

AMERICAN BAR ASSOCIATION
COALITION FOR JUSTICE

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Road maps

A “How-to” Series to Help the Community,
the Bench and the Bar Implement Change
in the Justice System



Racial and Ethnic
Bias in the Justice
System

Racial and Ethnic Bias in the Justice System

Prepared by the ABA
Coalition for Justice
Updated by the ABA Council on Racial and Ethnic Justice
and the ABA Diversity Center



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Except where indicated, the opinions expressed herein do not necessarily reflect those of the ABA.

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INTRODUCTION

Bias can be found throughout society, but nowhere does it carry more serious consequences than within our system of justice. Likewise, no aspect of society should be more concerned with assuring fairness and equal treatment of everyone served than its judges, courts, lawyers and others who deliver the system of justice to the people. Unfortunately, there are numerous ways that our system fails many of those it purports to serve. Every citizen of this nation, young and old, regardless of race, religion, gender, or ethnic background, must be concerned with this matter and strive to improve the manner in which all of our citizens are treated by the justice system. A nation which pledges itself to assure “liberty and justice for all” can do no less.

Inequities in treatment and numerous publicly reported instances of racial and ethnic bias have caused many citizens of color in this country to not trust that the system of justice will treat them fairly or in the same manner as their majority counterparts are treated. The continuation of this situation can only lead to an increasingly disgruntled and disenfranchised population.

Every state in the nation has recognized that numerous inequities exist regarding the manner in which its courts serve its minority constituents. Most have conducted surveys and studies and concluded that examples of bias can be discovered throughout all levels of the system and in every courthouse. Many states, as well as the federal court system, have undertaken steps to find the sources of such bias and develop ways to correct the problems which pervade the system.

The National Consortium on Racial and Ethnic Fairness in the Courts (formerly the National Consortium of Task Forces & Commissions on Racial and Ethnic Bias in the Courts) identified nine key justice system issues relating to bias. These were culled from recurring themes recognized by various states. They include judicial education, employee education, criminal justice, juvenile and family issues, jury issues, court functions and services, complaint mechanisms, court interpreters, and judicial system diversification. Additional information about the Consortium and its work can be found later in this publication.

Neither all the problems nor all the solutions can be explored fully in the pages of this Roadmap. However, several aspects of the issue will be highlighted, and examples of approaches in jurisdictions which have found ways to address these problems will be presented.

EDUCATION

Perhaps the most important factor which permeates every aspect of this issue is education. Most United States citizens in the 21st century do not approve of purposeful discrimination against their fellow citizens. However, ignorance, habit, and various practices that have been institutionalized result in continued injustices and inequities against individuals based upon their race or ethnic background. A principal weapon against such ignorance is education at every level.

EDUCATION OF JUDGES

In recent years, the recognition of the impact of racial and ethnic bias has caused most courts and court systems to include in their judicial education curriculum, programs which address concerns about bias and cultural diversity. However, the courts must remain vigilant in this regard and be aware that simply including in that curriculum one hour a year on the topic of bias cannot fully address this problem or lead to significant positive change.

Judges and court administrators must examine the work of their colleagues to determine what are the best practices used in jurisdictions around the country and how some courts have begun to effect true change. One important way to accomplish this is to incorporate an ethnic and racial awareness component in every judicial education topic that is presented. That is, whether the focus of an educational seminar for the judiciary be juvenile justice, criminal justice, or family law, the issues of racial differences that arise in each of those contexts can be developed and embodied as part of the overall education process. Strides are being made in some individual jurisdictions, as they revamp their curricula to fully incorporate the appropriate material. These efforts can be undertaken by national judicial education entities, national organizations of judges and court administrators, and the federal court system.

EDUCATION OF COURT PERSONNEL

The education of everyone inside the courthouse, especially those who come in contact with the public, is a critical part of addressing this issue. Whether it be a defendant, a civil litigant, a witness, a victim, or even a lawyer, his or her racial or ethnic background can have an impact on the treatment received by court personnel. Many of the suggestions above related to the education of judges are applicable with respect to other court employees. In addition, courts can look to successful, established diversity training programs which have been developed in the private sector and adapt them to the needs of the judicial system.

It is imperative that judges, administrators, and everyone working in the court system recognize the various needs of all of their constituents, and understand that all must be treated fairly and equally. One of the most important components of this education process, interpreters, is discussed in greater detail below.

EDUCATION OF THE PUBLIC

Educating the public is a much more difficult and less definable task than the education of judges and court personnel. However, it is critical to the true resolution of the insidious problem of bias. As bar associations, lawyers, judges, and concerned citizens, we must continue to make every effort to educate all Americans about our justice system, its needs and its goals.

We must help all Americans understand the importance of equal access to the justice system and equal treatment for all within the justice system. Every citizen, of every race and ethnic background, must be made aware that justice can be served only if all of our citizens are allowed to experience the same level of justice.

It must be made clear that the very integrity of the justice system depends on these reforms, and that all are affected, not just those ethnic and racial minorities who are most directly impacted.

CRIMINAL JUSTICE

The treatment of racial and ethnic minorities in the criminal justice system is perhaps the most visible and widely discussed aspect of the bias issue. The problem pervades all areas of the criminal justice system from arrest (or even pre-arrest) through sentencing, including the imposition of the death penalty. It is imperative that each of these areas be thoroughly examined and that the appropriate tools be used to assure the even-handed dispensation of justice at every level.

ARREST / ENFORCEMENT

The evolution of law and society itself in the past 50 years has resulted in legislation which has as its goal the elimination of bias and discrimination. This has resulted in the passage of many laws which are meant to solve the problem and are generally neutral on their face. No longer do we as a society tolerate overt laws which treat minorities differently from the majority population. However, in spite of the fact that the laws themselves appear neutral, enforcement often has a significantly disparate impact on the minority population.

Bias in the criminal justice system begins with police and other law enforcement officials. Racial profiling is one of the most visible manifestations of discriminatory enforcement. Numerous books and theses have been written on the subject of profiling and it is impossible to examine all of the intricacies of the issue in this Roadmap. However, it is important to recognize that this is a critical piece of the puzzle. The ABA Council on Racial and Ethnic Justice has materials and additional information. (See listing of ABA programs.) Many law enforcement agencies, either openly or more discreetly, engage in practices that result in a disproportionate number of traffic stops, searches, or arrests without probable cause, of members of the minority population. Some argue that such conduct may have a legitimate basis in the eyes of particular agencies. Regardless, the impact is widely disproportionate, and those interested in true "blind justice" must continue to work toward the elimination of the use of racial or ethnic profiles.

The practice of profiling and the resulting discriminatory impact goes beyond formal law enforcement. Studies and anecdotal evidence have shown that minorities are far more likely than the majority population to be stopped in retail stores for suspicion of shoplifting. Such practices are absolutely unacceptable at any and every level, and must be stopped in order to dispense justice in the most evenhanded manner possible. Educational programs, such as the police practices project developed by the American Civil Liberties Union, must be encouraged and widely disseminated.

PROSECUTORIAL DECISIONS

The next step in the criminal justice process which often produces disparate results is the decision-making by the prosecutor. The district attorney or prosecutor possesses a great deal of unchecked discretion. It is at this stage of the criminal justice process that determinations are made regarding

exactly what charges will be brought, if the accused will be diverted to an alternate program, and whether a plea bargain will be offered. These early decisions can have a lifelong impact on individuals who, if convicted of a felony, will forever lose their rights to vote and exercise other privileges of citizenship.

For example, in many jurisdictions there are widely divergent outcomes when cases of white youths arrested for possession of powder cocaine and youths of color arrested for possession of crack cocaine are compared. Furthermore, the report of the Leadership Conference on Civil Rights entitled *Justice on Trial: Racial Disparities in the Criminal Justice System* found that although blacks and whites in the population have approximately the same rate of drug use, blacks are one-third more likely to be prosecuted for a drug offense.

This is only one of the ways in which decisions made by prosecutors can ultimately lead to considerable differences in outcomes based upon race and ethnicity. Attention must be turned to this aspect of the system, through the education of prosecutorial agencies, and through the development and usage of innovations such as drug courts and other diversion programs.

SENTENCING

The growing popularity of sentencing guidelines at both federal and state levels has led to a perception that the sentencing process has become less discriminatory, because the judge has been left with little discretion with regard to sentencing. However, studies indicate that this may not be the case. Because of some of the disparities at earlier stages in the criminal justice system as discussed above, sentencing guidelines themselves have a disparate impact on minorities, who are more likely to have found themselves in the system on more than one occasion. The most effective ways to combat bias at this stage of the process are the careful examination and reform of existing sentencing guidelines, combined with the aggressive education of the judiciary as set forth above.

The ultimate sentence, of course, is the death sentence. The American Bar Association has long been interested in examining the disparate impact the death penalty has on minority defendants, and has sought ways to resolve the many issues surrounding its use. The ABA has called for a national moratorium on executions to allow study of death penalty procedures through a resolution passed by the ABA House of Delegates in February of 1997. "A Death Penalty Project Moratorium Implementation" implemented in 2001. (See ABA Listings)

In the early months of the new millennium, this issue began to gain momentum and reach a higher level of public awareness. Concerns about the death penalty and its impact on various segments of society have grown, and a greater scrutiny of every step of the process has begun in several jurisdictions. Although the exact reasons for the disparity and the various appropriate remedies have not yet been fully explored, statistics show that a disproportionate number of minority defendants are sentenced to death relative to the total number of arrests and/or convictions. The *Justice on Trial* report referenced above recounted that blacks who kill whites were sentenced to death twenty-two times more frequently than blacks who kill blacks, and seven times more frequently than whites who kill blacks. Additional statistics from the report are presented on page 9 of the report.

JUVENILE JUSTICE AND FAMILY ISSUES

Many of the issues discussed above, which are evident in the adult criminal justice system, are also found throughout the juvenile justice system. The long-term impact, however, is even greater because disparities at this level tend to be cumulative and perpetuate throughout the life of an individual.

A study conducted by the United States Department of Justice in conjunction with several of the country's foremost foundations, *And Justice for Some*, found that minority youth are far more likely to be treated more harshly at every step of the process. The comparisons are staggering. Black youth are disproportionately more likely to be arrested, to be held in jail pending arraignment, to be subjected to trial, to be waived to adult court, to be convicted, and to be sent to detention centers and prisons. Despite widely held perceptions, however, black children are not more likely to commit crimes. This is demonstrated further by the statistics shown in the chart on page 15 of the study. The ABA Council on Racial and Ethnic Justice has implemented "Overrepresentation of Juveniles In the Justice System Project" to address these issues.

A related issue, which cannot be explored in depth in this publication, is the condition of many juvenile detention centers and the lack of true education and rehabilitation efforts. Minority children confined in this environment at an early age are much more likely to become repeat juvenile offenders and ultimately adult offenders. On the other hand, children who are appropriately punished but given opportunities to remain in society are more likely to become productive members of that society and avoid the criminal justice system later in life. Therefore, disparities at the juvenile level are continually compounded, and lead to even greater disparities as children grow to adulthood. One of the ways to address juvenile crime without embarking upon this cycle is the greater usage of community-based prevention and treatment programs. A child, who remains in the community and receives mentoring and monitoring, is more likely to avoid the system in the future.

The issue of ethnic and racial bias is also critical at the non-criminal family and domestic court levels. One of the aspects of the justice system with which the largest number of Americans are involved is family and domestic law. These parts of the justice system address issues such as divorce, child custody, child support, domestic violence, and the termination of parental rights. It is particularly critical that the various steps toward eliminating bias remain in the forefront in each of these areas. Individuals who work with children and their families should be respectful, well-trained, and diverse. There is no aspect of the justice system for which even-handed and non-discriminatory treatment is more critical than as it relates to young people and their futures.

DIVERSIFICATION

As with any deep-seated issue, especially one such as bias that is a result of long-held beliefs, stereotypes, and actions, there can only be true long-term change when the problems are addressed at their very earliest stages. Although many of the ideas for reform which are considered in this publication are necessary and useful, it is likely that the problem of racial and ethnic bias will be eliminated only when the system itself is fully integrated and diversified at every level. Beginning at the top, efforts must be made to assure that the judges who sit at the front of every courtroom in America reflect the communities they serve. There are countless issues to be considered when selecting judges, and the ways in which the bench can and should become more diverse. It is absolutely critical to reform that the bench in every jurisdiction better reflect the diversity of its constituents. You will find additional discussion of this issue in the Roadmap entitled "Judicial Selection."

Diversity is, of course, important with respect to all courthouse employees. As discussed above, court personnel should be trained and educated to deal with the diverse population which it encounters daily. However, the employees themselves should be equally diverse, in order to improve access by minorities using the court. Although some jurisdictions have made significant efforts to diversify the lower levels of court personnel, few minorities hold decision-making positions within the courts of this nation. This problem must be faced and ameliorated.

It is also critical that the juries that preside over both civil and criminal cases reflect their communities. Courts must strive to diversify their jury pools in order to provide litigants and defendants with true juries of their peers. Ideas for accomplishing this goal are discussed further in the Roadmap entitled "The American Jury."

The need for diversification is not limited to faces inside the courthouse. It is important to examine the makeup of the many other agencies and entities which form parts of the justice system. In the criminal arena, this includes law enforcement and correction agencies. It is also a factor to consider with respect to social service agencies and others who more indirectly take part in the administration of justice.

Another key area in which diversification is critical is the makeup of the legal profession itself. Diversification must be seriously addressed by the nation's law schools. Schools must be encouraged to diligently recruit minorities, be vigilant as to the retention of minorities within their ranks, and assist in the placement of minorities in mainstream jobs subsequent to graduation. Law firms must likewise undertake vigorous recruitment efforts and be aware of the need to nurture and promote minority lawyers. In the public sector, the same issues must be addressed by district attorneys, public defenders, and other officials.

It is only through concerted and coordinated actions that seek to diversify the players at all levels of the justice system that it will be possible to effect institutional changes within that vast system.

OTHER ISSUES

INTERPRETERS

Foreign language interpreters are absolutely essential when it comes to the fair treatment and dispensation of justice to many minorities and ethnic groups. The use of interpreters in court during trials is fairly commonplace. However, there remain significant weaknesses and needs inside the courtroom. In many jurisdictions, there are no uniform standards for interpreters or any formal certification process. In some instances, family members, witnesses, and passersby are drafted into service at the last minute to serve as interpreters. This is an extremely dangerous practice, as it is impossible for the judge, the jury, or the lawyers on either side to fully know the level of competency of the interpreter and therefore to be assured that the true meaning of the defendant, witness or litigant is being properly conveyed.

The concern is much broader, however, because it is important that interpretative services be available to courthouse users before they reach the inside of a court. Greater efforts must be made to find ways to accommodate non-English speaking individuals who are seeking access to the justice system, whether it be pro se litigants, witnesses, victims, or others. In addition, the need extends even beyond the walls of

the courthouse. Non-English speaking defendants, victims, and witnesses must have access to interpretation services at the law enforcement level, including police stations and district attorneys' offices. Such availability would allow arrestees and victims alike to better communicate to the necessary authorities' critical elements of the potential crime. See ABA Resolution on Electronic Interpretation services under ABA Policies.

The problem also extends beyond the criminal context. In civil matters and family court matters, there are also many critical stages at which interpreters should be provided. For example, there is a social service element present in many cases involving juveniles, whether it be juvenile crime, custody and support issues, or parental termination. In all of those instances, and many others, it is important that assessments regarding the futures of children and their families are made only after the families and other individuals involved are given the opportunity to be heard and understood completely. Likewise, private lawyers, district attorneys, and public defenders have a need for professional interpretation not only at the trial itself but during many aspects of pre-trial preparation.

Although widespread reforms of this nature will not be put into effect overnight, and will be somewhat costly to the system, all of those involved with the administration of justice should work diligently to assure that interpretation is rendered by competent individuals and is provided at every critical step in the process.

COURTHOUSE ATMOSPHERE

In general, the courts themselves must expand their efforts to eliminate bias wherever it may exist inside their walls. The education of judges and court personnel is discussed above, but the problems and the needs are much broader. Court advisory committees should be formed in every jurisdiction and should include appropriate minority participation. Courts should employ public information officers to assure the public's improved understanding of the operation of the court. Additionally, courts should develop grievance procedures through which those who experience bias can have an accessible and appropriate forum for their complaints.

SOLUTIONS

AMERICAN BAR ASSOCIATION PROGRAMS

Many ABA divisions and sections maintain ongoing diversity initiatives. These initiatives reflect efforts to increase diversity within the section/division memberships and within practice specialties.

In response to the request of ABA President William G. Paul (1999 - 2000) that every ABA entity address this issue, an effort was undertaken by the Coalition for Justice, the ABA Commission on Racial & Ethnic Diversity in the Profession, and the ABA Council on Racial & Ethnic Justice. Specifics about those entities are found below. This joint project produced a report released in June 2000 entitled *Attacking Bias in the Justice System: a Compendium of Program Alternatives*. The report provides specific action steps that can be taken to address the most critical areas within the justice system where racial and ethnic bias is present. The specific areas confronted are Judicial Education, Employee Education, Criminal Justice, Juvenile and Family Issues, Jury Issues, Complaint Mechanisms, Court Interpreters, Judicial System Diversification, Court Functions and Services, and Legislative Impact Review.

*AMERICAN BAR ASSOCIATION DIVERSITY INITIATIVES:***Presidential Advisory Council on Diversity in the Profession**

During his term in office, ABA President William G. Paul developed a presidential initiative addressing diversity in the legal profession. The goals of the initiative are to increase minority participation in the legal profession by encouraging members of racial/ethnic minority groups to consider law as a career and to provide increased opportunities for minorities already in the profession. Working groups were formed to address issues of diversity in three areas: corporate counsel, law firms/bar associations and legal education.

One of the results of the initiative was the development of the Legal Opportunity Scholarship Fund to encourage racial and ethnic minority students to apply to law school and to provide financial assistance to ensure that these students have the opportunity to attend law school for three years. For more information, contact the ABA Diversity Center.

The ABA has since created the Diversity Center for Racial and Ethnic Diversity. The Center houses the Commission on Racial and Ethnic Diversity in the Profession; the Presidential Advisory Council on Diversity in the Profession; Council on Racial and Ethnic Justice; and the Legal Opportunity Scholarship Committee. It is also the starting point for those seeking diversity programs and information throughout the ABA. For more information, contact Center staff at <http://www.abanet.org/diversity/>.

Working to increase public trust and confidence in the justice system by encouraging partnerships between the bench, the bar and the public to work on justice reform projects and programs, the ABA maintains a clearinghouse of information on best practices to address racial and ethnic bias in the justice system. Resources such as the recent Summary of State and Local Justice Initiatives and web-based fact sheets detail successful bias reform efforts at a local level.

COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION

Created in 1986 (formerly the Commission on Opportunities for Minorities in the Profession), the Commission was begun to promote “full and equal participation” in the legal profession. The Commission has sponsored a variety of research projects and generally has served as a clearinghouse for data regarding the status of minorities in the legal profession. A number of projects and programs are in place to further that effort including: the Minority Counsel Program (MCP), the Minority In-House Counsel Group (MIC), the Conference of Minority Partners, the Multicultural Women Attorney Network (MWAN), and the Spirit of Excellence Awards. The Commission’s Miles to Go 2005 report chronicles the current status of minorities in the legal profession. Contact: <http://www.abanet.org/diversity/> for more information.

COUNCIL ON RACIAL AND ETHNIC JUSTICE

The Council serves as a catalyst for eliminating racial and ethnic bias in the legal profession and in the justice system with a focus on systemic change. It was designed to develop partnerships between community groups, civil rights organizations, businesses, religious organizations and bar associations for the purpose of eliminating racial and ethnic bias in the justice system. Specifically, the Council assists with the development of educational programs for bar associations, community groups and interested organizations. It provides public forums for dialogue between legal institutions and

community organizations and it provides technical assistance and advice on “how-to” implement specific programs, strategies and partnerships that eliminate racial and ethnic bias. For more information, visit their website at www.abanet.org/randejustice

PRESIDENTIAL ADVISORY COUNCIL ON RACIAL AND ETHNIC JUSTICE

The Council works to increase diversity among students in the pipeline to the legal profession. It collaborates with key stakeholders to address issues and build networks to effect change. Visit their website at www.abanet.org/op/councilondiversity.

CRIMINAL JUSTICE SECTION

The Criminal Justice Section provides leadership within the ABA on matters affecting the criminal justice system, therefore addressing the problems associated with racial and ethnic bias present in that system has been a cornerstone of the Section’s work.

- The Race and Racism in the Criminal Justice System Committee is actively involved in developing policy initiatives and legal education programs to address the pressing issues facing minorities in the criminal justice system.
- The Diversity Project is an endeavor to create educational modules and training programs to teach criminal justice professionals how to address race-sensitive issues and work toward the elimination of bias in the system.
- The Section has numerous publications that address racial and ethnic bias: The ABA Standards for Criminal Justice includes specific volumes relating to the prosecution of crime, jury trials and sentencing, including portions relating to the inappropriate use of ethnic status; The State of Criminal Justice is an annual report that presents statistical information on various aspects of the criminal justice system.

SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

This Section provides leadership within the ABA and legal profession in protecting and advancing human rights, civil liberties, and social justice. Through education and advocacy, the Section expresses the profession's commitment to achieving the American ideals of justice, freedom, and equality for all through the legal system. The Section fulfills its purpose by: 1) raising and addressing a growing array of often complex and difficult civil rights and civil liberties issues in a changing and diverse society; and 2) ensuring that protection of individual rights remains a focus of legal and policy decisions. The Section has sponsored or co-sponsored hundreds of resolutions adopted by the ABA House of Delegates that address a broad range of civil rights, civil liberties, and human rights concerns on topics including racial disparities in drug offense sentences. Contact: Individual Rights and Responsibilities Web site: www.abanet.org/irr.

*OTHER NATIONAL ORGANIZATIONS**NATIONAL CONSORTIUM ON RACIAL AND ETHNIC FAIRNESS IN THE COURTS*

In 1988, the Conference of Chief Justices and the Conference of State Court Administrators adopted resolutions urging the chief justice of every state to establish a task force devoted to the study of racial and ethnic minority concerns in the judicial system. As a result, the Consortium was created in 1989 in an effort to coordinate the efforts of existing task forces and commissions. Its principal purpose is to provide participating groups with an opportunity to discuss and share research and program activities relating to their common mandate to determine the existence of bias in the courts and to recommend and implement action to overcome it. Working in consultation with the National Center for State Courts, the Consortium tracks the task forces/commissions by state and issue and reports on implemented activities.

Contact: Dr. Yolande Marlow, Executive Director, c/o Minority Concerns Unit, Administrator of the Court, State of New Jersey, 609-633-8108.

COALITION OF BAR ASSOCIATIONS OF COLOR (CBAC)

The Coalition of Bar Associations of Color encompasses the National Asian Pacific American Bar Association, the National Bar Association, the Native American Bar Association and the Hispanic National Bar Association. It is dedicated to the provision of equal justice and equal opportunity for all people in this country regardless of race, ethnicity or economic status. The Coalition supports efforts regarding the inequitable administration of justice in America based upon racial and ethnic status with specific emphasis on racial profiling and racial disparities in the juvenile justice system. It further urges increased diversity among the federal judiciary.

Contact any of the coalition bar associations for more information: National Asian Pacific American Bar Association, websites 202-974-1185; National Bar Association, 202-842-3900; Native American Bar Association, info@nativeamericanbar.org; Hispanic National Bar Association, 703-610-9038.

LAWYERS FOR ONE AMERICA

A result of former President Bill Clinton's "Call to Action," Lawyers for One America addresses the need for diversity in the legal profession. The idea behind the President's Call, and the subsequent consortium it spawned, is that lawyers will have an extraordinary impact in determining whether our nation has significantly more or significantly less racial justice in the 21st Century. Convened to discuss what lawyers can do to speed our nation's search for equality, the group produced a plan of action that

concentrated on the unique talents lawyers can bring to solving everyday problems that face Americans.

Ideas circulated include: a transactional lawyer who puts deals together could set up financing for an inner-city revitalization project; a litigator's experience with settlement negotiations provides her with the insight necessary to consider beginning a dialogue between community leaders and law enforcement representatives on issues such as racial profiling and excessive use of force; an in-house corporate attorney could put her talents to use by helping a minority-owned business succeed; a lobbyist could use his connections to develop ways to improve financing of local schools.

Contact: Lawyers for One America at Web site: www.lawyersforoneamerica.org.

DEPARTMENT OF JUSTICE

A mission of the Office of Justice Programs (OJP) in the Department of Justice (DOJ) is to provide federal leadership in developing the nation's capacity to prevent and control crime, administer justice and assist crime victims. Together with the Department of the Interior and the Department of the Treasury, the DOJ has the responsibility "to design and implement a system to collect and report statistics relating to race, ethnicity, and gender for law enforcement activities in each department." Suggestions of racial and ethnic profiling resulted in a Presidential Executive Memorandum directed to these departments. Currently the DOJ's Bureau of Justice Statistics compiles statistical information on profiling and other criminal justice issues.

Contact the Department at: www.ojp.usdoj.gov/

NATIONAL ASIAN PACIFIC AMERICAN JUSTICE CENTER

This Consortium is dedicated to meeting the legal needs of all members of the Asian Pacific American community. Through community education, lawsuits, legislative advocacy, and clearinghouse functions, the Consortium addresses violence, immigration, voting rights, and other issues.

Contact: NAPALC at www.napalc.org

LAW SCHOOL ADMISSIONS COUNCIL

The Law School Admission Council (LSAC) is a nonprofit corporation whose members are 200 law schools in the United States and Canada. Of those, 182 law schools are located in the United States; 15 are in Canada. Headquartered in Newtown, Pennsylvania, about 30 miles north of Philadelphia, LSAC is best known for administering the Law School Admission Test (LSAT). The LSAC conducted a National Longitudinal Bar Passage Study with data gathered from the class that started law school in fall 1991. The goals of the study were to report for the first time national bar examination outcome data by ethnicity and gender and to explore factors that could explain difference in outcomes.

Contact: Law School Admission Council at www.lsac.org

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

The Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law. The Committee's major objective is to use the skills and resources of the bar to obtain equal opportunity for minorities by addressing factors that contribute to racial justice and economic opportunity. The Lawyers' Committee's primary focus is to represent the interest of African Americans in particular, other racial and ethnic minorities, and other victims of discrimination, where doing so can help to secure justice for all racial and ethnic minorities. The Lawyers' Committee implements its mission and objectives by marshaling the pro bono resources of the

bar for litigation, public policy advocacy, and other forms of service by lawyers to the cause of civil rights. Contact the Lawyers' Committee for Civil Right Under the Law at www.lawyerscommittee.org.

STATE EXAMPLES

As recognized above, almost every state in the United States has undertaken some form of study in the last decade to determine the extent of racial and ethnic bias in that state, and develop methods to combat that pervasive problem. The following states are far from the only ones developing important programs, but provide some insight into the types of studies and programs that are being implemented across the country.

GEORGIA

Georgia is one of the many states that conducted a study in the 1990s to determine the extent of racial and ethnic bias in the state and develop methods to combat that pervasive problem. The Commission on Racial and Ethnic Bias in the Court System was formed in 1993. Its work began with a comprehensive study that included the use of public hearings, focus groups, and surveys. Its final report, entitled *Let Justice Be Done: Equally, Fairly, and Impartially*, was published in August 1995. The recommendations included the need for improvement in several areas, including: attitudes and awareness, diversity in the workforce, access to the court system, legal representation for persons unable to afford private counsel, criminal justice system issues, juries and jury pools, and juvenile justice system issues.

The implementation of various recommendations made in the report is now being carried out by the Commission on Equality. The Commission was created and made part of the Georgia Supreme Court's Office of Commissions and Programs to implement the findings of both the Commission on Racial and Ethnic Bias and the Commission on Gender Bias. The court charged the Commission on Equality to:

1. formulate and propose guidelines, standards, and procedures to implements the Commissions' recommendations;
2. develop appropriate mandatory judicial and legal education course materials and programs on equality, including appropriate instruction to be included in Georgia's new judge and new lawyer orientation programs;
3. develop and participate in equality programs designed for professional and lay audiences;
4. serve as a resource to the media;
5. propose legislation needed to further the aims of the Commission;
6. facilitate a plan to educate the public about the dynamics of the cycle of domestic violence, resources for victims and protections available under Georgia law;
7. develop a mechanism for the processing of complaints received about judges' and lawyers' biased behaviors;
8. work with Judicial Nominating Committee to encourage more racial and ethnic minorities, women and men to apply for appointments as judges; and act as a resource to Georgia law schools in revising teaching and curricula to promote the elimination of biased conduct on the part of attorneys.

All of these lofty goals cannot be met immediately. However, many important projects have been undertaken by the Commission since it received its charge from the Supreme Court. Its work has been widespread and varied, and includes partnerships with many other entities, both legal and non-legal, across the state and beyond.

In October 1999, the Commission received a grant from the Georgia Bar Foundation to develop a statewide certification and training program for interpreters through membership in the Consortium for State Court Interpreter Certification. The Commission maintains a Registry of Foreign Language Interpreters that is distributed to judges and court administrators biannually. It is available on the Supreme Court of Georgia Web site at www.state.ga.us/court/supreme/.

The Commission is also reviewing a proposal drafted by the Georgia Hispanic Bar and the Georgia chapter of the Asian-Pacific American Bar Association, regarding the use of interpreters. It includes guidelines and policies for training, certification, and employment of interpreters in Georgia's legal system.

“Let Justice Be Done,” a 40-minute video and teaching guide, was designed to raise the sensitivity of judges and the legal community to subtle forms of racial and gender bias which is often difficult to identify and remedy. It includes seven justice system scenarios acted out on video, a summary and script of each scene, and discussion questions to encourage participation and interaction. It has been presented to the Institute of Continuing Judicial Education of Georgia, the Chief Justice's Commission on Professionalism, the Atlanta Bar Judicial Section, and numerous other groups. The Commission also joined with the Institute of Continuing Judicial Education and the Council of Superior Court Judges to create a training video for bailiffs which will be widely distributed in order to improve knowledge and sensitivity by those vital court employees.

Another partnership was formed with the Atlanta Hispanic Chamber of Commerce and the Georgia Hispanic Bar Association to create the **People's Law School** for the Hispanic Community, with funding through a grant from the Georgia Civil Justice Foundation. Seminars on various law-related topics are presented in Spanish by representatives of the partnering organizations including judges and lawyers. Plans are underway to replicate this program in Vietnamese, Chinese and Korean with the assistance of the Georgia Asian Pacific-American Bar Association and the Center for Pan Asian Community Services. Contact Chara Jackson, Program Director, Commission on Equality, Supreme Court of Georgia, 244 Washington St., Suite 572, Atlanta, GA 30334; (404) 463-6478; fax: (404) 656-4213; e-mail: jacksonc@supreme.courts.state.ga.us.

OREGON

Oregon has undertaken numerous studies and instituted programs related to racial and ethnic bias in the justice system. The Report of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System, published in May 1994, and the Progress Report, A Commitment to Fairness, published in January 1996, are both comprehensive and include many specific recommendations to improve the system. Another study is the Oregon State Bar Affirmative Action Predicate Study which issued its final report in August 1997. It is a comprehensive study conducted by the University of New Mexico Institute of Social Research. The Institute utilized a written questionnaire which was sent to all minority members of the OSB and a matched sample of white attorneys, and conducted in-depth personal interviews with representative minority attorneys. The Predicate Study contains a wealth of statistical data, as well as targeted objectives and recommendations.

One unique program developed in Oregon which is focused on here is the **Affirmative Action Program (AAP)** of the Oregon State Bar (OSB). In 1974, the OSB House of Delegates created the AAP to encourage the development of minority lawyers in the state. It is funded through a mandatory assessment of all OSB members (currently set at \$30 per member), which has been controversial but

recently withstood constitutional challenges. The AAP is staffed by three employees—two full-time and one part-time. During the AAP’s early years, its funds were used primarily to provide scholarships and loans to minority law students. It has grown to include various innovative and expanded scholarships as well as mentoring, clerkship, and other programs.

The AAP awards 18 scholarships annually to law students who intend to practice in Oregon. Awards are made based on financial need and ability to further the mission of the AAP. That mission is to support the mission of the OSB: “by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice.”

The AAP serves this mission “by striving to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, by educating attorneys about the cultural richness and diversity of the clients they serve, and by removing barriers to justice.” The AAP also sponsors 20 clerkship stipends each year, which amounts are matched by the participating employers. Applications are prioritized according to economic disadvantage and the potential that clerkships will help impact the students’ practical experience and networking in Oregon’s legal community.

First Year Honors offers eligible first-year ethnic minority students the unique opportunity to clerk during their first summer in one of Oregon’s largest law firms. The schools select candidates who rank in the top half of ethnic/racial minorities in their class, based on their first semester performance. Participating law firms interview and select employees and fully fund their salaries. Neither grades nor class ranking are considered in the firms’ selection process; in fact, that information is not provided to the firms. Public Honors summer fellowships of \$4,800 each are awarded to six second-year students whose career goals lie in public interest or public sector law. Each Oregon law school nominates five students. The top two chosen from each school are selected and provided with a list of participating employers; students submit resumes to AAP staff who forward them to the employer of the student’s choice. Bar Exam Grants are also made available to qualified students to pay for a bar preparation course and admissions application fee.

Another important program of the AAP is “**Opportunities for Law in Oregon,**” (OLIO). OLIO is a recruiting and retention strategy which begins with a comprehensive orientation to acculturate ethnic minority law students to law study, the legal profession, and to Oregon. Various opportunities for legal clerkships and practices are highlighted. OLIO makes a concerted effort to connect the minority students with others from all three of the state’s schools, to create community and to minimize feelings of isolation. From the initial orientation to follow-up activities such as the Bar Exam Retreat and Employment Retreat, AAP staff and planners assess the activities’ effectiveness in addressing the following areas: acculturation, community, employment, academics, Oregon ties, balance/lifestyle, bar exam, professionalism, and participation in other AAP and OSB activities.

The Professional Partnership Program (PPP) pairs minority students with OSB members, both of whom commit to a year’s relationship which includes diversity training and a time commitment of approximately two hours per month. Students and mentors fill out forms and provide statements to assist in the “matchmaking” process.

The AAP also publishes *Connections*, a news magazine of articles focusing on diversity issues in law study and the profession. *Connections* is published three times each year and is available through the OSB Web site.

Contact Stella K. Manabe, Affirmative Action Program Administrator, Oregon State Bar, 5200 S.W. Meadows Rd., P.O. Box 1689, Lake Oswego, OR 97035-0889; (503) 431-6337; fax: (503) 598-6937, e-mail: smanabe@osbar.org. Web site: www.osbar.org. Nori J. McCann Cross, Education Director, Oregon Judicial Department, Supreme Court Building, 1163 State St., Salem, OR 97310, (503) 986-5911, fax: (503) 986-5503, e-mail: nori.j.cross@state.or.us. Web site: www.ojd.state.or.us.

UTAH

Work in the critical arena of bias began with a Utah State Bar study entitled Equal Administration of Justice, which was published in July 1996. The study raised awareness of this issue and in the Spring of 1996, the Utah Judicial Council commissioned a Task Force to study the impact of racial and ethnic bias in the state. Startup funds were ultimately secured through the State Justice Institute (SJI), and the Task Force's work began in May of 1997.

The Utah Task Force on Racial and Ethnic Fairness in the Legal System set out to examine the existence and extent of bias in the state's criminal justice system as a whole. The scope went far beyond the court system itself to include law enforcement and related public agencies such as social services and corrections. The Task Force is chaired by the former Chief Justice of the Utah Supreme Court. It consists of approximately 30 members, including a cross-section of judges and lawyers, court administrators, professors, state legislators, corrections department officials, law enforcement leaders, directors of various offices and commissions of the Governor's office, media, and private organizations such as the NAACP and La Raza. The Task's Force's seven subcommittees broaden the base of involvement even further and total approximately 120 individuals.

Utah's Task Force sought to determine perceptions about the fairness of the system by minority and majority populations in Utah and to document differential outcomes. The process undertaken to accomplish that goal included the convening of 27 public hearings throughout the state. Hearings were conducted not only in English, but also in Spanish, Laotian, Cambodian, and other languages. In an effort to be as inclusive as possible, hearings were conducted in churches and temples, city halls, community centers, schools and universities, a state prison, and even a local restaurant and a private home.

The subcommittees of the Task Force include the Client Committee, which examined the experiences and perceptions of offenders, victims and their families; the Community Resources Committee, which examined referrals to community treatment programs and other community resources; the Courts Committee, which scrutinized the adjudication process; the Pre- Adjudication Committee, which focused on law enforcement and other segments of the criminal justice system that occur prior to court appearances; the Post-Adjudication Committee, which focused on probation, parole, prisons and jails; and the Representation Committee, which considered elements of the system after arrest, from charging through disposition, with a primary focus on prosecution and defense. The Disproportionate Minority Confinement Committee actually predates the Task Force, having been originally formed by the Utah Board of Juvenile Justice in 1994 as a result of legislative requirements. It was reconvened and made part of the Task Force to further consider these issues in relation to juvenile justice.

The Task Force has partnered with the University of Utah to conduct several studies, including one that focuses on sentencing, length of stay, and arrest rates as those issues impact minorities. In addition to such valuable partnerships, funding for the continuation of the Task Force has been received from various sources. These include the Utah Bar Association and Utah Bar Foundation, private corporations

and law firms, local foundations, federal grants, and supplementary funds from SJI.

The Task Force's implementation and other information on Utah's exemplary efforts can be found on the courts' Web site at courtlink.utcourts.gov.

Contact Jennifer Yim, Project Director, Utah Task Force on Racial and Ethnic Fairness in the Legal System, Administrative Office of the Courts, P.O. Box 140241, Salt Lake City, UT 84114-0241, (801) 578-3800, fax: (801) 578-3843, e-mail: jennifey@email.utcourts.gov.

AMERICAN BAR ASSOCIATION POLICIES

The ABA's House of Delegates has often considered many of the issues related to bias in the justice system. Below are a few of the resolutions passed in recent years which have been directed toward some of these issues.

DISCRIMINATION IN THE COURT SYSTEM

This resolution, passed in February 1990, urges judicial leaders to encourage and promote the full participation in the work forces of the court systems under their jurisdiction of all persons regardless of their race, sex, color, national origin, religion, age or handicap; encourages adoption of merit-based personnel systems that encompass all facets of court personnel management, including recruitment, hiring, training, promotion and advancement; urges incorporation of affirmative action values in deciding whom to recommend and appoint to judicial positions; and encourages implementation of equal employment opportunity and affirmative action plans and programs in the courts.

BIAS IN THE JUDICIAL SYSTEM

An August 1991 resolution supports the enactment of authoritative measures, requiring studies of the existence, if any, of bias in the federal judicial system, including bias based on race, ethnicity, gender, age, sexual orientation and disability, and the extent to which bias may affect litigants, witnesses, attorneys and all those who work in the judicial branch; and urges that such studies should include the development of remedial steps to address and eliminate any bias found to exist.

A resolution passed in 1995 condemns the manifestation by lawyers in the course of their professional activities of bias or prejudice against clients, opposing parties and others, unless such words or conduct are otherwise permissible as legitimate advocacy on behalf of a client or a cause; opposes unlawful discrimination by lawyers in the management or operation of a law practice in hiring, promoting, discharging or otherwise determining the conditions of employment, or accepting or terminating representation of a client; condemns any conduct by lawyers that would threaten, harass, intimidate or denigrate any other person; discourages members from belonging to any organization that practices invidious discrimination; and encourages affirmative steps to discourage such discriminatory speech and conduct.

A House Resolution of August 1996 urges state, territorial and local bar associations to study bias in their community against gay and lesbians within the legal profession and the justice system and make appropriate recommendations to eliminate such bias.

COURT INTERPRETERS

This 1997 resolution recommends that all courts be provided with qualified language interpreters, including sign language interpreters, in order that parties and witnesses with no or limited command of English and those who are deaf or hearing-impaired may fully and fairly participate in court

proceedings; and that court interpreters should be qualified and should maintain their proficiency through continuing education and should adhere to standards of professional conduct.

RACIAL PROFILING

A resolution passed in August 1999 reads as follows:

RESOLVED, That the American Bar Association supports passage of federal, state, local and territorial legislation requiring the systematic collection of and annual reporting to the United States Department of Justice and the appropriate state or territorial attorneys general the

following data, by all federal, state, local and territorial law enforcement agencies that engage in traffic stops:

- (1) the race and ethnicity but not the identity of each person stopped by law enforcement officials;
- (2) the alleged traffic infraction that led to the stop;
- (3) whether a search was instituted as a result of the stop;
- (4) whether the vehicle, personal effects, driver, passenger and/or passengers were searched;
- (5) the legal basis for the search;
- (6) whether contraband was discovered in the course of the search;
- (7) the nature and amount of any contraband found; and
- (8) whether an arrest was made or citation or warning issued as a result of either the stop or the search.

FURTHER RESOLVED, That the American Bar Association supports the passage of federal, state, local and territorial legislation that requires the Department of Justice as well as state and territorial attorneys general, to undertake a study using the data collected and reported pursuant to the legislation described above and such other information as may be gathered by or reported to them, to determine whether, how and the degree to which race-based profiling or other methods that disproportionately target or affect persons of color are being employed by federal, state, local and territorial law enforcement authorities in conducting traffic stops and searches, and, to the extent such practices are being employed, to identify the most efficient and effective method of ending all such practices.

CAPITAL PUNISHMENT

A resolution passed in August 1988 opposes discrimination in capital sentencing on the basis of the race of either the victim or the defendant; supports legislation that strives to eliminate racial discrimination in capital sentencing; and provides that a challenge to a death sentence can result in relief in certain instances.

In February 1989, the House urged that no person with mental retardation, as defined by the American Association on Mental Retardation, be sentenced to death or executed; and supported enactment of legislation barring the execution of defendants with mental retardation.

A 1993 resolution opposed in principle the imposition of capital punishment upon any person for any offense committed while under the age of 18.

February 1997 resolution urged jurisdictions that impose capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that are consistent with four

longstanding Association policies intended to (1) ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and (2) minimize the risk that innocent persons may be executed, with the understanding that, apart from existing policies relating to offenders who are mentally retarded or under the age of 19 at the time of the commission of the offenses. The Association took no position on the death penalty.

RESOURCES

CONTACTS

- Administrative Office of the Courts, www.courtinfo.ca.info.
- American Bar Association, www.abanet.org
- Commission on Racial and Ethnic Diversity in the Profession, www.abanet.org/minorities/home.html.
- Council on Racial and Ethnic Justice, www.abanet.org/r&ejustice/home.html.
- Coalition for Justice, www.abanet.org/justice/home.html.
- American Civil Liberties Union, www.aclu.org.
- American Judges Association, <http://aja.ncsc.dni.us>.
- American Judicature Society, www.ajs.org
- American Psychological Association, www.apa.org.
- Conference of Chief Justices, www.ncsc.dni.us/ccj/ccj.htm.
- Council for Court Excellence
- Hispanic National Bar Association, www.hbadc.org.
- Leadership Conference on Civil Rights, Leadership Council Education Fund, www.civilrights.org.
- National Asian Pacific American Bar Association, www.napaba.org.
- National Asian Pacific American Legal Consortium, www.napalc.org
- National Bar Association, www.nationalbar.org.
- National Center for State Courts, www.ncsc.dni.us.
- National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts www.ncsc.dni.us.
- Native American Bar Association, www.nativeamericanbar.org.
- New Jersey Supreme Court Committee on Minority Concerns www.judiciary.state.nj.us/supreme/index.htm.
- Sentencing Project, www.sentencingproject.org.
- State Bar Presidents, Presidents-elect and Executive Directors: names and addresses are available through: American Bar Association, Division for Bar Services www.abanet.org/barserv.
- State Court Administrators and Chief Justices, www.ncsc.dni.us.
- Superior Court of New Jersey, www.judiciary.state.nj.us/essex/index.htm.
- United States Department of Justice, Office of Justice Programs, www.ojp.usdoj.gov.
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- Chapter 9, “Protecting Against Bias and Discrimination in the Judicial Branch and the Judicial Process”, from Report of the Federal Courts Study Committee (April 2, 1990).
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- “The Criminal Justice System: Racism and Genocide,” *National Bar Association Magazine* (March 1989).
- “Data on Women and Minorities in the Law,” *Journal of the Kansas Bar Association* (January 1991).
- “Detention of Minorities Traced to Strictness on Drug Cases,” *Criminal Justice Newsletter* (May 15, 1990).
- *Discrimination in the Courts memorandum* (National Center for State Courts, RIS 87.028). Discusses sex, age, race, and physical discrimination.
- “Discrimination in the Decision to Prosecute,” *Pretrial Reporter* (August 1987).
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