called it a "riot." He said, "And these Mexicans are out of control." As far as I know, he's a Mexican himself. I understand their job but (not) to come in there and to harass us that way." (Ogden Community Action Agency Public Hearing).

Police Workforce Composition

Respondents were asked to complete a chart about the racial composition of their workforce. The chart separated jobs into three categories: (1) officials and administrators, (2) service workers (police officers), and (3) administrative support and asked the number of minorities in each group (see Appendix C-3). The aggregate data from each county (determined by summing the answers of every respondent in a county) were collapsed, and a percentage of minority workforce determined. Results were then compared to "Estimates of County Populations by Race/Ethnicity" according to 1996 U.S. Census Estimates. The chart below portrays the results:

COUNTY	WORKFORCE COMPOSITION BY RACE / ETHNICITY	COUNTY COMPOSITION BY RACE / ETHNICITY
Salt Lake County ¹⁷	9.6% minority	12.84% minority population
Uintah County ¹⁸	0% minority	15.20% minority population
Washington County ¹⁹	2.4% minority	4.55% minority population
Weber County ²⁰	7.1% minority	13.23% minority population

¹⁷ Includes Salt Lake County Sheriff's Office, Midvale P.D., Salt Lake City P.D., Sandy P.D., South Salt Lake P.D., South Jordan P.D., and West Valley City P.D.. Non-respondents include West Jordan P.D.

¹⁸ Includes Uintah County Sheriff's Office and Naples P.D. Non-respondents include Vernal P.D.

¹⁹ Includes St. George P.D. Non-respondents include Washington County Sheriff's Office and Hurricane P.D.

²⁰ Includes Weber County Sheriff's Office, Harrisville P.D., North Ogden P.D., Ogden P.D., Plain City P.D., Pleasant View P.D., Riverdale P.D., Roy P.D., and Washington Terrace P.D. Non-respondents include South Ogden P.D.

In Weber and Salt Lake Counties, the percentage of minorities in the workforce was higher in the service workers job category (police officers). Clearly, this is where the highest concentration of minorities are in law enforcement. However, each of the agencies in the counties was lower than the overall composition of minorities. In other words, they did not reflect the ethnic composition of their communities. In particular, Uintah County data demonstrates a glaring difference between the racial composition of the community and the composition of their police department workforce. Of course, the limitation of the above comparison is that at least one law enforcement agency in each of the four counties did not respond to repeated attempts to collect this information. To the extent that those answers affect the above percentages, the results are incomplete.

In addition to the surveys sent to each law enforcement entity in the sample, a survey was sent to P.O.S.T. to collect data from all the sworn officers in the state. Each agency was responsible for distributing the survey and collecting the data. From this survey, 2,228 officers responded. Of these, nearly 92% identified themselves as White, Thirty-seven of the 79 agencies surveyed indicated that agency staff are 100% White (see Appendix A-2 for the full report).

Comparisons Between Community Composition, Applicant Pool, and Current Workforce

Some information is complete enough to get a picture of applicant pool and current racial composition in comparison to the minority population in a particular county. For example,

<u>AGENCY</u>	<u>POPULATION ESTIMATE</u>	<u>APPLICANT POOL</u>	<u>CURRENT WORKFORCE</u>
Salt Lake County Sheriff's Office	12.84%	12%	10%

The above data tell us that the current Salt Lake County Sheriff's Office workforce is fairly close to the estimated percentage of minorities in that county (based on 1996 census data). The

last applicant pool recorded also reflected closely the minority population of the county. Other agencies were not as close to their community's racial composition:

<u>AGENCY</u>	<u>POPULATION ESTIMATE</u>	<u>APPLICANT POOL</u>	<u>CURRENT WORKFORCE</u>
Utah County Sheriff's Office	6.7%	8.0%	3.8%
Sandy City (within Salt Lake County)	12.84%	23%	5.3%
Roy City (within Weber County)	13.28%	0%	6.5%

Despite an applicant pool that exceeds the 1996 census estimates for minority populations in Utah County, the Utah County Sheriff's Office workforce is not reflective of the community composition. In Sandy City, the percentage of minority applicants is very high; higher than the composition of the county. Sandy Police Department reported specific efforts to attract minorities to the application process, so while the workforce does not resemble the county's overall population (which may due to differences in actual city population), it does appear that their recruitment efforts have been successful. In contrast, the Roy Police Department reported that they did not have any specific minority recruitment efforts and that no minority individuals applied for positions.

Findings

Based on the above data, the Committee concludes the following:

- Most law enforcement agencies in Utah do not conduct any special outreach efforts to increase the ethnic diversity of their workforce.
- P.O.S.T. offers one tuition scholarship to ethnic minorities on an annual basis.
- In Weber, Washington and Uintah Counties, the racial/ethnic composition of the police workforce falls far short of the racial and ethnic composition of those counties.

- Each year, New Horizons, a community based television program, sponsors five (5) tuition scholarships for minority and other disadvantaged students to attend P.O.S.T. training with the goal of promoting diversity within the police workforce (see Noteworthy Programs section).

Recommendations and Concluding Remarks

The Committee endorses the following recommendation made by the Client Committee:

- Law enforcement agencies should make efforts to have a workforce that is reflective of the diversity of the population they serve. Recruitment efforts should be made to encourage minority youth into law enforcement careers.

In addition, from the findings as noted above, the Committee recommends the following:

- P.O.S.T. and individual law enforcement agencies should target local high schools, community colleges, ethnic community organizations, and ethnic media to recruit more people of color into law enforcement professions.
- In order to better understand the lack of representativeness of minorities in law enforcement, P.O.S.T. and individual law enforcement agencies should conduct additional research on the relationship between officer turnover rates and the race / ethnicity of the departing officers, the racial / ethnic makeup of applicant pools, and the existence of racial / ethnic bias on the part of those responsible for hiring.
- Other community organizations and businesses should follow the example of New Horizons and sponsor tuition scholarships for minority students to attend P.O.S.T. training.

Finally, during one of the public hearings, this recommendation was made:

I'd like to start off with just a real quick recommendation. I moved from South Texas, where I used to teach. What they've done is they've started a police academy at the high school level. Is there any possibility that we can do that? I think that's one way that we can get our students better educated and also get them involved I knowing about the law, instead of having to fight it from the other side. I think that's something that would give our students a better perspective on what police officers have to deal with, because sometimes I don't think they're aware of all the hassles that you guys have to go through. I've been on both sides of the fence. (Orem High School Public Hearing).

LAW ENFORCEMENT COMPLAINT PROCESS

Introduction

The Committee examined complaint processes from several different law enforcement entities. Specifically, twenty-two (22) Utah law enforcement organizations were asked to respond to twenty-one (21) questions submitted in regards to their respective policies and procedures. Data were kept regarding law enforcement abuse and complaint processes. Twelve (12) law enforcement entities were selected for additional follow-up questioning. The quantity of the follow-up questions varied and each question was tailored to each law enforcement department.

The Committee was, in part, interested in determining: (1) whether law enforcement agencies/organizations 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.

Discussion of Data

The Committee developed a written survey to address the above-referenced issues. In addition, data were collected from public hearings which were held throughout Utah regarding the community's perceptions of how their complaints were handled by the law enforcement. Questions regarding the organizations' law enforcement abuse processes were sent to the following counties and agencies/organizations:

Juab County	(Juab County Sheriff's Office)
Salt Lake County	(Midvale, Murray, Salt Lake City, Sandy, South Salt Lake, South Jordan, West Jordan, West Valley City, Salt Lake County Sheriff's Office)
Utah County	(Utah County Sheriff's Office)
Washington County	(St. George, Hurricane)
Weber County	(Harrisville, North Ogden, Ogden, Riverdale, Roy, Washington Terrace)
Utah Highway Patrol	

Surveys were mailed to the chief of police and/or sheriff, who either filled out the questionnaires or delegated this task to someone else in the department. The letter and survey are attached as Appendices D-1 and D-2.

Findings

Summary of Data

Ninety-five percent (95%) of the law enforcement agencies/organizations stated there is a complaint process in place (see Appendix D-3)

Eighty-two percent (82%) indicated that a written formal complaint is part of the process that initiates a complaint (see Appendix D-4 for sample complaint forms).

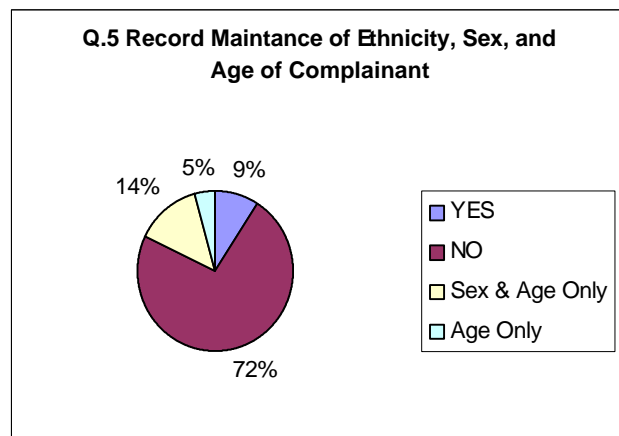
Fifty percent (50%) indicated that a verbal complaint may be submitted by telephone. However, submitting a complaint in person is preferred.

Only nine percent (9%) indicated that a record is kept of complainant's ethnicity.

One hundred percent (100%) of the law enforcement agencies/organizations indicated they did not keep a record of the ethnicity of the alleged offending officer.

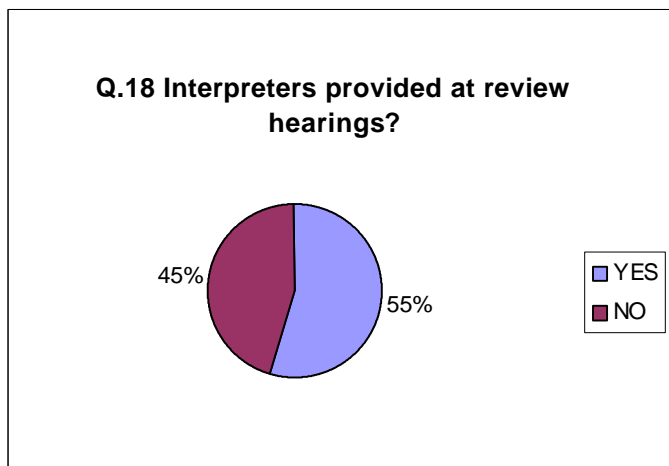
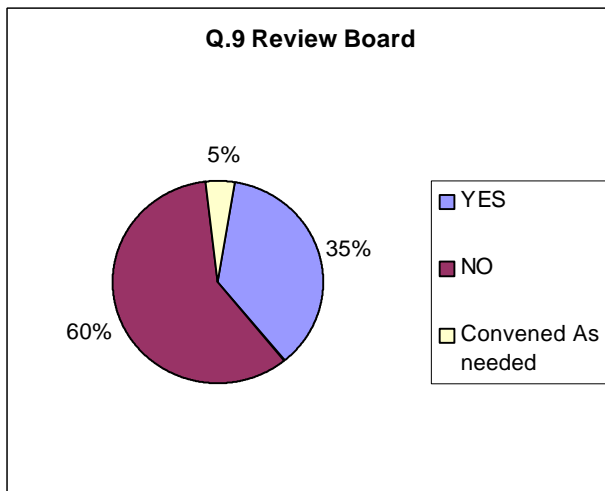
When asked for statistics for the years 1996-1998, thirty-six percent (36%) answered they had no record of any complaints for those years or could not provide records of complaints for those years.

Sixty-two percent (62%) of the law enforcement agencies/organizations indicated they did not categorize by nature or severity of alleged abuse on record.



Sixty percent (60%) of the law enforcement agencies/organizations indicated they did not have a review board.

Of those law enforcement agencies that reported having a review board, five percent (5%) indicated their review board consisted of only civilians. While ninety-five percent (95%) indicated law enforcement agents or department employees sit on their review board. Five percent (5%) indicated they have both law enforcement employees and civilians sitting on their review board. The number of members on the review board varies from location to location.

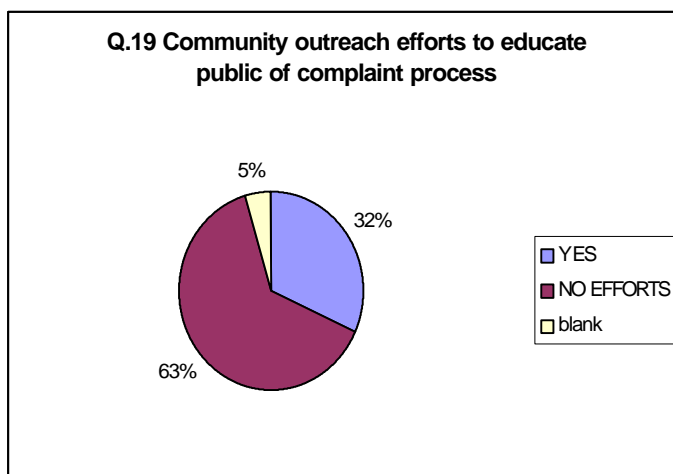


Those that indicated they had a “review board” varied in definition. “Review boards” were sometimes described as operational and only convened when necessary or were in place for the purpose of employee complaints only. The race and sex composition information of review boards was limited. An African American female sits on one review board and a single Hispanic person sits on another civilian review board. How each review board is selected also varied by location. Some members were permanent while others rotated.

One hundred percent (100%) of the review boards indicated their power consisted of only making recommendations and do not have enforcement power.

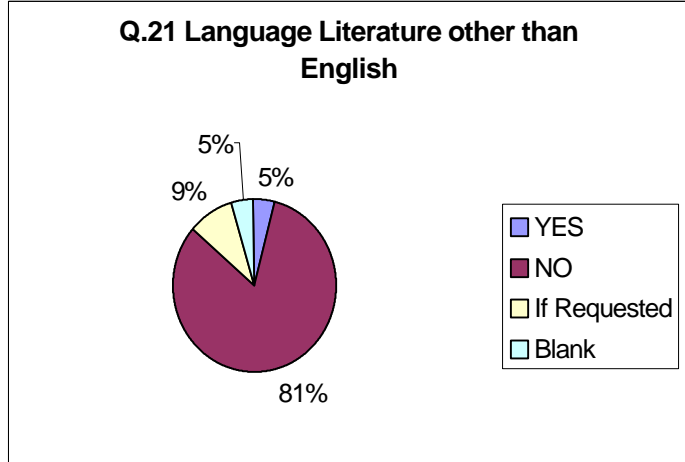
Forty-five percent (45%) of the law enforcement agencies/organizations indicated they do not provide interpreters at review board hearings.

Sixty-three percent (63%) of the law enforcement agencies/organizations indicated they do not make community outreach efforts to inform the public of the complaint process (see Appendix D-5 for examples of information about complaint processes).



Eighty-one percent (81%) of law enforcement agencies/organizations indicated they do not have complaint process literature available in any language other than English.

From the responses received, there were varying degrees of defining the term “hearing.” For example, an “*informal*” hearing, was not a hearing for one law enforcement agency/organization and yet was described as a hearing for another law enforcement agency/organization. Sixty-four percent (64%) indicated they did not give each complaint a hearing.



As with all sampling some responses were left blank and/or some surveys were not returned. Follow-up efforts were made to obtain the information, some of which were successful (see additional information in Appendix D-6). In addition, several months after the data had been collected, it was decided that all Sheriff’s Departments in the survey sample should be included. Surveys and letters were sent to the sheriffs in those counties; however, several departments did not respond.

Public Hearing Opinions and Disclosures

In addition to the surveys which were sent out to law enforcement agencies/organizations, public hearings were held to allow Utahns to express their perceptions regarding the criminal justice system in Utah. The following is a sample of opinions and disclosures which were made at public hearings held throughout Utah during the data collection phase.

In one instance, a handicapped African American public hearing participant indicated that a plain-clothes police officer directed him to move his car from in front of a store. The participant informed the officer that he was entitled to park in that area because he did not have the use of

his legs. The officer nevertheless told him to get out of the car, opening the participant's door and grabbed him by the arm attempting to yank him out. The participant's brother was seated next to the participant and assisted the participant from being extracted from the car. The participant had to go to an urgent care medical facility and get an arm sling. As a result of the incident, the participant filed a complaint and asked the police department to pay the medical bill he incurred as a result of the officer's action. The participant later received a letter indicating that an investigation had been conducted and the investigation concluded that the police officer had done nothing wrong.

Another African American male participant indicated that he was pulled over by a police officer. The officer indicated that he was speeding; however, the male participant indicated he was not. The participant ultimately telephoned the officer's boss who asked the participant to, "Wait right there. I'm coming." When the officer realized that the participant was on the phone with his superior, he wrote a ticket very quickly and then threw it through the participant's car window and left. The ticket indicated that the participant was traveling 52 miles per hour in a 40 miles per hour zone. The participant went to the station to talk with the officer's boss. He filed a report with Internal Affairs, yet months later, he still had not heard a response.

In another instance, a female Hispanic participant indicated that she had called the police to assist her in an abuse case to be filed against her husband. The officer told the participant, "Well, you guys are used to this. That's part of your culture. You get beat up, I guess, as part of your culture. Women don't have a say." The female participant was left speechless. He then indicated, "You're from Mexico. This is how it is." The female Hispanic participant filed a complaint. The intake officer told the female Hispanic participant that perhaps she misunderstood and that maybe her English-speaking skills were not that good. After the complaint had been filed

against the officer, the officer contacted the female Hispanic participant directly. The officer threatened the participant with notifying Immigration if she continued with her complaint.

Recommendations and Concluding Remarks

The following recommendations do not appear in any particular order. Rather, they should be taken as a compilation of what has been suggested and should be considered in establishing a policy whereby law enforcement abuse complaints can be thoroughly, honestly, and impartially evaluated.

In addition, the Committee had lengthy discussions on the ability of review boards to enforce their decisions. Many members expressed the need to empower review boards to take action against offending officers, including suspension, termination, etc. However, other members noted that review board members often serve at the request of the police chief. Also, civil service merit issues can affect the ability to impose certain sanctions upon officers. One suggestion was to take the review board out of the law enforcement agencies and place the selection of the review board members in the power of another office (e.g., city mayor, city council, county commission). Review boards could then be given some enforcement powers, though they would still be subject to civil service limitations. 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. This issue directly affects the credibility concerns of complaint processes that have been raised by individuals at the public hearings and other Task Force sponsored events.

- Allow a participant to file a law enforcement abuse complaint via the telephone assigning that individual an identification number. Keep the name of the complainant concealed in a separate location until the investigation is complete. The participant therefore would be free to disclose fully and without the possibility of recourse his or her side of the story.
- Have the complaint reviewed by the officer's supervisor and by someone other than the officer's immediate supervisor.

- Have the law enforcement agency send to the complainant / participant a copy of their testimony taken orally during the investigation, for verification of accuracy.
- Complete the review of the complainant's investigation within three weeks culminating in a written response with supporting testimony or documents to justify the law enforcement agency's actions or inactions.
- Provide interpreters for individuals with other than English-speaking needs to file their complaint and/or follow through with the review process.
- Have the complainant / participant indicate his or her race / ethnicity on their complaint form.
- Have the officer who is complained about list his or her race / ethnicity as part of the investigation review process.
- List on the complaint process form general categories about which the complainant/ participant is complaining (i.e., verbal, physical, harassment, action conducted by the law enforcement officer).
- At a minimum, all law enforcement agencies in Utah should have a written review process in place.
- All complaint processes should include an appeals process. All complainants should be informed of the appeals process during the initial phase of the complaint process.
- Have in place a review board of an officer's action which includes a minimum of three individuals with two-thirds of the review board composed of non-law enforcement personnel.
- Provide literature and publications to the public which informs them that the law enforcement agency has a police abuse process complaint procedure and explains how to conduct the complaint process.
- Individual law enforcement agencies should track yearly the number of police abuse complaints filed and their dispositions.
- Individual law enforcement agencies should track yearly the outcome and percentage of alleged offenses separated by category.
- Individual law enforcement agencies should track review board members' race and ethnicity, and length of service.
- Individual law enforcement agencies should track recommendations handed down by civilian review boards and their outcomes.

- 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.

Recommendations From Public Hearings

Policy Recommendations

When filing complaints to law enforcement agencies, many participants from the public hearings shared the perception of a lack of professional services based on race. Fear of retaliation or a lack of trust of follow through once complaints are filed were also voiced at the public hearings. Having a less intimidating location than to police department to file complaints should be available to complainants.

Civilian Review Board

Fairness in a review board should include review of the complaint by other members of the board who are not directly employed by the law enforcement department. Review boards should also include racial and ethnic minorities whenever possible.

Language and Cultural Needs

Efforts to have interpreters available throughout the complaint process should be provided.

Literature describing the complaint process and the complainants rights to appeal should be printed in English as well as other languages and should be available in the law enforcement agencies/organizations in plain view.

PUBLIC DEFENDER CONTRACT AWARD PROCESS

Among the many pre-trial issues of concern to the Committee, members selected the process for the award of the public defender contracts. Although additional fact-finding may be necessary, there is information from the background and experience of committee members which enables the work group to make certain broad findings and recommendations.²¹

There are some counties in rural Utah with relatively large concentrations of minority groups whose members are exposed to the criminal justice system. Rural counties which have relatively high concentrations of minority groups are Uintah County, Duchesne County, Washington County, and San Juan County. These individuals are largely indigent, requiring court-appointed counsel. In order for these individuals to receive fundamental fairness in the judicial process, it is important that competent, effective legal counsel be involved from the outset of any criminal proceeding, particularly in felony cases. This requirement is mandated by the U.S. Constitution and relevant case law. A vigorous, effective and independent defense bar can and should in the course of normal representation of clients, address issues of racial and ethnic fairness in the law enforcement and judicial system.²²

Since many of the defendants are both indigent and members of minority groups, it is important to ensure that there is an adequate public defender service, particularly in the aforementioned counties. The negotiation process for public defender contracts is important because it affects the quality of representation of indigent defendants. It is important to ensure a fair contract-negotiation process, especially since attorneys in rural counties may be subject to

²¹ The work group made inquiries to every county in Utah in order to ascertain certain basic facts. Unfortunately, there were no responses to the inquiries. This fact should be of concern to the Task Force.

²² These issues may include racially motivated traffic stops and searches, discrimination in charging, pretrial release, sentencing, and jury discrimination.

peer group pressure or pressure from the community and elected officials to a far greater extent than may occur in urban areas of the state.

The process by which a public defender or public defender organization is selected to provide services to indigent defendants can raise an appearance of a conflict of interest, especially where prosecutors, who perform both civil and criminal functions, are involved in reviewing and negotiating county public defender contracts, or where county attorneys and other persons or county entities, such as law enforcement, compete with public defenders for public funds.

Recommendations and Concluding Remarks

The Committee makes the following recommendations:

- Public defenders and public defender groups should be engaged full-time and should be required to have minimal professional qualifications and experience which can be set by administrative rule of the Utah Judicial Council.
- Public defender representation throughout the state should, to the greatest extent practical, be uniform in quality, and operation and delivery of services.
- Public defender funds should be appropriated by the Utah Legislature rather than by local government.
- Criteria for award of public defender contracts, and review of contract performance and delivery of services should be established by administrative rule of the Judicial Council.
- The participation of law enforcement, prosecutors and judges in the award of public defender contracts should be prohibited by statute and ethical rule.
- Diversity training for public defenders should be required as part of their contracts. This requirement could be met as part of lawyers' annual Continuing Legal Education courses.

In addition, Committee members recognize that this issue requires additional research to fully document the issues raised above. The Committee concluded that this issue overlaps significantly with the Representation Committee. It therefore decided to retain this issue in its report and forward it to the Representation Committee for further examination and comment.

PRE-TRIAL NON-BAIL RELEASES

Introduction

There are three basic pre-trial release systems that do not require the posting of a bail bond employed in the Utah courts: supervised pre-trial release (PTS); court ordered own-recognizance release (OR) and releases entered pursuant to federal court ordered consent decrees. Those decrees require the release of jail inmates to relieve potentially unconstitutional overcrowding (CDR).

The PTS release programs are available in Salt Lake County. Those programs allow persons charged with crimes to be released to supervision by either pre-trial services in Salt Lake County or misdemeanor releases screened by Adult Probation and Parole in Weber County. Judges in other counties may order pre-trial detainees released on their own recognizance. That procedure generally occurs at a bail hearing and at the request of counsel. The CDR release is related to the number of people held in the jail facility. Only Salt Lake and Weber Counties are subject to such decrees.

Findings

The PTS release allows an agency such as pre-trial services in Salt Lake County to establish guidelines and procedures for release with judicial direction and approval. In certain circumstances (non-violent misdemeanors), pre-trial services has the authority to release an individual without judicial approval. In all other circumstances, judicial approval is required for release. In Salt Lake County, the criteria used to determine eligibility for recommended release by pre-trial services includes one year minimum residence in the area and verifiable references. A psychological evaluation may be required when the defendant is charged with a crime of violence. There is no requirement for employment or property ownership to make a person eligible for a PTS

release. However, a history of failures to appear in court or non-compliance with a prior probation may preclude a recommendation for PTS release. The criteria for PTS releases are race and ethnic neutral on their faces. However, as previously noted, the recommendations for such releases, except in limited circumstances, are subject to judicial approval. There are no statistics available on the racial or ethnic breakdown relating to recommendations for PTS release which were rejected by judges. An OR release may also be based on a prosecutor's decision to proceed by summons rather than issuing an arrest warrant. There are no available statistics to relate this process to racial or ethnic bias or prejudice.

Similarly, OR releases are subject to judicial discretion. The criteria that are relied upon relate to the seriousness of the crime, the defendant's ties to the community, the defendant's prior record, the prosecutor's agreement to such a release and any other factors that would be relied upon in a traditional bond hearing. The factors that are important vary from district to district and even from judge to judge within a district. Statistics are not available to determine if such releases were made on racial and ethnic neutral criteria, or if the releases reflected any racial or ethnic bias or prejudice.

The CDR form of release differs significantly from the OR and the PTS releases in that a CDR does not require any prior judicial approval. A CDR is based on a point system. The defendant's offense for which he or she is being held is scored numerically. The offenses are scored to reflect the seriousness of that offense. Other factors that are scored include the prisoner's disciplinary history, offense history, escape history, prior felony convictions, failures to appear in court, alcohol and drug abuse and stability factors. When the jail population reaches a designated level, the prisoners with the lower CDR scores are released. None of the factors reflect racial or ethnic bias or prejudice. Since judges do not approve such releases, any potential judicial bias or prejudice based on race or ethnicity would not affect these release decisions.

Recommendations and Concluding Remarks

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. There are no statistics available to demonstrate the existence or lack of any racial or ethnic bias in those releases. The Committee recommends the following to address the inability to assess racial or ethnic bias in judicial release decisions:

- Track electronically racial and ethnic data on pre-trial release decisions, including CDR, PTS, and OR.
- Training on how racial and ethnic bias can impact decision making should be required for all those involved in pre-trial release decisions (i.e., law enforcement, prosecutors, judges).
- In order to develop race-neutral release policies, Utah's criminal justice system should adopt Salt Lake County's criteria for pre-trial releases (see Appendix E-1).

BAIL AND CHARGING DECISIONS

Introduction

The purpose of bail in our system of criminal justice is to make sure that a person accused of a crime will appear for court proceedings.²³ The amount of bail required is very often a reflection upon the seriousness of the charges in the minds of the judge and prosecutor. The basic notion is that a defendant facing a serious charge stands to lose more if ultimately found guilty and therefore is more likely to flee the jurisdiction than a defendant facing a less serious offense. Thus the bail for the more serious offense is justifiably higher.

Discussion of Data

Bail setting decisions are made at several significant times at the preliminary stages of a criminal prosecution.

1. When a person is booked into jail pending a formal court charge, arrest is made based on probable cause. A sworn statement summarizing information which is basis for the arrest is made by the arresting officer at the time of booking. Within a few hours of booking, the sworn Probable Cause Statement is reviewed by a judge. That judge sets bail based on that information. The set bail amount stands until formal court charges are filed or until the defendant is released from jail without filing (after the 72-hour investigative hold expires).

For the past two decades, a general understanding has developed relating to non-traffic crimes: bail will be set at \$500 for Class C misdemeanors, \$1000 for Class B misdemeanors, \$2,500 for Class A Misdemeanors, \$5000 for third degree felonies, and \$10,000 for second

²³ In addition to requiring bail, a judge has the authority to impose other conditions upon an accused upon release. Those conditions should be designed to: (a) ensure the appearance of the accused; (b) ensure the integrity of the court process; (c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and (d) ensure the safety of the public. Utah Code Annotated Section 77-20-1.

degree felonies. The setting of bail for first degree felonies is much more case specific but it can be said that generally at least \$25,000 bail is established. The judge also has the option of determining within strict legal boundaries that the suspect is not entitled to a bail amount. It should be noted that for bail amounts of \$25,000 and above, bonding entities usually require real property or some item of substantial personal property as collateral before posting the bail.

The Judicial Council has also approved a misdemeanor bail schedule which recognizes customary bail amounts. This bail schedule lists most misdemeanor crimes and a suggested bail amount for each.

2. When a felony has been investigated by police, a summary of gathered evidence is brought by law enforcement agency to the prosecutor. The prosecutor screens the case and determines what charge will be brought into court. The prosecutor prepares formal charging information for court. The prosecutor also requests Warrant of Arrest. These documents contain another probable cause statement. The request for warrant carries a bail recommendation made by screening prosecutor. At court, the documents are reviewed by judge and signed to initiate court case. In most instances, the judge approves the requested bail amount and signs the Warrant of Arrest. This bail amount stands until first court appearance.

3. After formal charge is filed in court and arrest warrant is issued, the defendant will go to an initial court appearance. The defendant may make this appearance after being booked on the Warrant of Arrest or by notification from bondsman or release agency on original booking. (See #1.) Bail amount and release status is reviewed by judge at initial appearance with attorneys for both parties present.

The Task Force has hired a Research Consultant, Russ Van Vleet, to study whether there is some bias in the above described process along racial or ethnic lines. The results of that study are expected by November 15, 1999.

Findings

There is no data at this time to determine whether there is any racial or ethnic bias in the setting of bail. However, at this point, it seems safe to say that potential for abuse exists within the above described processes. Deciding what criminal charge to file against a person is solely within the discretion of the prosecuting agency. As with bail setting, a prosecutor has wide discretion in making that decision. Ideally the decision is based completely upon the factual makeup of the incident giving rise to the charge.

Judges and prosecutors are not supplied with a solid framework through which to approach the setting of bail. This allows for possible disparate treatment between similarly situated people in that one judge may see the case as a \$5,000 bail while another judge thinks \$10,000. Also, there is no mechanism in place to prevent outright, purposeful discrimination because each judge and prosecutor has a significant amount of latitude in making bail decisions.

Recommendations and Concluding Remarks

To address these concerns, the Committee recommends the following:

- Establish a more structured system for the setting of bail. Decisions should be made based upon objective criteria and uniformity amongst judges and prosecutors should be a baseline goal.
- Judges and prosecutors should receive training exposing them the different cultures in our society and to the problems and dangers presented by racial and ethnic bias.
- Research to determine whether racial or ethnic bias is reflected in such prosecutorial decisions-making should be completed and/or sponsored by the Task Force.
- Data should be kept electronically on charging decisions by race/ethnicity for the purposes of better understanding whether race and ethnicity have an effect on the types of charges filed.

HATE CRIMES

The Task Force was one of several major sponsors of a statewide symposium on hate crimes, held on May 18-19, 1999 in Ogden. Other sponsors included the U.S. Attorney's Office for the District of Utah, Weber State University, and the Simon Wiesenthal Center.

The first day of the symposium included national speakers with knowledge about hate crimes, hate on the Internet, and hate groups. The second day had a local focus, beginning with a roundtable discussion about hate crimes in Utah. In the afternoon, participants divided up into six working groups to assemble recommendations on addressing hate crimes. These diverse groups were made up of citizens from many neighborhoods, communities, groups and associations with an interest in the general issues of hate and hate motivated violence in Utah. Each group was led by a moderator chosen from leaders in the Utah legal, political, religious and academic communities.

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 endorses the ten recommendations formulated most often by the working groups at the event. Below is a listing of those recommendations.

Recommendations and Concluding Remarks

- Law enforcement should be provided specific training 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.
- Community groups and the educational system should take leadership roles in teaching the community and students about respect for different cultures, tolerance of difference, and understanding about what constitutes a hate crime.
- The people of Utah and particularly Utah's leaders need to recognize and acknowledge the problems of discrimination, hate and hate motivated violence that exist in Utah. The working groups saw the denial of the existence of discrimination, hate and hate crimes in Utah as a serious problem.

- Effective legislation to prosecute hate crimes is needed to ensure uniformity of understanding regarding what constitutes a hate crime. An example of legislation, sponsored by Senator Pete Suazo, that will be considered by the Utah Legislature during the 2000 session is attached (see Appendix F-1).
- Regardless of whether effective legislation is adopted, Utah's law enforcement agencies should come to a uniform understanding of how they will recognize and investigate hate crimes in Utah.
- Workforce diversity within law enforcement, prosecution offices, and the judiciary should be a goal to help partially address the lack of understanding of and sensitivity for issues of hate and hate motivated violence.
- Victims of hate crimes should be provided a safe and central location to learn more about hate groups and hate motivated violence, receive assistance in reporting hate crimes, and report complaints about the handling of their cases.
- Prosecutors and law enforcement should receive training on proper procedures for investigating hate crimes. The importance of ongoing contact with the victim about the status of their case is an essential element of the training.
- County attorneys, the U.S. Attorney, elected officials and community leaders should speak publicly on the importance of prosecuting hate crimes and make it a priority to ensure that officers, prosecutors, and those in the criminal justice system are held accountable for appropriate follow through with hate crime cases.
- 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.

NOTEWORTHY PROGRAMS IN UTAH

While the Committee's purpose is to determine whether racial and ethnic bias occurs in the pre-adjudication segment of the system, positive efforts to lessen disparate impact and improve communication between law enforcement and communities of color also deserve attention and acknowledgment. In its deliberations, the Committee found that law enforcement entities tend to be unaware of special programs sponsored by other law enforcement agencies. Law enforcement representatives on the Committee stated that information about successful programs that may have a positive impact on racial and ethnic communities would be helpful. This section attempts to provide basic information about several programs that the Committee found noteworthy.

This section does not attempt to provide complete information about the activities of the agencies involved nor does it intend to be an exhaustive listing. Indeed, Committee members hope that there are many more positive examples of bridge building between ethnic communities and law enforcement that exist currently in Utah.

New Horizons P.O.S.T. Scholarships

New Horizons is a local television program that has been on the air for twelve years in Utah. Headed by James Brown, New Horizons has made a financial commitment to assist law enforcement entities in Utah to reflect the racial and ethnic composition of the communities they serve. Each year for the past ten years, New Horizons has sponsored five scholarships (\$2,500 to \$3,000 per scholarship) for minority and financially disadvantaged candidates to attend Peace Officers Standards and Training's training and certification program.

St. George Police Department's Civilian Academies

The St. George Police Department has made a number of recent efforts to reach out to

the Hispanic community in Southern Utah. As part of its Community Oriented Policing efforts, the Department created a citizen's academy to educate the community about the proper role and limitations of law enforcement. The initial session was offered in English, however the Department recently added an academy that is taught in Spanish through interpreters. The class is nine (9) weeks long and meets three (3) hours per week. About forty (40) Spanish-speaking individuals completed the first session of the course and others sessions are scheduled in Spanish and English. In addition, a youth academy offers young people between the ages of eleven (11) and fourteen (14) to job shadow a police officer for a week to learn about the role of law enforcement and to provide youth with positive role models. Both of these program have had significant participation and support from the Hispanic community in St. George.

Salt Lake City Police Department's Diversity Training

The Salt Lake City Police Department (SLPD) recently launched a special diversity training series offered by Theresa A. Martinez, Ph.D., Associate Professor of Sociology at the University of Utah and Pre-Adjudication Committee member. The training is designed to address the needs of officers, supervisors, and administrators within SLPD. The following concepts are discussed: race versus culture, the differences between cultures, subcultures and police work culture, ethnocentrism versus cultural relativity, historical experiences of racial/ethnic groups in the United States, and how racial/ethnic groups view law enforcement. The training utilizes several teaching modes including use of audiovisual materials, significant group interaction and other adult education best practice methods.

West Valley City Police Department's Citizens Review Board

The West Valley City Police Department (WVPD) has a citizen review board process for addressing citizen complaints that incorporates several of the elements that the Committee

recommends in this report. Complaints can be made in person, over the phone, or through the mail. A Professional Standards Review Board (PSRB) reviews each and every complaint that is filed using a formal hearing process. Membership on the PSRB is established through an application process, an interview with the chief of police, and approval by the city manager and city council. The PSRB meets monthly to review complaints and make recommendations to the chief of police. The current composition of the nine-member PSRB includes four male Anglos, four female Anglos, and one African American female. All members serve for two years, and five members are private citizens, not employed by West Valley City. WVPD has made a number of efforts to make the public aware of the availability of the complaint process, and information is available about the process in languages other than English.

CONCLUSION

Law enforcement is the entry point to the criminal justice system. If one lesson can be drawn from the public hearings, it is that participants' experiences with law enforcement strongly affect their perceptions about the criminal justice system as a whole. The Pre-Adjudication 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 and incompatibility between data systems among law enforcement and other entities created difficulties in completing the work. However, through an analysis of pre-adjudication policies and several surveys, Committee members were able to assess important aspects of law enforcement and other 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. In many cases, the recommendations encourage law enforcement entities to work together, often with P.O.S.T., to address racial and ethnic issues. 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.

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