

REPRESENTATION COMMITTEE

REPORT TO

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

REVISED FINAL DRAFT
FOR COMMENT ONLY

NOVEMBER 17, 1999

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EXECUTIVE SUMMARY

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

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

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

THE INDIGENT MINORITY POPULATION

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

population in Utah. Recommendations by the Committee include paying specific attention to the implications of this over-representation in policy changes and final Task Force recommendations.

WORKFORCE COMPOSITION

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

CASE LOAD AND OFFICE RESOURCES

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

upon the adequate representation of racial and ethnic minorities because the percentage of minorities in several rural counties is higher than that of the state as a whole.

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

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

PUBLIC HEARING PERCEPTIONS

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

for prosecution and defense attorneys, education for the public about the adjudication process, and education of all major players in the adjudication process about the effective use of court interpreters.

ATTORNEY PERCEPTIONS

The Committee focused on whether minority/non-minority public defenders, prosecutors and privately-retained defense attorneys view racial and ethnic fairness in the criminal justice system differently; whether the race or ethnicity of a defendant plays a role in charges filed, pleas offered or case dispositions; and whether private counsel is reluctant to represent minority defendants. These inquiries were relayed to the Task Force's research consultant. Research methods included focus groups of attorneys. Over 100 criminal law attorneys from throughout Utah were invited to participate in focus groups to discuss their perceptions of racial and ethnic fairness in the criminal justice system. While the results have not yet been reported to the Committee, the members see this portion of its analysis as significant and hope to amend their report to include findings and recommendations in this area as soon as data become available.

SEARCH AND SEIZURE ISSUES

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

CONCLUDING REMARKS

The Representation Committee's work represents its best effort to examine issues related to criminal defense and prosecution issues and their impact on racial and ethnic minorities in Utah. The Committee discussed issues related to minorities and indigent defense, the experiences of attorneys of color, and minority victim experiences. The impact of heavy caseloads and the differences involved

in resources available to different offices throughout the state were also addressed for their impact on racial and ethnic minorities. Finally the Committee acknowledges that the perceptions of clients and attorneys about the impact of race and ethnicity on representation issues are a significant component of what must be addressed by the Task Force. Negative perceptions about fairness has an impact on the credibility of the legal system and must be actively addressed. The Committee makes recommendations to attempt to improve both perceived and actual fairness to minorities in the criminal justice system.

INTRODUCTION

The Representation Committee of the Utah Task Force on Racial and Ethnic Fairness in the Legal System was created in order to examine the criminal justice system after arrest, from charging through disposition, with a primary focus on prosecution and defense.

The Committee was originally co-chaired by three Task Force members: F. John Hill, Executive Director, Salt Lake Legal Defenders Association, Judge G.A. Petry, Uintah County Justice Court, and E. Neal Gunnarson, former Salt Lake District Attorney (later replaced by Jerry G. Campbell, Chief Deputy District Attorney, Salt Lake District Attorney's Office). The three co-chairs, with assistance from the Operations Committee, assembled a group of individuals from diverse backgrounds having experience with representation issues in the criminal justice system.

The Committee began its work by creating a prioritized list of topics for investigation. Some of the selected issues were forwarded to the Task Force's research consultant for examination. Other issues were examined by the Committee itself. The Committee conducted two surveys with the assistance of staff. The first survey examined the workforce composition of prosecution and legal defense offices throughout Utah. The second survey asked a sample of Utah attorneys questions regarding the representation of racial and ethnic minorities.

The Committee awaits the results of the research consultant's work and reserves the right to add and modify any recommendations contained herein after review of those results. That research includes data analysis, as well as focus groups with prosecutors and defense attorneys.

This report begins with background information on the full Task Force, to whom this report is submitted. Discussion of the data gathered by the Committee follows, along with its findings and recommendations. Finally, concluding remarks are offered by the Committee.

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.*

Committee Structure

The Task Force chose a committee 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.

Committees generally were co-chaired by two Task Force members and included 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 committee as the committees complete their work.

Research Agenda

The Task Force developed a research agenda for the adult and juvenile systems. The research was conducted separately for each system. Juvenile research included focus groups and exit interviews. A quantitative study duplicating earlier research on minorities in the juvenile justice system provided 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, Utah Legislature, member agencies on the Task Force, other Task Force partners, and the general public. This Representation Committee report will be received by the full Task Force and be used in the preparation of its final report.

FINDINGS & RECOMMENDATIONS

THE INDIGENT MINORITY POPULATION

The Committee began with the question of whether the indigent population was reflective of Utah's general population by race and ethnicity. The experience of Committee members tended to indicate that there was a higher percentage of minorities in the indigent population than in the overall population. The Utah Code Ann. §77-32-202(3) indicates that "indigency" means that a person "has an income level at or below 150% of the United States poverty level." The Committee looked to U.S. Census data for poverty levels by race and ethnicity.¹

Finding

- **Racial and ethnic minorities are significantly over-represented in the indigent population. While they made up 8.8 percent of the Utah population in 1989, they made up the following percentages of the population living in poverty:**

African American	30.5
Asian/Pacific Islander	20.9
Hispanic (any race)	22.8
Native American	43.6

¹ The Committee used the numbers of people living in poverty as an indicator of indigence. Although the data were somewhat incomplete and, in some instances, dated, the information gives a sense of the indigent population by race/ethnicity.

According to 1989 U.S. Census data, (the most recent U.S. Census data available to the Committee that breaks down race, ethnicity, and poverty status by state), minorities composed 8.8 percent of the Utah population. At the same time period, 8.2 percent of Utahns were living in poverty as defined by the U.S. Census. Of those living in poverty, 11.2% were White, 30.5 percent were African American, 43.6 percent were Native American, 20.9 percent were Asian or Pacific Islanders, and 22.8 percent were Hispanic (any race). Percentages do not add up to 100 because Hispanics may be any race, and these figures do not include the 36,196 persons living in poverty who classified themselves as "Other race." It is interesting to note that the percentages of minority Utahns living in poverty correspond roughly to percentages on a national level for the same time period.

According to 1996 Census estimates, 9.7 percent of Utahns were living in poverty. While the breakdown of this population by race/ethnicity was unavailable to the Committee, the minority population has grown at a faster rate than the White, non-Hispanic population. Since racial and ethnic minorities made up approximately 10.7 percent of the Utah population in 1996, minorities are very likely over-represented in the indigent population as well.

Recommendations

- The development of future policy and practice aimed at the indigent population should occur in an environment that considers the implications for and effect upon racial and ethnic minorities who are over-represented in the indigent population.
- Task Force recommendations aimed at racial and ethnic fairness in the legal system should consider the over-representation of racial and ethnic minorities in the indigent population.

WORKFORCE COMPOSITION

The Committee evaluated two primary questions relating to the issue of diversity in workforce composition of county prosecutors' offices and legal defenders' offices in Utah:

- Is there appropriate diversity in the composition of the workforce in prosecutors' offices?
- Is there appropriate diversity in the composition of the workforce in legal defenders' offices?

In response to these concerns, a survey was sent to all county prosecutor offices and legal defender offices in Utah. From these surveys, the Committee formed a series of findings and recommendations.

Findings

- **Racial and ethnic minorities are under-represented in the offices of county prosecutors throughout Utah, though the level of under-representation varies considerably by county.**

Prosecutor Offices (All Counties)				
County	Minority	Non-Minority	Total Workforce	Percent % Minority
Officials/ Administrators	0	24	24	0.0
Professionals	11	137	148	7.4
Technicians	2	8	10	20.0
Paraprofessionals	1	19	20	5.0
Clerical	14	95	109	12.8
Service/Maintenance	0	0	0	0.0
TOTAL	28	283	311	9.0

As indicated in the table below, the prosecution data (by county) shows that minorities represent 9 percent of the county prosecution workforce throughout the state. Of the minorities employed, none are employed as officials/administrators, 7.4 percent are employed as “professionals” (i.e., attorneys), 20 percent are employed as technicians, 5 percent are employed as paraprofessionals, 12.8 percent are employed as clerical staff and none are employed as service/maintenance workers. By contrast, minorities represent 10.7 percent of Utah’s general population.² Minorities are thus under-represented in the overall workforce of county prosecution offices as compared to the minority composition of the Utah’s general population. Minorities are particularly under-represented in employment as officials/administrators and paraprofessionals. Conversely, minorities are over-represented in employment as technicians and clerical staff.

Prosecutor Offices (Weber, Davis, Salt Lake, Utah Counties)				
County	Minority	Non-Minority	Total Workforce	Percent % Minority
Officials/ Administrators	0	12	12	0.0
Professionals	10	91	101	9.9
Technicians	2	7	9	22.2
Paraprofessionals	1	9	10	10.0
Clerical	14	65	79	17.7
Service/Maintenance	0	0	0	0.0
TOTAL	27	184	211	12.8

Minority representation in Wasatch Front county prosecution offices (presently at 12.8 percent) adequately parallels the minority composition of the Wasatch Front (estimated at 10.5 percent). Despite this equality however, minorities are still under-represented in the officials/administrators category and are over-represented in the technicians and clerical staff categories. In Salt Lake County

² Percentage Estimates of County Populations by Race/Ethnicity, U.S. Bureau of Census, July 1, 1996.

alone, 17.5 percent of the prosecutor office workforce is minority, a number greater than the 12.9 percent racial/ethnic diversity in the county population.³ While the highest level of racial/ethnic diversity can be found in Salt Lake County’s prosecution workforce, all of the minority staff in Salt Lake County’s prosecution offices are either professionals (i.e., attorneys), technicians, or clerical staff. The survey reported no officials or administrators of color.

Prosecutor Offices (Non-Wasatch Front, Less-Populated Counties)				
County	Minority	Non-Minority	Total Workforce	Percent % Minority
Officials/ Administrators	0	12	12	0.0
Professionals	1	46	47	2.1
Technicians	0	1	1	0.0
Paraprofessionals	0	10	10	0.0
Clerical	0	30	30	0.0
Service/Maintenance	0	0	0	0.0
TOTAL	1	99	100	1.0

Minorities outside of the Wasatch Front compose only 1 percent of the workforce of all county prosecution offices in the state, compared to 9.1 percent of the Utah population in the same area.⁴ In fact, it is in rural Utah where the greatest disparities in workforce composition were reported. For example, in San Juan County, approximately 58.3 percent of the population is minority. Of those 53.7 percent are of American Indian descent. Yet in the prosecutor office of San Juan County, the workforce includes no minorities. In Tooele County, the minority population represents 17.1 percent of the county population but again the prosecutor workforce is entirely white (seven staff). In fact, the

³ Percentage Estimates of County Populations by Race/Ethnicity, U.S. Bureau of Census, July 1, 1996.

⁴ Box Elder, Daggett, Grand, Rich, and Washington Counties did not respond to the survey and are not included in population estimates.

only county outside of the Wasatch Front that reported having any minority staff is Emery County (equaling 6.3 percent), where the minority population is estimated at 4 percent.

- **The Salt Lake City prosecutor’s office adequately represents the minority population of Salt Lake County.**

Salt Lake City Prosecutor’s Office				
County	Minority	Non-Minority	Total Workforce	Percent % Minority
Officials/ Administrators	0	2	2	0.0
Professionals	2	8	10	20.0
Technicians	0	0	0	0.0
Paraprofessionals	0	1	1	0.0
Clerical	1	6	7	14.3
Service/Maintenance	0	0	0	0.0
TOTAL	3	17	20	15.0

As these statistics indicate, the Salt Lake City prosecutor’s office reported 15 percent minority employees, with no minority officials/administrators, 20 percent minority professionals, no paraprofessionals and 14.2 percent minority clerical staff. When compared to the overall composition of Salt Lake County, which reflects a general minority population of 12.9 percent, minorities appear to be well-represented in general. However, the lack of minority employees serving as officials/administrators and paraprofessionals clearly indicates some areas of under-representation.

- **Racial and ethnic minorities are adequately represented, if not over-represented, in some legal defense offices and severely under-represented in others.**

Utah Legal Defenders (All Counties)				
County	Minority	Non-Minority	Total Workforce	Percent % Minority
Officials/ Administrators	0	8	8	0.0
Professionals	14	95	109	12.8
Technicians	0	0	0	0.0
Paraprofessionals	2	9	11	18.1
Clerical	5	56	61	8.1
Service/Maintenance	0	0	0	0.0
TOTAL	21	168	189	11.1

These statistics indicate that 11.1 percent of the legal defender workforce in Utah is composed of minority employees. Of these, none serve as officials/administrators, 12.8 percent are employed as professionals, 18.1 percent are employed as paraprofessionals, none are employed as technicians and 8.1 percent are employed as clerical staff. Therefore, statewide legal defense workforces generally represent a percentage of minority employment comparable to the general minority population in Utah (10.7 percent), though minorities remain under-represented as officials/administrators and clerical staff.

Utah Legal Defenders (Weber, Davis, Salt Lake, Utah Counties)				
County	Minority	Non-Minority	Total Workforce	Percent % Minority
Officials/ Administrators	0	4	4	0
Professionals	11	69	80	13.7
Technicians	0	0	0	0
Paraprofessionals	0	3	3	0
Clerical	4	30	34	11.7
Skills, Trades, Crafts	0	0	0	0
Service/Maintenance	0	0	0	0
TOTAL	15	106	121	12.3

Along the Wasatch Front, minority representation in the legal defense workforce parallels the diversity of the Wasatch Front population. Minorities represent 13.7 percent of the professional legal defense workforce, 11.7 percent of the clerical legal defense workforce, and none of the service/maintenance workforce. By comparison, the Wasatch Front’s ethnic diversity is estimated by the U.S. Census at 10.5 percent.

In Salt Lake County alone, minorities compose 12.9 percent of the population and 16.9 percent of the legal defense workforce. Of these minority members of the workforce, all are either professionals (e.g., attorneys) or clerical staff. None are officials or administrators. While a disparity continues to exist in top leadership positions, Salt Lake County’s legal defense workforce significantly exceeds the population in the county overall.

Utah Legal Defenders (All Other, Less-Populated Counties)				
County	Minority	Non-Minority	Total Workforce	Percent % Minority
Officials/ Administrators	0	4	4	0.0
Professionals	0	26	26	0.0
Technicians	0	0	0	0.0
Paraprofessionals	2	5	7	28.6
Clerical	2	26	28	7.1
Service/Maintenance	0	0	0	0.0
TOTAL	4	61	65	6.2

However, outside of the Wasatch Front, minority representation declines considerably. Of the total workforce composition in rural Utah counties, no minorities are employed as officials/administrators, professionals or technicians.⁵ The only areas in which minorities are employed

⁵ Beaver, Garfield, and Summit Counties did not respond and are not included in population estimates.

at all are the areas of paraprofessional and clerical staff—28.6 percent of paraprofessional employees (2 staff) in rural Utah legal defense offices are minorities, and 7.1 percent of clerical staff (2 staff) are minorities. By comparison, the overall population of the same counties in Utah is estimated at 9.2 percent.

The same notable disparities exist in rural legal defense workforce composition that exists in prosecution workforces. For example, though Uintah County is 15.2 percent minority, its legal defense workforce is entirely white (four staff). Grand, Morgan, and San Juan Counties are the only counties outside the Wasatch Front who reported having minority members of their legal defense workforces.

- **Racial and ethnic minorities are under-represented in the officials/administrator category for county prosecutor and legal defense offices throughout the state.**
- **Racial and ethnic minorities are generally under-represented in the legal community.**

Minority/Non-Minority Lawyers Statistics from Utah State Bar, August 1998					
Race/ Ethnicity	Members Active	New Active	Members Inactive	Total Members	Percent of Total
Minority	110	42	46	198	5.7
Non-Minority	2187	319	776	3282	94.3
Total	2297	323	822	3480	100.0

As these statistics indicate, only 5.7 percent of the active, inactive and new members of the Utah State Bar are of minority descent. When compared with the general Utah minority population of 10.7 percent, it is clear that minorities are severely under-represented statewide as professionals. The statistics also indicate that, of the 198 total licensed minority attorneys in Utah, 46 or 23.3 percent are not currently practicing law, thereby effectively decreasing the total numbers of available minority attorneys in Utah. By comparison, only 9.7 percent of non-minority Bar members are not currently practicing law. Also notable is the fact that 13 percent of new active members of the Utah State Bar are minorities, indicating a trend toward a higher percentage of practicing minority attorneys.

Recommendations

In reviewing the above-delineated findings, the Committee hereby makes the following recommendations:

- The Utah State Bar, the Utah Minority Bar Association, the University of Utah College of Law and the J. Reuben Clark School of Law (Brigham Young University) should conduct outreach efforts in order to increase the number of minorities practicing law in Utah.
- All county prosecution and defense offices, as well as all city prosecution offices in Utah should draft and effectuate a written policy commitment to having a workforce that accurately represents the diversity of the population which it serves.
- All county prosecution and defense offices, as well as all city prosecution offices in Utah, should advertise workforce openings through the Utah Minority Bar Association, ethnic media sources, and other outreach avenues aimed toward minority communities.
- All county commissions awarding legal defender contracts in Utah should consider the issue of workforce diversity as an important factor in its review and assessment of the qualifications of contract applications.
- Counties where the racial composition of the population exceeds that of Utah generally should pay specific attention to expanding recruiting efforts in order to increase the racial/ethnic representativeness of their legal workforces. The Committee recommends that these counties consider active recruiting efforts in other areas (e.g., recruiting in Salt Lake County for Tooele County positions, recruiting in New Mexico, Arizona, and Colorado for San Juan County positions).
- The Utah State Bar should track and report the number of minority attorneys in its membership on an annual basis.
- The Utah State Bar and the Utah Minority Bar Association leadership should maintain open lines of communication and interact annually (at a minimum) with minority organizations at both the University of Utah College of Law and the J. Reuben Clark School of Law (Brigham Young University).
- The Utah State Bar Commission members should meet regularly with members of the Utah Minority Bar Association and develop collaborative goals and projects each year to advance the legal profession within minority communities in Utah.
- The Utah Minority Bar Association should continue its efforts to provide scholarships for minority law students and should work toward developing creative methods for expanding its outreach to recruit and encourage minorities to consider pursuing the practice of law.
- The Utah State Bar and Utah Minority Bar Association should collaborate to conduct research to determine why 23 percent of minority bar members in Utah are currently inactive. The

reasons for why minority members of the bar tend to discontinue the practice of law may help to facilitate adequate representation of minorities in legal representation workforces by providing more information about retention.

- The Utah State Bar and Utah Minority Bar Association should recommend and implement changes to address the results found in the above research.

CASE LOAD AND OFFICE RESOURCES

The Committee evaluated four primary issues relating to the available staff and resources in city and county prosecution offices, as well as those available to legal defense offices. The primary focus centered around both the general availability/shortage of these resources and the impact (if any) the shortages had on minority and/or indigent minority defendants. The selected inquiries were:

Prosecution Issues

1. Does the size of a prosecutor's case load adversely affect the competent prosecution of minority and/or indigent minority defendants?
2. Do prosecutors have adequate resources, salaries, benefits and public resources (i.e., investigators, interpreters, etc.) to provide competent prosecution? If they do not, does this issue have a disparate impact on minorities and/or indigent minorities?

Defense Issues

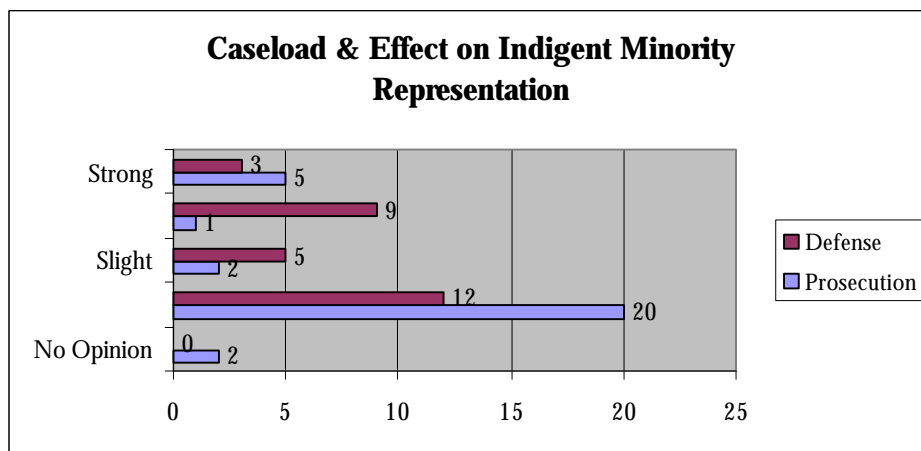
1. Does the size of a legal defender's case load adversely affect the competent representation of minority and/or indigent minority defendants?
2. Do legal defenders have adequate resources, salaries, benefits, contract compensation and public resources (i.e., investigators, interpreters, etc.) to provide competent representation? If they do not, does this issue have a disparate impact on minorities and/or indigent minorities?

To evaluate these issues, a survey was distributed to every county attorney in Utah, as well as to randomly-selected assistant county attorneys, city prosecutors, public defenders and private defense attorneys throughout the state.⁶ Of the approximately 120 surveys distributed statewide, 62 were returned and evaluated by the Committee. The survey results allow for some aggregate findings.

⁶ See Appendix B-1 for a sample of the survey.

However, Committee members recognize that each county in Utah currently has vastly different situations that have a major impact upon caseloads and the amount and kind of available resources.

Case Load Findings



- **The majority of prosecutors and defense attorneys said they believe that indigent minorities are not disparately affected by attorney caseloads (see bar graph below). However, a significantly higher number of both prosecutors and defense attorneys stated that they believed the size of their caseloads adversely impacted all defendants, regardless of ethnicity and/or indigence.**

Several prosecuting attorneys provided additional comments regarding the problems stemming from high caseloads. One indicated that, “high caseloads preclude giving any case individualized attention.”

Another observed,

from the prosecution’s view, the size of the caseload only slightly affects the representation, but from the defense counsel’s view, it would moderately affect the representation. Our city’s public defender is also in private practice and his caseload is definitely a factor in the public defense representation.

In addition, many prosecutors maintained that their caseloads affected competent prosecution of all defendants, minority or otherwise. As one stated, “although my case load is large, it does not have a specific impact on minorities. Any effect it has on defendants is across the board & affects all defendants.” Another respondent observed that,

the size of my caseload and that of the public defender moderately affects the competent representation/prosecution of all defendants, minority or otherwise. The demand of a large caseload does not discriminate.

Of the private defense attorneys who responded, the most significant comment was that, while their own representation of minorities was not affected by caseload, they believed minorities were affected by the high caseloads of public defenders. “Public defenders can’t begin to competently represent their clients even though most are highly competent attorneys and good persons—this is because of the serious under-funding public defenders suffer.” Many others observed that there is an inherently higher time commitment associated with defending minority clients.

Minority client cases may need more attention (time consumption) from communication-related issues to cases where, *de facto*, the government, or insurance companies (or other litigants) assume any given prejudicial set of facts against the client because of her minority status.

Overall, however, the majority of private defense attorneys responding stated that their “caseload affects the representation of all clients, not just indigent minorities.” One private defense attorney commented that minority clients are not necessarily the first to be disadvantaged by the burdens of a high caseload. “Everyone gets the same treatment. Frequently, my minority clients have more money and are better able to defend.”

Of the public defenders responding, the general consensus seemed to be that they are tremendously overburdened by cases. One respondent cited current caseload statistics, stating that the “current caseload for felonies is 218 per year, per attorney. The recommended maximum load is 150 felony cases per year, per attorney.”

A more general concern was the communication barrier many public defenders face with their minority clients.

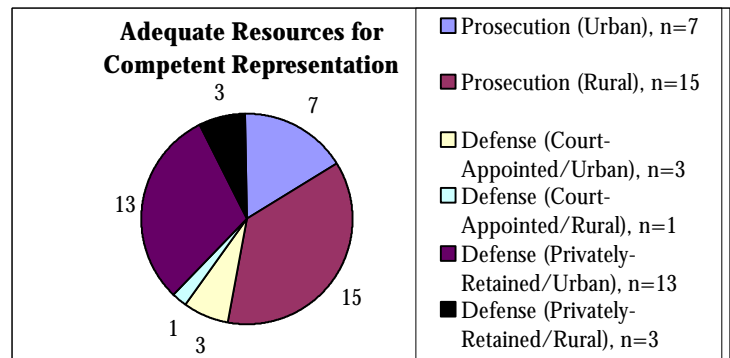
The caseload isn’t an overwhelming bar to competent representation, although the pace some days makes it difficult to ensure our clients have a full understanding of what is going on and why. I worry that this lack of understanding sometimes is a bar to compliance with court orders and successful completion of court programs.

Office Resources Findings

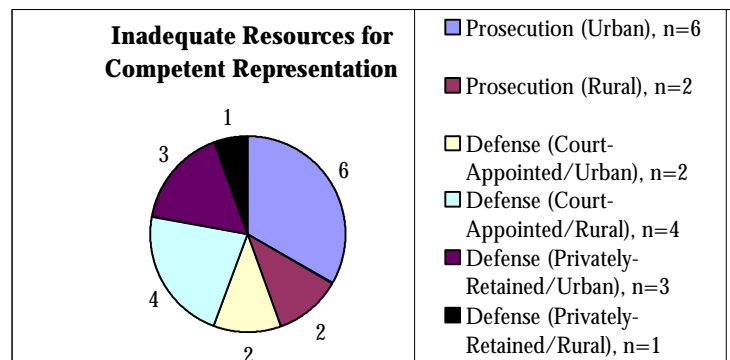
The Committee also examined whether the resources available to prosecution and defense attorneys made a difference in the representation of minority clients.

- **A majority of the respondents (44 out of 62) to the Survey of Attorneys Representing or Prosecuting Minorities and Indigent Minority Defendants felt their offices had adequate resources to competently represent or defend indigent minority defendants (see chart below).**

Of particular interest is the fact that rural prosecutors and privately-retained defense attorneys were the largest groups who believed their offices had access to sufficient resources.



The remaining eighteen (18) attorneys said they believed their offices were inadequately staffed, funded or equipped to effectively represent their indigent minority clients (see chart below). The largest group of respondents who believed they did not have access to adequate resources were urban prosecutors and rural public defenders. Although this is a minority of respondents, it is interesting to note that the counties with the largest percentage of minorities in its population are predominantly rural counties (e.g., San Juan, Uintah, Tooele) and most likely to report inadequate resources. If rural public defenders are serving minorities at a similar level to their population in the county, then the lack of resources may disparately affect minorities in those areas.



Of those prosecuting attorneys who *did not* believe they had access to adequate resources to facilitate competent representation or prosecution, respondent commentary included several concerns about the lack of available resources. One prosecutor noted that “any statement given by non-English-speaking defendants is subject to challenge—the lack of translators inevitably delays disposing of a case.” Another prosecutor pointed to a general lack of resources, with no disparate impact on minority defendants. “As with most government agencies, we could use more investigators and resources, but I don’t think it has much effect on minorities. It affects all of our cases.”

One private defense attorney had an interesting observation regarding pro-bono representation.

I do a few well-paid, quality criminal cases, and a few wholly pro-bono. I work free at times, but never cheap. If I can’t afford to do the best job, I turn down the case. Most of my free cases are minorities (especially Native Americans and Hispanics) who slip through the cracks of the public defense system and end up with no representation or non-responsive public defenders.

The Committee noted a great disparity in the availability of resources throughout the state. In Salt Lake County, public defenders have substantial resources provided within their budget. Some of those resources include:

- Funding to hire D.N.A. and other experts.
- Staff investigators, interpreters, social workers, drug and alcohol counselors and a polygraph operator.
- Spanish-speaking attorneys assigned to Spanish-speaking clients.
- In-house immigration training and retained counsel to respond upon request.
- Reimbursement for employees who complete Spanish language classes.

Other counties report varying availability of these resources. Public defender respondents pointed overwhelmingly to the constraints of a rural location as a primary concern in the provision of adequate resources. “Prosecutors and some judges in the rural counties are unwilling, due to budgetary constraints, to award investigators, evaluators to assist the defense in most cases.” Another public defender noted that “public defender resources are poor in rural areas—efforts are made; however, inconvenience is great.” One urban public defense attorney observed that their office faces many of the same concerns as rural public defenders.

Interpreters aren't always notified or are otherwise unavailable. Compensation is low, so turnover can cause instability in representation, and we can't spend much on investigators or experts, nor do we often have the time necessary for an investigator to work, or to contact experts to solicit opinions.

- **The impact of a lack of resources on rural public defenders points to a disparate impact upon the adequate representation of racial and ethnic minorities because the percentage of minorities in several rural counties is higher than that of the state as a whole.⁷**

Case Load and Office Size Recommendations

Committee members worked toward recommendations that could help to bring a uniformity to legal representation that would minimize disparate impact on minorities and still allow for differences in needs between counties. The Committee also received a referral from the Task Force's Pre-Adjudication Committee to examine the public defender award process for conflict of interest issues and its impact on racial and ethnic minorities. It reviewed the recommendations of the Pre-Adjudication Committee and noted several problematic aspects. In particular, Representation Committee members cited a conflict of interest in selecting the Judicial Council as the oversight body for the award process. Although the establishment of a statewide public defenders office would perhaps be the most comprehensive solution for many of the issues presented, the Committee recognizes many significant funding, political, geographic, and practical difficulties associated with the establishment of such an office. The Committee reviewed the past 30-year history of efforts to establish various forms of regional and statewide offices. The example of a significant effort in that regard is the report from the Task Force on Appellate Representation of Indigent Defendants attached in Appendix C-1. The Committee therefore recommends the following:

- The State of Utah should establish an Indigent Defense Review Council (IDRC) to be active for three years. Membership in the IDRC would be designated by the Legislature and would include one committee member from each judicial district in Utah, minority representation reflective of Utah's overall population, and others. IDRC would be charged with studying current delivery efforts in each county with specific attention to standards of fairness as applied

⁷ The percentage of minority population in Carbon San Juan, Tooele, Uintah counties is higher than that of the state as a whole, according to 1996 U.S. Census estimates.

to the representation of racial and ethnic minorities. IDRC would be state-funded, and its services divided as follows:

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

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

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

IDRC's mission will be five-fold:

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

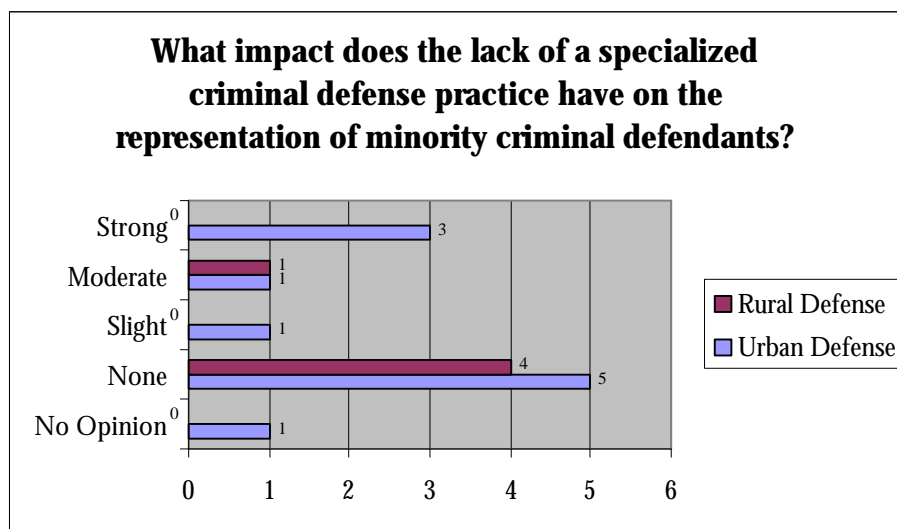
IDRC specifically should do the following:

1. Conduct more detailed research into the specific situations of individual counties regarding caseloads and office resources. The Committee was limited in its ability to conduct this research due to time and concerns for county respondent anonymity.
 2. Conduct more detailed research into the relationship between socio-economic status and race upon treatment by the criminal justice system. While the Committee discussed this issue and has some results, its main discussions centered around race and ethnicity.
 3. Seriously consider the impact of public defender resources upon racial and ethnic minority populations, particularly when the percentage of the county's minority population exceeds that of the state as a whole.
- The Administrative Office of the Courts should establish positions of Judicial District Ombudsman (JDO). At least one JDO should be assigned to each judicial district and should serve as a facilitator to assist defendants, victims and their families negotiate the legal system effectively. One possible resource for the JDO would be the State Offices of Ethnic Affairs.
 - State and local governments should provide additional resources for prosecution and defense offices to offer cultural diversity training, and other issues related to race/ethnicity, such as immigration law training. Also, additional resources are needed to bring all prosecutor and legal defense offices up to par generally with the Salt Lake District Attorney's Office and Salt Lake Legal Defenders Association.

- Rural county governments should consider the disparate impact of insufficient resources upon racial and ethnic minorities due to the disproportionate number of minorities in Utah's indigent population.

SPECIALIZED CRIMINAL DEFENSE PRACTICE

The Committee reviewed the potential impact of the lack of a specialized criminal defense practice on minority defendants.



Findings

- **Of those defense attorneys whose practices were not entirely devoted to criminal defense, the majority claimed this factor had no impact on their representation of minority clients. Defense attorneys who said they believed a diversified practice was likely to negatively impact their minority clients were primarily practicing in urban areas along the Wasatch Front (see bar graph above).**

Of the comments received from private and public defense attorneys, the general consensus was that minority clients would be better served by defense attorneys specializing in criminal defense cases.

I believe criminal law is just as technical (many times counter-intuitive) as other areas. 'Specialization' should be encouraged. Particularly troublesome is counsel's lack of knowledge as to immigration-related consequences, cultural pre-dispositions, and deep-seated prejudices about minority defendants in domestic violence, narcotics violations, etc.

Another noted that,

the majority of minority clients would be indigent if I could afford to represent them, since the poor commit more of the crimes society has deemed important to suppress (i.e., crimes against

people, property and drugs) and the majority of the minority are poor. A practice that specialized in criminal defense is always better situated to defend.

Some defense attorneys said they believed a diversified practice did not have a disparately negative impact on minority clients.

It depends on the counsel that is appointed. Some appointments go to counsel who also have an active defense practice. I don't believe it makes any difference to minority or indigent defendants. If counsel is competent and willing to put in the time and effort, the defendant (whether a minority or indigent) can get appropriate representation.

Recommendations

The Committee's primary emphasis on this issue centered around criminal defense attorney knowledge of immigration issues and the potential ramifications of cultural issues on those involved in criminal legal matters. The Committee proposes to address this issue by the following recommendations:

- The Utah State Bar should provide criminal defense attorneys with training in immigration law as part of its Continuing Legal Education curriculum.
- The Utah State Bar should provide criminal defense attorneys with cultural diversity training as part of its Continuing Legal Education curriculum.
- The Utah Association of Criminal Defense Attorneys should offer specialized training in immigration law.
- Public defender contract should be awarded to attorneys who have experience in criminal law.

PUBLIC HEARING PERCEPTIONS

The Task Force public hearings raised several perceptions regarding legal defense and prosecution of minority clients. Committee members attended some of the public hearings and received all of the public hearing summaries from the Client Committee to the Task Force. It should be noted that many of these perceptions are applicable in a broad sense to all public defenders and others in the criminal justice system and not only those whose clients are people of color. No attempt was made by the Committee to determine the scope or magnitude of the concerns presented nor to

assign an order of priority to the perceptions expressed at the hearings. The Committee considered all of them as important and worthy of consideration.

Findings

The Committee noted the following overall perceptions:

- **The large caseloads of public defenders prevent them from giving attention to individual clients.**

Overall, the actual experiences of Committee members support this public perception. Committee members also note that there are significant differences between caseloads between counties.

- **Public defenders are part of "the system" and are not advocates for their clients.**

Committee members acknowledge that this perception exists among some minority defendants and others. However, they note that public defenders are as much a part of the criminal justice system as interpreters, victim advocates, judges, prosecutors, etc. in that each has a vital role in assuring that justice is administered fairly and without bias or prejudice to all defendants. The fact that a public defender is a necessary component in the criminal justice process however does not preclude him/her from being an effective advocate for his/her client(s).

- **Defense attorneys are more interested in being friends with prosecutors and judges than in representing their clients.**

Committee members acknowledge that some people hold this perception. However their own experiences also yield examples of clients that are pleased by the perceived advantage to be had by the establishment of professional relationships among defenders, prosecutors, and judges. The Committee asserts that criminal defense attorneys need to establish an effective, working relationship with prosecutors and need to be respected by judges in order to advance the interests of their clients.

- **Public defenders do not want to try cases and fight for their clients. They would rather have them plead guilty.**

The right of a client to exercise his/her constitutional right should be vigorously protected and clearly explained to every client. The Rules of Professional Responsibility require attorneys to observe their client's rights to take their case to trial. It is also the duty of an attorney to clearly communicate all plea offers of their clients and fully discuss and advise them of the same. The client, being fully informed, then makes the final decision. There may be some attorneys who do not give each client's case the attention it deserves due to high caseloads or lack of effort. Other attorneys zealously represent their client's interests.

- **Public defenders do not have sufficient minorities in the workplace composition of their offices.**

Although the Committee's survey indicated different levels of minority representation in the workforce compositions of different legal defense offices (see Workforce Composition Survey section), the Committee doubts if there are any instances in Utah where the workforce composition of public defender offices parallel the minority composition of the indigent population. When compared to the population actually served, Committee members acknowledge that public defenders offices do not have sufficient minorities on staff.

- **Defense attorneys are insensitive to the problems of their clients. They want to narrow their attention to the legal issues only.**

Attorneys must be aware of client concerns and personal issues in their representation. Private attorneys are often in the position to address the comprehensive needs of clients. Public defenders are funded to represent the client's criminal representation needs. Sensitivity training would be helpful to increase awareness. Often referrals can be made to appropriate agencies and government departments when necessary to address specific client needs.

- **Defense attorneys are not sensitive to or knowledgeable about cultural issues relating to the clients they represent.**

One prosecutor noted having never received any type of cultural awareness training, despite having attended several sessions of gender awareness or sexual harassment training. Committee members agree that criminal defense attorneys and prosecutors alike should be sensitive to and aware of the cultural issues of those they represent and implement training to address these issues.

- **Clients have to pay recoupment fees even when they are not receiving adequate representation.**

Recoupment is a legislative mandate. However, in Salt Lake County, for example, it is only a fraction of the real costs involved. Few rural jurisdictions assess any restitution for public defender services. Private defense counsel who don't satisfy clients require higher payments than are required through recoupment fees. There is often a difference between adequate representation and representation that is satisfactory to the client. Individual attorneys are the only ones that can instill a sense of satisfaction in their clients.

- **Discrimination occurs due to communication and language problems.**

Committee members acknowledge that this perception is often true and is troubling.

- **Racial discrimination can occur in smaller counties because of residents' minimal contact with minorities.**

Committee members acknowledge that this perception is often true and is troubling.

- **Perceptions exist that minorities, with the same criminal histories as whites, are committed to prison while whites are granted probation.**

Insuring that pre-sentence reports are race and ethnic neutral and requiring that any departure be documented and justified will go a long way to address this problem. Some attorneys share the common perception that minorities receive a disproportionate number of upward departures from the sentencing guidelines. The Committee is concerned and recommends the issue be addressed.

- **Cultural differences, such as lack of telephones, result in Native Americans being treated differently and experiencing discrimination.**

Some Committee members were themselves unaware of these differences before the public hearings. This fact points to the lack of cultural knowledge even among those who are interested in addressing the issue of racial and ethnic fairness.

- **Assistant Attorneys General resist having Pacific Islander caseworkers on Pacific Islander guardian ad litem matters.**

Committee members acknowledge that this type of incident can occur, is troubling, and points to the need for training of attorneys on the benefits of cultural awareness.

- **Lack of interpreters and the quality of interpreting result in injustice for some limited-English proficient minorities.**

There is a definite shortage of qualified and certified interpreters in languages other than Spanish. However, many justice courts have not been provided funding from which to pay interpreters and, as a result, interpreters are not provided. In addition, some judges and attorneys may not be convinced that an interpreter is needed and one is not appointed or requested.

- **Legal terminology and other technical legal concepts operate to limit understanding of minorities in the criminal justice system.**

Committee members acknowledge that this perception is often true and is troubling.

- **People need money to hire good attorneys to receive justice.**

Justice is dispensed when all persons involved in the criminal justice process perform their duties without regard to race or ethnicity. The private bar has many excellent criminal attorneys. Public defender offices also have many attorneys who provide quality representation. Although caseloads are often excessive and resources limited in some offices, public defender offices are on the cutting edge of many issues and are well aware of current practices of prosecuting attorneys and judges. Judges bear the ultimate responsibility of ensuring equal justice for all. Judges should never allow injustice to occur because of monetary, racial/ethnic, or inadequate counsel issues.

- **If you don't have money, you are not treated with respect in the criminal justice system.**

Committee members acknowledge that this perception may be a reality in some courts. However, they also agree that this generalization does not hold true in the majority of courts in Utah.

- **Minorities feel they are not respected and their needs and requests are not taken seriously.**

The Committee acknowledges that this perception may be true on a case by case basis. Individual judges and individual attorneys will accord different levels of respect to people of color and others. Judges should be conscious of giving those who appear before them adequate time to make their requests and comments. Often, justice accelerated is justice denied. Committee members expressed the sentiment that the most effective way to deal with some types of racial/ethnic bias is for attorneys and others to speak up and not remain silent about racial comments and attitudes that are unacceptable.

Recommendations

In order to address the public perceptions of racial and ethnic bias in representation, the Committee recommends the following:

- Public defender caseloads should be lightened so as to allow more attention to individual cases.
- Public defenders and all criminal defense attorneys need to actively demonstrate and express their willingness to work aggressively for their minority clients.
- Public defenders and all criminal defense attorneys need to evoke confidence from their clients so that their clients understand that the clients' interests come first and that a cordial relationship with the prosecution helps to advance the clients' cause.
- Public defenders and prosecutors should be given the opportunity to make lateral movement with equivalent pay between the two systems in order to encourage career broadening. Comparable pay for comparable experience between prosecutors and public defenders would encourage this type of work experience.
- Education of the public, via the above proposed JDO and IDRC, as well as through other means, should provide information to the minority community about the legal representation process.
- Attorneys should ensure that their clients understand the legal process in which they are involved.

- Public defender and prosecution offices should recruit and hire more minority attorneys and staff so as to be representative at least of the diversity in the geographical area they represent. At best, the workforce should represent the diversity of the clients served (e.g., the indigent population).
- Public defenders and all criminal defense attorneys should provide their clients with referrals to other agencies that can assist in resolving problems that are not legal in nature and thus outside the expertise of the attorneys.
- Public defenders and prosecutors should be sensitive to cultural issues, and they should work to gain additional knowledge about the cultural backgrounds of those who appear before the court.
- The Utah State Bar should offer mandatory cultural sensitivity training for attorneys in the criminal justice system.
- Attorneys should advise their clients of their right to file a complaint with the Utah State Bar.
- The Judicial Council should require that all judges (at all levels of court) and relevant court personnel receive training on the appropriate use of interpreters in the courtroom.
- The Judicial Council should require that all judges (at all levels of court) and court personnel receive training on cultural diversity.
- Pre-sentence investigators should adhere to sentencing guidelines in making their recommendations or have an affirmative duty to justify departures.
- The Department of Corrections should require Adult Probation and Parole (AP&P) staff and contract pre-sentence investigators to attend training on cultural diversity and the impact of racial/ethnic bias on the pre-sentence investigation process.
- AP&P should develop policies that outline specific sanctions and reprimands for those who use race/ethnicity inappropriately in determining sentencing recommendations.
- Court personnel, judges, and attorneys should be encouraged to limit the use of confusing legal terms.
- Every segment of the criminal justice system should have appropriate cultural diversity training to help ensure against racial and ethnic bias.
- Individual judges (at all levels of court) need to seriously examine the sentences they impose to determine whether or not they have, perhaps unconsciously, allowed racism to cloud their judgments.

ATTORNEY PERCEPTIONS

In evaluating the perceptions of prosecutors and defense attorneys, the Committee focused their research on four primary inquiries:

- Do minority/non-minority defense attorneys, prosecutors and privately-retained defense attorneys view racial and ethnic fairness in the criminal justice system differently?
- Does the race or ethnicity of a defendant play a role in charges filed, pleas offered or case dispositions?
- Does the timing of providing counsel to the indigent result in a disproportionate impact on minority defendants?
- Is private counsel reluctant to represent minority defendants?

All of these inquiries were relayed to the Task Force's research consultant who took responsibility for gathering data to answer the above questions. Research methods included focus groups of attorneys. Over 100 attorneys from throughout Utah were invited to participate in focus groups to discuss their perceptions of racial and ethnic fairness in the criminal justice system. Two focus groups were held for criminal defense attorneys. Prosecuting attorneys participated in one focus group. While the results have not yet been reported to the Committee, the members see this portion of its analysis as significant and hope to amend their report to include findings and recommendations in this area as soon as data become available.

SEARCH AND SEIZURE ISSUES

Finally, the Committee also posed the following research question:

- Are fourth amendment rights of minority defendants charged with drug offenses being violated more often than others who are arrested for the same violation?

The Committee forwarded this research question to the Task Force's research consultant and awaits data on this matter. Committee members hope to address this issue in its report amendment.

CONCLUSION

The Representation Committee's work represents its best effort to examine issues related to criminal defense and prosecution issues and their impact on racial and ethnic minorities in Utah. The Committee discussed issues related to minorities and indigent defense, the experiences of attorneys of color, and minority victim experiences. The impact of heavy caseloads and the differences involved in resources available to different offices throughout the state was also addressed for its impact on racial and ethnic minorities. The Committee recognized the differences from county to county on these issues and discussed the best ways to minimize disparate impact on minorities. It recommends a statewide approach to study, understand and implement appropriate change by the establishment of an Indigent Defense Review Council.

Finally the Committee acknowledges that the perceptions of clients and attorneys about the impact of race and ethnicity on representation issues are a significant component of what must be addressed by the Task Force. Negative perceptions about fairness have an impact on the credibility of the legal system and must be actively addressed. The Committee makes its recommendations in an attempt to improve both perceived and actual fairness to minorities in the criminal justice system.