



*Establishing and Operating
a Task Force or
Commission on Racial and
Ethnic Bias in the Courts*

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*National Consortium of Task Forces and Commissions on
Racial and Ethnic Bias in the Courts*

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Dedication

This manual is dedicated to the memory of Franklin Hall Williams, who died on May 20, 1990. Ambassador Williams was the chair of the New York State Judicial Commission on Minorities and was instrumental in the formation of the National Consortium of Task Forces and Commissions on Race/Ethnic Bias in the Courts. In December 1988, Ambassador Williams organized and convened a landmark meeting of the leaders of similar commissions and, from that meeting, the National Consortium was formed. It is the leadership of Ambassador Williams in reaching out to others engaged in similar endeavors that inspired the sharing spirit of the National Consortium, and through it, the presentation of shared experiences and knowledge in this manual.



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Acknowledgments

THE IDEA FOR THIS MANUAL SPRANG from the members of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts. The National Consortium was formed as a result of a meeting called by Ambassador Franklin H. Williams, then chair of the New York State Judicial Commission on Minorities, of the chairs and executive directors of racial and ethnic bias commissions and task forces on December 10, 1988. The Consortium was established to promote cooperation on mutual concerns and issues related to racial and ethnic bias in the courts. The founding members were the Michigan, New Jersey, New York, and Washington State task forces. The membership now includes all former and existing task forces and commissions. The Consortium coordinator - a volunteer from among the membership - facilitates communication among the members and plans the annual meeting.

The Consortium is provided with staff assistance by the National Center for State Courts' Information Service. The National Center is a private, nonprofit organization established in 1971 as a central service agency for the nation's state and local courts. It provides education and training, conducts research, offers direct assistance, and gathers and distributes information about state courts. The Information Service, a clearinghouse and reference service for state courts, is partially funded by a grant from the State Justice Institute, which is also the funding source for this manual.

It is only fitting, therefore, that the Consortium founding task force directors are the authors of this manual and that other Consortium members have contributed their time and ideas to the review process. It is the successful collaboration among

Consortium members, the National Center for State Courts, and the State Justice Institute that has made this manual possible.

The authors gratefully acknowledge the special contribution of the Consortium founding task force chairs: Ambassador Franklin H. Williams, chair, New York State Judicial Commission on Minorities; Judge Harold Hood, chair, Michigan Supreme Court Task Force on Racial/Ethnic Issues; Judge Theodore Z. Davis, chair, New Jersey Supreme Court Task Force on Minority Concerns; and Justice Charles Z. Smith, chair, Washington State Minority and Justice Task Force, without whom the Consortium would not have been established. Justice Smith served as moderator of the Consortium during the preparation of this manual and has reviewed drafts, as did Judge Davis. The authors also acknowledge the time and effort contributed by other members of the Consortium to review drafts and provide valuable feedback, particularly Arline S. Tyler, Esq., program manager, California Advisory Committee on Race/Ethnic Bias in the Courts.

The authors also acknowledge the contribution of *Operating a Task Force on Gender Bias in the Courts: A Manual for Action*, by Lynn Hecht Schafran, Esq., and Norma Juliet Wikler, Ph.D., to the literature on the court task force process. This manual provided a valuable resource for the authors and created an excellent foundation for developing an approach to race and ethnic bias in the courts. The authors urge those who plan to create a task force or commission to examine racial and ethnic bias in the courts to consult the gender bias manual along with this manual. These manuals will provide expert guidance to the process of establishing and operating a task force or commission to study racial and ethnic bias in the courts.

The authors acknowledge the strong contribution of state court leaders to the effort to eliminate bias from the courts. At their 1988 annual meeting, the Conference of Chief Justices and the Conference of State Court Administrators passed resolutions that called for each state supreme court to establish a task force on minority concerns. At their 1993 midyear meeting, the Conference of Chief Justices renewed the call for action in another resolution that "urges each chief justice in every state to further the efforts for equal justice ... in the court system by establishing task forces to remedy any discrimination and to implement the recommendations of the task force studies." This manual will guide those who accept the call to action by the nation's highest state judicial leaders.

Finally, the authors wish to express their gratitude and appreciation to their families. These individuals have witnessed firsthand the long nights, incredible pressure, and lost weekends experienced by a task force director. Through it all they have supported us and the projects because of their belief that our nation's courts can be places where justice is available to every person. Without their understanding and assistance, this manual would not have been possible.



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CHAPTER I



Introduction

A swallow had built her nest under the eaves of a Court of Justice. Before her young ones could fly, a serpent gliding out of his hole ate them all up. When the poor bird returned to her nest and found it empty she began a pitiable wailing. A neighbor suggested, by way of comfort, that she was not the first bird who had lost her young. "True," she replied, "but it is not only my little ones that I mourn, but that I should have been wronged in the very place where the injured fly for justice." Aesop's Fables

THE FLORIDA SUPREME COURT RACIAL and Ethnic Bias Study Commission presented this very cogent quote on the cover of its December 1990 and 1991 reports. Although this treatise was first recorded between 300 and 350 B.C., its message is just as applicable today as it was over two millennia ago.

For racial and ethnic minorities, the early history of the court was that of an institution that denied equal justice to minorities. Even our precious Constitution and the Bill of Rights refused to embrace all manner of humankind in its guarantee of "freedom for all." Recently, both federal and state courts have become more active in protecting and extending the rights of racial and ethnic minorities.

As a result of the *Brown v. Board of Education* decision, the practice of state-imposed "separate but equal education" was legally eliminated, thereby laying the foundation for a new and broader vision of equality in America.

The legal struggle for equitable justice has not been a steady ascendancy toward expanding the rights of minorities and placing them at parity with their nonminority counterparts. The path has often been marked by periods in which the courts have not manifestly demonstrated their dedication to "equal justice for all."

Thus, it is quite appropriate as we enter a new century that the judicial branch of government examine itself and its role in the justice equation. State courts are leading the effort to study the individual

and institutional practices, policies, and procedures that, intentionally or unintentionally, affect the quality of justice received by minorities. Since they are the initial point of contact with the justice system for most minority citizens, state courts have a critical role to play in the establishment of task forces and commissions to investigate racial and ethnic bias. Recognition of the direct effect the courts have on the basic needs and liberties of individual minorities prompted the chief justices of several states to create task forces or commissions to investigate racial and ethnic bias in their respective courts.

This manual discusses one method by which the courts, and by extension the legal profession, may engage in self-analysis. The manual presents a detailed discussion of the objectives, the process, and the procedures for creating, launching, and operating a judicial task force or commission on minorities in the courts.

Chapter II, "Creating the Momentum for the Task Force," discusses the circumstances that should attend the creation of a task force, including the presence of internal support for such an effort, especially by the chief justice/judge, and external support. The reader is asked a number of questions, such as "Is there community interest in the idea?" all of which should be answered affirmatively before creating a task force. In addition, this chapter discusses means by which the need for such an endeavor can be assessed and strategies can be developed for galvanizing necessary resources.

Chapter III, “Fashioning the Mandate,” discusses the mandate, the document that details the task force's mission or scope of work. Given the pivotal nature of the mandate to the work of the task force, this chapter identifies issues that should be addressed in delineating areas of concern, e.g., defining who is a minority, combining race and gender issues.

Chapter IV, “The Roles and Responsibilities of Key Actors in the Task Force or Commission Process,” discusses the selection, roles, and desirable characteristics of key actors in the task force process. Throughout this manual, the need to have the chief justice/judge committed to the work of the task force is emphasized. This chapter details the roles of these key actors once the task force is established, as well as the roles and responsibilities of the chair, executive director, members, and staff.

Chapter V, “Financing,” presents strategies for obtaining adequate funding. It cannot be overstated that adequate funding is an absolute imperative to a task force. This chapter reviews ways in which, through creativity and refinement of issues, a task force may obtain needed resources. Because the nature of the authority creating the task force will often dictate the source of its funds, this chapter describes the various types of task forces.

Once the task force or commission gets under way, maintaining momentum through effective management becomes a necessary task of its leadership. **Chapter VI**, “Managing the Task Force,” sets forth strategies to ensure the continuation and success of the task force. Presented are such issues as reporting relationships, team building, diversity training, and unproductive members.

The all-important matter of defining and implementing a research agenda is discussed in **Chapter VII**, “The Research Agenda: An Overview and Methods.” A detailed discussion of proposed committee structures as a means to facilitate the

creation and implementation of a research agenda is presented. Of note are recommendations regarding use of public outreach to identify issues and use of various research methods, e.g., literature review, court watching, and surveys.

Chapter VIII, “Selected Issues: Monographs from Other Task Forces and Commissions,” highlights projects undertaken by previous task forces and commissions. Discussed are New York's work force diversity program, Washington State's cultural awareness education program, Florida's study on minority performance on the bar examination, and the court utilization studies of New Jersey and Michigan.

Chapter IX, “Writing, Presenting, and Disseminating the Findings and Recommendations,” suggests ways in which the task force's findings and recommendations may be disseminated. Although a great deal of attention is usually reserved for the task force's final report, presentation of oral reports at judicial/legal gatherings, interim reports, companion reports, and progress reports are suggested in this chapter as alternative or additional means by which the task force may present its work to the court and public. The chapter concludes with an outline for dissemination of the final report.

Finally, **Chapter X**, “Implementation of Recommendations,” discusses the ongoing work of the task force. So that the report will not gather dust on a library shelf, this chapter presents strategies on presenting the recommendations, retaining staff, and implementing the recommendations. Of note is the need to maintain a permanent body to continue the self-assessment and correction of identified failings.

CHAPTER II

Creating the Momentum for the Task Force or Commission on Racial and Ethnic Bias in the Courts

A. Prerequisites to the Creation of a Task Force or Commission on Racial and Ethnic Bias in the Courts

Each state should consider several preliminary matters before establishing a task force or commission. Careful planning and a realistic assessment of the forces for and against a task force or commission proposal are critical first steps. The task force process is a long-term strategy for initiating needed reforms in the justice system. Many of the decisions made during the formative phases of the project will have a significant effect upon the research, reporting, and implementation phases. A well-planned initial strategy will provide the groundwork for success and will result in an effective and focused long-term project.

The following is a list of five questions designed to assess the requisite strength of a task force or commission plan:

- Are there individuals in positions of power and influence in the justice system who are supportive of the concept of a task force or commission and committed to the idea of reform?
- Is there community interest, support, and leadership for the task force or commission?
- Are there individuals willing to devote the time and energy necessary to accomplish the work of the task force or commission?
- What are the issues and concerns of the minority public that argue for or support the establishment of this inquiry?
- Are there sufficient resources and time to accomplish the mandate of the task force or commission in a credible and professional manner?

If the answer to any of these questions is clearly no, then it is advisable to focus on developing a stronger foundation for the project. If these questions can be answered yes, then it is likely that a state judiciary is ready to endorse and support the investigation into racial and ethnic bias issues.

1. Are there individuals in positions of power and influence in the justice system who are supportive of the concept of a task force or commission and committed to the idea of reform?

When answering this question, note that these individuals are not necessarily the people who will be directly involved in the work of the commission. Rather, this group will provide the leadership for creating the commission and for ensuring that its recommendations are implemented and that progress is evaluated and monitored. Highly placed and well-respected judges, lawyers, and administrators will be necessary advocates for the creation of the commission. Ideally, justices from the state's highest courts, state bar leaders, state court administrators, and other influential judicial, legislative, corporate, community, civic, and labor leaders should be recruited as voices in support of the commission.

It is also important that this group consist of men and women from a mixture of racial, ethnic, religious, and cultural backgrounds. From the outset, the task force effort should draw broad-based support from all segments of the justice system and lay community. Racial and ethnic groups and nonminority supporters will enhance the credibility of the proposed task force or commission and the likelihood of its success.

It is a matter of serious concern when individuals possessing power and influence in the justice system and lay community are actively opposed to the commission effort. Knowing, initially, where these obstacles exist will be invaluable in creating an initial strategy. For example, opposition to the goals of the commission may create obstacles to the resources or cooperation needed to conduct the research.

Accurate knowledge of where the support and opposition to the task force proposal reside will allow for both short-term and long-term success of the plan. If an individual is important to the task force, assumptions should not be made about his or her support or opposition. Simply because a judge is African-American or Hispanic does not necessarily mean he or she will support the creation of a task force. In like manner, judges who might be presumed hostile to the proposal may become powerful voices in support of the task force as a result of effective communication during the initial phase.

2. Is there community interest, support, and leadership for the task force or commission?

Much of the research conducted by the commission will depend upon the support and input of racial and ethnic groups throughout the state. It is critical therefore that the project gain the trust and involvement of these groups from the outset. In many minority communities, there is an active distrust and avoidance of programs imposed upon them from outside forces. Often the cooperation of minority individuals depends upon the involvement and endorsement of known community leaders who will encourage their participation and vouchsafe the process. These key minority persons or groups will be able to assure their constituency that 1) the commission will conduct a legitimate investigation into the truth, 2) minorities have been intimately involved in all deliberations and decisions, 3) the commission is likely to make a difference and to solve problems that affect them, and 4) they will be protected from retaliation.

Trusted community leadership is the only means of assuring individuals that they will be protected and that their participation is critical to exposing and redressing incidents of racial and ethnic bias in the courts. The following is a list of suggested sources for identifying effective minority community leaders.

- Civic and political groups specifically representing a minority constituency

- Established civil rights organizations
- Neighborhood and block associations in predominantly minority areas
- Educational groups
- Fraternities and sororities
- Churches, temples, synagogues, and other religious organizations
- Professional special interest groups
- Volunteer special interest groups, i.e., court and corrections volunteers
- Organized labor and unions
- Sports and entertainment figures
- Governmental commissions, boards, and task forces charged with representing minority interests

3. Are there individuals who will be willing to devote the time and energy necessary to accomplish the work of the task force or commission?

An initial determination should be made that the task force will be supported by a sufficient number of dedicated participants who will be able to accomplish the mandate and goals of the project. The time and energy required from the task force or commission participants should not be underestimated. A strong core of individuals will be asked to volunteer several days a month to the project. They will be required to read, research, and evaluate volumes of materials. Some will write and edit sections of the interim and final reports. Any proposed task force should rely on the dedication and availability of these individuals. Without a sufficient number of dedicated members, the work of the task force will become an impossible burden on the remaining members. At least two-thirds of the task force or commission should qualify as active and committed participants. (The membership criteria of the task force will be discussed in detail in Chapter IV.)

4. What are the issues and concerns of the minority public that argue for or support the establishment of this inquiry?

The history of minorities in this country has clearly demonstrated the need for some mechanism to address racial and ethnic issues in the courts. However, for most state judicial systems, there is a high premium placed on time and resources. There are many worthwhile ideas and projects that might be undertaken to improve the administration of

justice in a state. Why, then, should a commission on racial and ethnic bias be established at this particular time? Unless a state has a chief justice, governor, or legislature firmly committed to the concept of the commission, more effort will have to be invested in the documentation of the need. It is likely that even the most committed policymaker will require some documentation as support. This documentation can take many forms and does not necessarily involve extensive research or high cost. Described below are several ways in which the judiciary and other state officials, and community and civic leaders, have established the existence of racial and ethnic bias in their court systems and have promoted the need for a systematic investigation of these problems.

Reports from Other State Task Forces or Commissions on Racial and Ethnic Bias in the Courts. Several states have completed their inquiries and issued reports on racial and ethnic issues in the courts. These reports and the experience of these state task forces are invaluable resources for states considering similar initiatives. The National Center for State Courts is a clearinghouse for all materials generated by these investigations as well as as the liaison to the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the State Courts. Both of these organizations are available to provide materials and advice to individuals seeking to create task forces or commissions in their states. A chief justice from a state that has had a task force may be a powerful advocate for another chief justice who may be considering a task force. Inviting the chair, an executive director, or a member of an existing task force to address a group or organization may create momentum within a state and focus attention on the issue of racial and ethnic discrimination in the courts. Relying on the experience of others is an excellent way to respond to concerns and questions about the task force process.

Reports from Commissions or Task Forces Within the State. It is likely that each state has a significant number of civil rights organizations dedicated to the investigation of racial bias. Groups such as the NAACP-Legal Defense and Education Fund, the American Civil Liberties Union, and the Urban League are valuable sources of information and documentation about racial bias and the courts.

Many states have created and completed the work of commissions on gender issues in the courts before the establishment of a racial and ethnic bias task force. A recommendation from such a body that the chief justice mandate a racial and ethnic study may be significant in encouraging the court to establish a task force or commission. In some states, citizen's commissions for the courts or twenty-first-century commissions have been created. These groups are usually charged with a broader view of the future concerns of the courts and the level of service provided to its citizens. Such commissions are ideal vehicles for documenting the perception of discrimination and the possible existence of racial and ethnic bias. Both legislative and executive initiatives may provide additional opportunities for highlighting the deeper effect of racial and ethnic discrimination in the courts.

Special Interest Groups Within the Justice System. Associations or organizations of minority lawyers and judges can be important forces in establishing the need for a task force investigation. They can conduct independent research into specific aspects of racial and ethnic bias in the courts and publish their findings with a request for further investigation. These organizations can invite expert speakers to address their members about racial and ethnic bias in the courts or sponsor a broader educational program for all judges and lawyers in their jurisdictions. Minority judges and lawyers in panel discussions can speak about their own experiences of discrimination and about the experiences of their minority clients. Town hall-type meetings can draw attention to the issues and encourage lawyers and judges to speak out about racial bias and the need for a task force. In each of these situations it may be appropriate to publicize the event, videotape the proceedings, and make the tape available to those individuals who will be instrumental in approving the creation of the task force.

In the absence of a broad-based public effort, a letter-writing campaign conducted by interested organizations and their members may also be useful. This correspondence should document the experience of the letter writer and request that the chief justice, governor, or legislature make every effort to address the concerns of minority lawyers, judges, and citizens. The tangible presence of public concern and support within the justice system for the project is important.

State Bar Initiatives. State and local bar associations are valuable resources in creating momentum for the commission. The list below enumerates some of the ways the state and local bars may become involved.

- The state bar can provide data about minority membership and the leadership role minorities have in the bar. In most states this information clearly demonstrates the limited access that minority attorneys and judges have to positions of power in their profession.
- Regional lawyer meetings can be held for the specific purpose of discussing and reporting on the nature and extent of racial and ethnic bias in local court systems.
- Individual sections or committees of the bar can report about specific areas of law that are adversely affected by racial and ethnic bias issues. For example, the criminal law section might report on sentencing differentials or the committee on law and economics might sponsor a survey to gather employment and salary statistics for minority attorneys.
- The state bar may also be an effective voice in calling for an investigation of membership claims of racial discrimination and in offering partnership with the courts in the task force or commission.

Court Administrators and Judicial Educators. Court administrators and judicial educators may be overlooked in the formation and ongoing work of a task force. Yet, these individuals are important allies. Court administrators have access to data and information that will be useful in advocating for the task force. Administrators can also lend their managerial/administrative skills and advice. Their expertise will be particularly helpful in implementing the research agenda, operationalizing the recommendations, and overcoming resistance to the reforms.

Judicial educators possess a unique perspective on the attitudes and behaviors of the judiciary. They will likely already be a part of the national momentum to include bias issues in their educational offerings. Creation of a course component on racial and ethnic bias issues clearly publicizes the concerns about bias and the possible effect it has on the court system. Such a component creates an opportunity for judges to be introduced to the findings and recommendations of other task forces in a

nonthreatening, nonjudgmental manner. Many states and national organizations have developed course curricula on racial and ethnic bias in the courts. The National Judicial College, the National Council of Juvenile and Family Court Judges, the National Organization for Women Legal Defense Fund's National Judicial Education Program, the American Bar Association, Washington State Court Administrators Office, the Michigan Judicial Institute, and many other judicial education sources have produced teaching videos, guides, curricula, and course manuals.

These courses should be developed using the following guidelines:

- Select faculty who are knowledgeable about the material and are themselves comfortable in discussing racial and ethnic bias issues. Have a diverse faculty, which includes judges, nonjudges, and minority and nonminority presenters.
- Keep in mind the difficult nature of the topic. It will not always be possible to avoid controversy. The important goal is to keep the channels of communication open on this extremely important and sensitive issue. Allow participants to discover the issues through their own involvement in the process. Adult-learning techniques are critical teaching aides. Make the course relevant to the work of the participants.
- Remember that substantive legal issues are as important as behavioral issues.
- Allow sufficient time for discussion and resolution of sensitive and difficult issues. When a topic is given too little time and attention, the message is that it is not important. Such treatment diminishes the credibility of the course or seminar and prevents complete discussion of the complex issues that are raised.

Civic Momentum and Media Coverage. Do not underestimate the power of community interest and media coverage in creating the momentum for a commission. The courts are influenced by the needs and expectations of their constituencies. As a public institution, the courts (and the judges) are mindful of their public responsibility. Impartial and unbiased justice is a fundamental guarantee of the judicial system. When civic leaders, community groups, and the lay public communicate their concern through the media about the existence of racial and ethnic

bias in the courts, judges will likely be persuaded to generate equal attention and enthusiasm for reform efforts.

Newspapers and magazines should be encouraged to cover stories relating to racial and ethnic bias issues in the courts. Broadcast media and the press may be invited to attend meetings, speeches, or presentations on the topic. Articles may also be submitted to legal interest publications, such as bar journals.

Benefits of Preliminary Research. There are several benefits to preplanning task force research. First, much of the information gained in this preliminary phase will become the basis for future findings and recommendations as well as the focus for more intensive research efforts. Second, people and organizations who are contacted during this preliminary phase are potential members, contributors, or public-hearing witnesses. To this extent, this phase may be seen as an initial effort to educate the public about the work of the task force. Finally, a well-documented needs assessment will help eliminate false starts and organizational mistakes and will provide a solid response to detractors who may characterize the task force as a waste of time, energy, and resources. It will also increase the credibility and influence of those who support the task force effort by providing a firm foundation for its creation.

5. *Are there sufficient resources and time to accomplish the mandate of the task force or commission in a credible and professional manner?*

Commission supporters should also recognize that there is a perception in some instances, and a reality in others, that efforts addressing minority issues tend to be understaffed, underfunded, and inadequately supported - that they are programmed to fail. If, therefore, there is a question at the outset regarding the availability of resources, the task force will be seriously hampered in its work. First, members will feel unduly limited in their research options. Important areas of investigation will be shortchanged or bypassed. Research projects will be restricted in scope and methodology. Second, members will spend a disproportionate amount of time in the fund-raising effort. Substantial momentum will be lost as resource allocation becomes the dominant task force goal. As a result, many members will lose enthusiasm for the project.

Finally, as the time frame narrows and funds are depleted, dedicated members and staff will be required to work long hours and on weekends and holidays to complete the project. Overburdened and overwhelmed by the task before them, they will make every attempt to salvage the project. The result will be burnout for all involved and a product that is less than satisfactory.

Consequently, if adequate resources are not likely to be readily available without an extraordinary commitment of time and energy, it may be advisable to postpone starting the commission and to pursue alternate strategies for generating financial support. (Chapter IV discusses in detail the many funding strategies available to support the commission effort.)

B. The Task Force or Commission Plan

If the five questions in the preceding section can be answered satisfactorily, the groundwork is laid for the successful design and proposal for a task force or commission plan. In designing the plan, four key issues should be addressed.

1. *What Is Contained in the Task Force or Commission Plan?*

Any proposal for the creation of a task force or commission should include the following components:

- a. The need for the task force or commission (including sample findings and recommendations from other jurisdictions)
- b. The level of support and interest of key members in the legal community who will be willing to devote time, money, and energy to the effort
- c. The level of support and interest of citizens and community leaders representing a broad spectrum of the state's minority constituency
- d. A proposed structure for the task force or commission, including:
 - Proposed mandate (see Chapter III)
 - Recommendations for membership and staffing
 - Time requirements and a time frame for completing the investigation
 - Research methods and project goals

- e. A breakdown of anticipated resource requirements for the task force or commission, including:
 - Tentative budget
 - Sources of direct funding
 - Sources of grant funding
 - Availability of in-kind services and professional Volunteer staff
 - Availability of volunteer staff
 - Availability of clerical assistance or administrative support
- f. Discussion of the need for a commitment beyond the final report phase and into the implementation, monitoring, and evaluation phases.
- g. Outline of the role of the chief justice and administrative director of the courts highlighting the need for an open dialogue between commission leaders and the court and for active, visible, and ongoing leadership from the mandating authority.

In creating the commission plan it is essential to anticipate the needs of the commission. Once the chief justice (or mandating authority) has agreed that the project is essential, major changes in focus or requirements at a later date will be difficult to justify and may cause a loss of confidence and credibility. Each chapter in this manual should be read carefully before designing the plan. Consultation with other task force or commission chairs and executive directors will help to avoid some of the most common pitfalls. Everything the commission will reasonably need to do a thorough and professional investigation and report should be included in the proposal. Any lack of clarity regarding a specific goal, plan of action, or the availability of resources for the project should be noted, and a procedure should be established to help the new commission make a decision on these issues.

2. *How Should the Task Force or Commission Be Designated?*

There are a few successful operating models from which to choose when determining the appropriate structure for examining racial and ethnic bias in a state court system. First and foremost, the designation of the activity or group as a *committee*, *task force*, or *commission* should be given some

consideration. The formal title of the group should be consistent with its mandate, authority, and expected duration. For instance, *committee* might suggest a temporary advisory group and may not confer the same stature to the initiative as *task force* or *commission*. Nor does the word *committee* imply any sense of the group's duration, which is important because activities designed to examine racial and ethnic bias in the court system are not "quick fixes" for correcting the manifestations and consequences of biased treatment.

In fact, the general duration of most state court racial and ethnic bias task forces or commissions is two to four years. This time is spent identifying the real and perceived problems and preparing a substantive final report with findings and recommendations. In a few instances, a task force or commission has been succeeded by another entity, which is responsible for the implementation of recommended reforms. In other instances, task forces and commissions have conducted their investigations and research, while simultaneously overseeing the implementation of programmatic and procedural reforms. Either of these approaches lengthens the life expectancy of the task force beyond the two-year minimum.

There is another important point to keep in mind when selecting the title *commission* or *task force*. A *commission* or *task force* may raise public expectations about the group's role in implementing reforms. This is especially true with commissions, which are frequently perceived by the public as quasi-judicial bodies capable of issuing rules, regulations, or guidelines. For the public, this type of authority is seen as being able to provide some form of redress. Some of these public expectations and perceptions, therefore, may need to be considered when designing the framework of such a commission. If redress is not a primary function of the state court's commission, clarification of its role as a fact-finding or investigative body should be stated at its inception and reiterated during public events (e.g., the commission's public hearings, media events associated with the release of the commission's reports, and relevant court ceremonies).

To date, there appears to have been little functional difference among groups or investigative bodies designated as a task force, commission, or committee. Notwithstanding this fact, the designation is important. Specifically, the title of *task force* or *commission* adds more credibility to the group's role and purpose. One of these two titles is preferred as the more appropriate terminology for a

group mandated to conduct a racial and ethnic bias study. These two terms are used interchangeably throughout this report.

3. *How Is the Task Force or Commission Plan Presented?*

The single most important factor in the success of the task force or commission may be the extent to which the chief justice and the highest court endorse the project. The leadership of the chief justice will mobilize the cooperation of the judiciary as a whole. Even if the highest court is not the funding agent for the commission, all research, reforms, and recommendations will depend upon the court's willingness to cooperate with the commission. All proposals, therefore, should be designed for initial approval and adoption by the chief justice and the state's highest court.

As alternate funding sources are identified, other key individuals and organizations may be targeted as critical actors in the task force or commission plan. Included in this list may be the following:

- Governor
- Legislature
- Minority bar associations
- State bar president and board of commissioners
- State court administrator
- Judicial councils
- State and local judges' associations

Once the necessary mandating and funding sources have been identified, it is essential that appropriate protocol for the proposal process be followed to avoid detrimental breaches of etiquette. It will be important to have the counsel of individuals who are familiar with the personalities and relationships of the key parties. It also will be important to know the positions taken by these key individuals on racial and ethnic bias issues. Before meeting with potential mandating and funding sources, send them a proposed agenda, along with a list of attendees and a brief synopsis of the commission plan with supporting documentation.

The meeting should be attended by a limited, and carefully selected, number of people and chaired by the most persuasive and influential spokesperson for the group. Media coverage is not appropriate before this event because a chief justice or legislator who might feel forced into creating the task force is likely to resist cooperation. Even if the task force is created, disinterest or enmity can be a significant source of difficulty, even harm, later on.

4. *What Options Exist in the Event the Task Force or Commission Plan Is Rejected?*

In their manual *Operating a Task Force on Gender Bias in the Courts*, Lynn Hecht Schafran and Norma Juliet Wikler present an excellent discussion of the steps to take "when the chief justice says no" (pages 15-16). Their recommendations are applicable to obtaining support for a racial and ethnic bias task force in the face of opposition from any policymaker.

- Try to keep the door open for future discussions and forestall a final negative decision.
- Get as much information as possible about the reasons for the chief justice's refusal. Remember, the real reason may not be apparent. Summarize the objections and ask whether the summary accurately describes the position taken by the chief justice.
- Do not respond immediately to the refusal. Take time to discuss the chief justice's objections with the broader group and request a return appointment.
- Use the time before the scheduled appointment to 1) reevaluate the strengths and weaknesses of the proposal; 2) determine whether there are other forces at work in opposition to the effort; and 3) formulate a response and garner additional support.
- If the final answer is no, do not necessarily abandon the effort. Maintain communication and cooperation with the chief justice and indicate that you will be updating him or her on the progress of the proposal.
- Maintain small scale efforts at addressing racial and ethnic bias and continue to recruit supporters.

C. *Establishing an Independent Task Force*

It is possible that all efforts to establish a formal racial and ethnic bias investigation by court mandate will fail. In that event, an independent commission may be created. This type of task force will differ from the type of "independently funded" task force described in Chapter V. Following are some guidelines to assist in that effort.

- Recruit from those persons whom you have already contacted and from the comprehensive list of persons who would have been asked to serve on the official court-appointed commission.
- Establish the written mandate, objectives, and goals and compose a lists of priorities to reflect the commission's independent status.
- Set the timetable and schedule commission meetings.
- Seek financial support from the state bar, minority bar associations, local colleges and universities, community groups, and corporate and private donors. (See also Chapter V: "Financing.") Do not overlook voluntary, in-kind services and public support.
- Determine the research agenda and the data collection methods. Plan for obtaining the needed court data.
- Devise a marketing strategy to promote the commission's visibility. Invite the press to attend public hearings and other significant meetings.
- Develop a press package to keep the public informed.
- Keep the chief justice and other key players informed about the commission's progress.
- Disseminate your report in a timely fashion and invite feedback from all segments of the community.
- Follow-up on the report's dissemination and analyze the content of the comments.
- Request another meeting with the chief justice and members of the highest court to present your findings, recommendations, and the feedback that the commission has received from all segments of the community. Renew the commission's request to establish a court commission on race and ethnic bias in the courts.

CHAPTER III

Fashioning the Mandate

ONE OF THE FIRST EFFORTS TO BE undertaken, preferably before commission activities, is drafting the mandate. The mandate is an authorizing document, which creates the task force and defines the scope of its authority. At a minimum, the mandate should describe the parameters of the study to be pursued and the desired end products. Included should be statements regarding 1) the perception and existence of racial and ethnic bias in the courts, 2) the nature and extent of the authorized investigation, 3) the anticipated focus of recommendations for reform, and 4) the commitment on the part of the mandating authority to address the recommended reforms.

This chapter discusses the mechanics and possible challenges of drafting a mandate.

A. What Is the Mandate?

The mandate details the commission's "mission" or scope of work. It also details the nature of the authority with which the appointing official clothes the commission. For example, if the appointing authority is the chief justice, he or she may limit the scope of the investigation to those areas he or she controls or influences, and the mandate should reflect those limitations. If the commission receives broad-based authority to examine a wide range of issues, the mandate should likewise reflect the expanse of the task force's scope. Thus, although a seemingly simple document, the mandate should be born of careful, detailed analysis and thought.

As well as defining the task force's authority, the mandate may also define the funding needed, the access necessary to gain information, the expertise required of task force or staff members, and the amount of time needed to complete the project. It is, therefore, necessary to fashion the mandate with full consideration of the desired end product(s).

The end product of most commissions is a report with recommendations. Accordingly, before fashioning a mandate, it would be wise to review the reports and recommendations of other commissions and task forces and to compare their final reports with their respective mandates. This review will provide a sense of the scope of work undertaken by other task forces and reveal a marked uniformity in their mandates and end products. The mandates of most existing and former task forces have yielded largely policy documents that call for change not only by the authority that created the task force, but by other branches of government and nongovernmental agencies that are integral components of the justice system as well. The documents also are partly blueprints for change within specific arenas, e.g., the courts.

Two possible exceptions to this general pattern are the commissions of New York and New Jersey. The New York Commission sought to narrow its scope to the authority of its appointing authority, the chief judge. Thus, the mandate, report, and attendant recommendations speak to the direct authority of the chief judge, e.g., hiring of nonjudicial personnel, to the chief judge's "spheres of influence," and to the curriculum of the state's law schools. Likewise, the New Jersey Task Force directed recommendations to the chief justice and supreme court, and, where appropriate, suggested that the supreme court present recommendations for reform to the governor and state legislature.

Reviewing the mandates of other task forces may cause a new task force to take a different approach to defining its mission and making projections about its desired end product(s). Such creativity would be a welcome addition to a growing number of models for change represented by state task force mandates.

B. Scope of the Mandate

A number of issues should be addressed in fashioning the mandate. These issues concern the breadth of the work to be undertaken by the commission. One of the first issues is defining the term minority and determining what groups will be embraced by that definition.

1. Defining Minority

Before embarking on any investigation or research, most existing task forces and commissions have been faced with a key question. That is, whether to limit the investigation to the racial and ethnic classifications used historically by civil rights groups, or to expand the investigation to include other ethnic or disadvantaged groups. For example, soon after its inauguration, the New York Commission began to receive requests from various groups for inclusion in its investigation. Those groups included Irish-American court officers, Jewish court employees, and gay and lesbian court users. Because New York had not defined the term minority in its mandate or founding documents, these groups were understandably seeking inclusion.

Most state commissions and task forces have confined their investigations to the historically disadvantaged racial and ethnic minority groups -- African-Americans, Asian/Pacific Islanders, Hispanics, and Native Americans. Michigan has the largest population of Arab-Americans in the United States and chose to include this group as well. This approach does not assume that these major racial and ethnic groups can be lumped together into one minority category. On the contrary, it is essential that the experiences and perceptions of each minority group be viewed separately. This allows for earlier identification of unique or similar patterns of treatment.

There are a number of options available to determine the groups to be included within the definition. Task forces and commissions have considered the range, from those persons who have traditionally been considered "minority"; to those who fall within a legally recognized "protected class"; to groups included in federal or local definitions of the term; and to those persons who share a common characteristic and who assert "adverse impact" because of certain governmental policies and practices. The more groups included, however, the more complex the logistics of

determining the extent of their representation on the task force and the nature of their input. Census data may be useful in determining proportional representation; however, the dominant minority group within the jurisdiction, or the group that may have spearheaded the effort to have a task force or commission established, may raise legitimate claims of dilution of their efforts and interests.

To appreciate the complexity of the problem, one should consider the efforts of the New York Commission on Minorities. For its public hearings, it contacted a diverse Asian community of Chinese-Americans, Korean-Americans, Japanese-Americans, and Southeast Asian-Americans. Similarly, in Washington the task force outreach included contact with a diverse Asian-American community and a significant effort to reach the state's thirty Native-American tribal groups.

2. Combining Gender and Race

There have been a few attempts at combining gender and racial bias task forces. To a very limited extent, it has worked; for example, in the conduct of demographic or court employment studies. The examination of gender and racial bias, however, usually has resulted in separate studies or research efforts. This is because race and ethnic bias and sexism are different sociological problems that require different solutions. Moreover, the investigative tools or methodology used to identify the subtle biases directed at racial and ethnic minorities are not automatically transferable to identification of gender bias. Finally, racial and ethnic bias studies examine diverse groups of people, all of whom need to be represented on or involved in the task force process. Balancing divergent goals is often more complicated than consensus building among individuals who represent a specific target group or audience. Therefore, to combine gender bias and racial bias studies into one activity diminishes both efforts. While joint efforts are feasible, each area of bias is unique and requires a separate investigative body, task force, or commission. (For a further discussions of this issue refer to Appendix A, "The Relationship Between Gender and Racial and Ethnic Task Forces in the Investigation of Bias in the Courts.")

3. *Perception Versus Experience*

The commission should determine the extent to which it will focus on perceptions as opposed to actual experiences of racial bias. Given the importance of the public's perception of the ability and willingness of the court to mete out justice, perceptions of bias and the reality of bias are equally detrimental to the system. If the commission relies more on perception than it does experience, it opens itself up to charges of witch hunt. This charge alleges that perceptions can be erroneous or based upon insufficient evidence. It may suggest that the commission is attempting to justify its existence by relying upon flawed data that do not establish irrefutable patterns of biased treatment.

Documenting experiential racial discrimination, however, is quite a challenge. Such data are the most compelling evidence of bias. To the extent patterns can be established from experience, there exist fewer grounds for challenging of findings. Collecting evidence of actual bias is difficult, however, because the instruments used can be costly to design and implement. Further, as many task forces have discovered, persons involved in the court system are often reluctant to share experiences for fear of retaliation. Thus, an over-reliance upon proof of actual experience can lead to claims of whitewash. Those making this charge will assert that actual proof of intentional bias sets up an impossible mission for the task force, one predestined to fail.

4. *Treatment and Representation Issues*

The perception/experience dichotomy crystallizes when the commission focuses upon treatment and representation questions. These inquiries concern both the breadth and the depth of the task force's work. The breadth covers the spectrum of points of interaction between the user and the system (treatment); the depth looks down the "pipeline" to determine the adequacy of representation of minorities working in the justice system. A complete mandate will address both levels of inquiry.

When focusing on treatment issues, the commission should look at all possible minority users of the courts, including lawyers, litigants, witnesses, jurors, observers, or reporters. Such users also may include court employees, both judicial (judges and attorneys) and nonjudicial (court reporters, clerks, other professional staff, and

secretaries), as well as ancillary workers, such as probation officers and social service workers. Another area of investigation may include the status of minority lawyers within the larger legal community, i.e., law firms, law schools, mediation and administrative tribunals. Again, the extent to which the commission's investigation encompasses most, if not all, of these users will dictate the comprehensiveness of the report and the soundness of the recommendations. An exhaustive review, however, takes both time and money, and no task force to date has had an abundance of funds.

Once the decision is made as to what racial minorities are "adversely impacted" or make up the "protected classes," the next step is to determine "from whom" these court users are receiving unfair treatment. Implicit in this inquiry is the scope of the commission's definition of the *justice system*. The public rarely makes definitive and pristine distinctions among the different actors within the justice system. The conduct of the police, for example, is used to condemn the actions of the judiciary. It is important, therefore, to look at the treatment received by all court users from all the actors in the system - police, administrative law personnel, prosecutors, defense attorneys, judges, and probation and corrections officials.

When looking at employment profiles to examine issues of adequate representation, it is necessary to identify the sources of potential applicants and to determine the corresponding participation of minorities in the applicant pool. Consequently, to assess under-representation on the bench, a review of minority membership in the bar and enrollment in law schools also is necessary.

Task forces and commissions have taken different approaches to these issues. While the New York Commission chose to focus on the treatment of all users of the court system, it, like the New Jersey Task Force, chose to make recommendations *only* about those actors in the system over whom the chief judge had actual authority or considerable influence. This made it possible to determine the extent to which the court system has been responsive to and accountable for the recommendations of the commission. The New York Commission also conducted an in-depth review of the representation of minorities in the court system to discern what role, if any, those actors over whom the chief judge had authority contributed to any under-representation

of minorities and to assess the relative degrees of under-representation within various departments, units, offices, and districts.

The Florida, Michigan, and Washington task forces chose to look at the breadth of the problem. They focused on all the actors within the justice system to provide as comprehensive a picture as possible and to make policy statements where appropriate.

5. *Review of Substantive Law*

A final determination to be made by the commission is whether it will end its inquiry at treatment and representation of minorities or will review areas of substantive law for bias. This is an important issue since this kind of review goes to the heart of judicial decision making. To conduct a comprehensive review, however, calls for a commitment of resources beyond those available to most task forces.

The District of Columbia and Florida task forces reviewed substantive law areas. The New York Commission, during its hearings, was asked to look at one such substantive area, i.e., the limitations in law governing recovery in personal injury cases. Although its final report does address civil case outcomes, it does not review disparate outcomes due to the substantive law.

6. *The "Elastic Clause"*

The mandate of the New York Commission provides, in relevant part, that "the Commission also may study other areas within the power and authority of the Chief Judge to effect change in order to complete its study on the treatment of minorities in the courts and to make recommendations which will ensure the operation of a totally bias-free system."

The reason for this provision, which became known as its elastic clause, was the belief that the commission would have to review the criminal justice system as it relates to over-representation of minorities as users of that system. However, as the commission had neither the funding nor the longevity needed to review the entire criminal justice system, it limited its investigation to aspects of that system relevant to its mandate, e.g., general treatment issues.

Had the commission stated in its mandate that it would review the criminal justice system, the commission felt that it would have raised expectations beyond those it could meet. The elastic clause allowed the commission to choose those areas that it deemed most relevant, without raising expectations that it would engage in a total review of a problematic area.

C. **Writing the Mandate**

The mandate of the commission or task force can raise or lower expectations of the targeted groups, the legal community, the public, and other observers. The more realistic and realizable the mandated mission, the greater the chances of meeting those expectations. Accordingly, in fashioning such a mandate and thereby determining the mission, the mandating authority and the commission will ultimately guide the commission's work and strongly influence the likelihood of success.

A commission's mandate can be multifaceted. Each aspect could involve a specific segment of the courts' operations (e.g., family court), specified parties who operate within the courts (e.g., court officers), or selected topics (e.g., the question of disparate sentencing). The New York Commission's mandate was fivefold. First, it was to ascertain how both the public and court participants perceive treatment of minorities, as well as the extent to which minorities voluntarily use the courts. Second, the commission was to review the representation of minorities in nonjudicial positions, e.g., court clerks, court reporters, and court officers. If under-representation was found, the commission was to recommend ways to increase the number of minorities in nonjudicial positions. Third, the commission was to review the two selection processes for judges – elective and appointive – to determine which results in greater minority representation. Fourth, the commission was to examine the representation and treatment of minorities within the legal profession. Finally, the commission was to review other areas (its elastic clause) it deemed appropriate to its investigation.

The Information Service of the National Center for State Courts can supply copies of mandates from other task forces and commissions.

CHAPTER IV

The Roles and Responsibilities of Key Actors in the Task Force or Commission Process

THERE ARE FIVE KEY ACTORS OR SETS of actors who are ultimately responsible for the success or failure of the commission: the chief justice/judge, the chair, the vice-chair(s), the members, and the executive director. Each individual has a unique role to play. From the outset, it is imperative that everybody understand their responsibilities and the responsibilities of their colleagues. This not only assists in the selection of the best possible candidates to fill these task force positions but also decreases the likelihood of conflict between the parties.

A. The Role and Responsibility of the Chief Justice (Mandate Source)

In almost all jurisdictions, the responsibility for creating the task force rests with the chief justice of the highest court. Following are ways in which a chief justice can provide effective, ongoing leadership for the task force:

- Announce publicly the formation of the task force or commission and personally endorse the investigation.
- Appoint the task force or commission chair, members, and executive director. (It is recommended that the selection of these individuals be accomplished under the guidelines discussed in this chapter.)
- Notify each judge in the state of the task force or commission, state its mandate, and request full cooperation and support from the judiciary.
- Fund the task force or commission at a level sufficient to provide a credible and professional report and subsequent implementation of its recommendations.
- Establish a direct line of communication with the chair.

- Review regular reports on the status of the task force or commission and periodically attend meetings.
- Implement interim measures to address immediate concerns where appropriate. (One chief justice adopted a hiring policy for minority judicial clerks after the state task force notified him of disproportionate hiring figures.)
- Focus ongoing public attention to the work of the task force or commission through press releases, speeches, interviews, articles, public presentations, and conferences.
- Require mandatory attendance where appropriate or encourage all judges to attend the presentation of the task force or commission reports.
- Endorse appropriate findings and recommendations and direct or encourage state judges to examine and follow such recommendations.
- Order where appropriate, or urge, state judicial education programs to develop course components and curricula that focus on cultural diversity issues.
- Examine practices and policies of the supreme court and the state court administrator's office to ensure that they represent a bias-free model for the entire judicial system.
- Commit to address the task force or commission quickly and to provide adequate resources and support for the implementation, monitoring, and evaluation phases.

B. The Role and Responsibility of the Task Force or Commission Chair

The task force or commission chair is the primary source of leadership, motivation and direction for the work of the task force or commission. The chair should have a unique combination of managerial skills, political savvy, and substantive expertise. In many ways the chair is the keeper of the vision of the task force or commission. As a result, he or she is required to provide leadership and direction to the task force or commission, by resolving conflicts, encouraging communication and the exchange of ideas, demonstrating commitment, and generating ideas and sharing insights into the issues before the task force or commission. The responsibilities of the chair cover all phases of the task force or commission process. Following is a basic job description for this complex and challenging position:

- Serve as liaison between the task force or commission and the chief justice. Additionally, the chair serves as a liaison with the state court administrator, the executive and legislative branches, and all other organizations responsible for the mandate and funding of the task force or commission.
- Serve as spokesperson for all public relations and media coverage. In the event that this responsibility is delegated to another individual, the chair should exercise final approval for all press releases and public items.
- Appoint all committee chairs, approve meeting agendas, and conduct meetings.
- Select and supervise the executive director. (Note: In many states the executive director is hired by the supreme court, administrative office of the courts, or a combination of individuals.)
- Approve the budget and authorize all expenditures and fund-raising efforts.
- Provide broad administrative direction for the commission work by working with the executive director. The chair should not directly supervise line staff.

All problems and questions that arise in a project of this magnitude cannot be solved at the committee level. As a result, the chair should be prepared to respond to these issues quickly, decisively, and effectively. Given the crucial role to be played by the chair, great care should be given to his or her selection.

1. Selecting the Chair

There are two options for selecting the chair. The appointing authority can make the selection ("appointing-authority option"), or the commission members can select a chair from among themselves ("commission-selected option"). There are benefits and drawbacks to both options. By empowering the commission to make the selection, the appointing authority can clothe the group with a level of independence that will increase the credibility of both the appointing authority and the commission. A critical factor, however, in the commission-selected option is that the members likely will not all know each other, thereby complicating the selection process.

Moreover, given the need for commission members to be as responsive to the needs of the appointing authority as they are to the needs of their other constituencies, the insularity of the commission-selected process may limit the ability of the commission to further the aims of either its constituencies or the appointing authority.

The appointing-authority option, on the other hand, maximizes the extent to which the authority's views and needs are made known to the commission and the extent to which those views are shared by the chair-to-be. This process also allows the appointing authority to maintain a certain level of access to the commission. It is important for the chair and the appointing authority to maintain as close a working relationship as possible, particularly given the sensitivity of the topics to be covered. This relationship may be enhanced when the selection process itself establishes the initial connection between the authority and the chair.

A further benefit of the appointing-authority option is that valuable time is saved in identifying task force members. The experience of commissions and task forces to date suggests that the appointing authority usually has limited access to minority communities; this deficit can make the identification of appropriate task force members a slow process. If the chair comes from a minority community, or is acceptably knowledgeable about minority communities (and all minority communities should be represented), the selection of the chair by the appointing authority may expedite the formation of the commission because the chair will have the knowledge base needed to identify possible task force members quickly without engaging in extended outreach.

Finally, the selection of a chair who is known and respected in minority communities and the community-at-large will send a positive message to the public about the appointing authority's expectation that the commission will make a difference.

General Traits. There is almost universal agreement among the commissions and task forces that the chair should have the following attributes: strong leadership and proven administrative abilities, as well as strong ties to the communities that will be represented by the task force. The chair should be established in his or her field of endeavor so as not to be perceived as using the task force as a stepping stone to higher position. The chair should also have access to a broad spectrum of people in different disciplines and fields so that the task force will have broad-based appeal and access.

Person of Color. The question of whether the chair should be a person of color is often asked. The majority view is yes for a number of reasons. First, as discussed earlier, the appointing authority makes a statement of principle when selecting the chair. Selecting a person of color shows that the authority seeks to empower minority communities with the authority and credibility to investigate issues uniquely affecting them. Too often the study of race issues has been the sole province of white researchers, rendering minorities as the observed "specimen."

A second reason is that a person of color, absent a personal history that may suggest otherwise, may have greater access to minority communities and a greater ability to establish the level of trust needed to gain desirable information. Further, it is not unreasonable to assume that a person of color would have preexisting relationships with other persons of color, thus enhancing access to information for the task force.

It also may be argued that a person of color, by virtue of his or her minority status, has a profound appreciation for both overt and covert aspects of race and ethnic bias. A person of color, therefore, would not have to invest time and energy gaining an appreciation for the problem.

On the other hand, it may be argued that the color of the person's skin does not matter as long as he or she has a keen appreciation of the concerns of those whom the commission represents. Eight of the fourteen state commissions and task forces established have persons of color as chairs.

Which Minority Group? A question embedded in the above discussion is "To which minority group should the chair belong?" Again, the prevailing wisdom is that the chair should be a member of the largest minority group within the jurisdiction. Most of the minority chairs to date have been African-Americans. This selection has been more a function of the demographics of those jurisdictions that have established commissions, the active participation of racial and ethnic groups who have spearheaded the establishment of the commission, and an assessment of the adverse impact the court has on specific minority groups. These jurisdictions have tended to be the larger, more heavily populated states that have sizable, if not majority, African-American populations within predominantly urban communities. If the chair's background does not reflect that of the minorities within the jurisdiction, it is essential to balance the commission with such members.

Member of the Judiciary. Another often-asked question is whether the chair should be a judge. The arguments favoring a member of the judiciary are as persuasive as those countering such a selection. The arguments in favor revolve around the level of trust and credibility such a person would engender from his or her colleagues. With a judge as chair, the participation and support of the judiciary may be easier to obtain because of the belief that a judge would likely take special care not to present the judiciary in an unnecessarily unfavorable light.

The countervailing view is that a judge might be overprotective of the interests of the judiciary, resulting in a less credible commission and even less credible results. Of the fourteen commissions and task forces, twelve have been chaired by judges. If a judge is chosen, it should be the judge of the highest court in the state. This avoids the appearance of constrained leadership because of fear of blocked advancement, and it encourages cooperation with the commission's efforts by bringing into play the tendency of persons to defer to those in higher authority. A final caution here is that commission members may defer too much to the judge as chair, particularly lawyers who may be unwilling to criticize the judiciary in front of judges.

2. *Selecting Vice-Chair(s)*

The New York experience illustrates the need for and the desired attributes of a vice-chair. A year before completion of the final report, the chair of the New York Commission, Ambassador Franklin H. Williams, died. Had it not been for the vice-chairs, there probably would not have been the seamless leadership transition that occurred. There was little time or energy lost in deciding upon a successor because the chief judge was not required to engage in a new selection process, which could have raised anew all of the issues mentioned above.

The New York Commission had two vice-chairs by agreement of the late chair and the chief judge. One vice-chair, the choice of the chief judge, was a member of the judiciary and a person of color. The other was a nonminority member of the bar and partner in a major law firm. The chief judge selected the latter vice-chair as the successor to Ambassador Williams. The professional affiliations of the successor chair were critical to the transition and report-writing phases of the commission's life. His access to resources and people was instrumental in finishing the final report. For this very reason, at least one vice-chair should have proven administrative abilities.

C. The Role and Responsibility of the Task Force or Commission Members

Careful selection and briefing of task force or commission members will reduce the possibility of appointing individuals who contribute little to the task force or commission. However, task force or commission members will, by their very nature, have differing levels of commitment and available time. While the following list outlines the ideal role of the task force or commission member, there may be valid reasons to appoint a member who will not be able to meet all of these requirements. Such a person may provide important leadership in the implementation phase, enhance the political credibility of the project, or have significant connections in the legal or minority communities. These factors may override the desire for full participation of a member in the work of the task force or commission. Additionally, such a person may be helpful in a narrowly circumscribed area such as fund raising.

The recommended role and responsibilities for the task force or commission members are:

- Attend all meetings (both full and subcommittee). Complete assignments for these meetings and arrive prepared.
- Read materials and become familiar with the substantive issues under investigation.
- Participate with an open mind and listen to the opinions of other members and presenters. Find consensus when possible.
- Maintain the confidentiality of the process and deliberations of the task force or commission.
- Speak in support of commission or task force goals to colleagues and the community.
- Participate in the writing or research assignments necessary for the final report.
- Participate in commission focus groups, public hearings, and town meetings and make public presentations.
- Communicate honestly and clearly all concerns relevant to the goals of the task force or commission.

1. *Selecting Commission Members*

How Many? The decisions regarding “whom to select” as commissioners and “how many” are coextensive. Appointing authorities tend to select as many persons as may wish to serve. Thus, to date, there has been no task force or commission with fewer than fifteen members, with nearly half having memberships ranging from twenty-seven to forty-eight.

The challenge is to balance the need for maximum representation with the need to contain the membership size. Consortium members have learned that a task force with more than twenty members can become unwieldy. With a larger task force or commission, meeting and communication logistics consume much valuable staff time, and consensus building, the operative model of commission decision making, becomes a formidable task.

Representativeness. The nature of the representation will vary. The commission should have members from each of the racial and ethnic minority groups represented within the state. The exclusion of any legally recognizable minority group may undermine the credibility of the task force and may be used to discredit its report. For example, the New York Commission was roundly criticized for not having had representation of Native Americans. Although the selection of a staff member

who was from one of the Indian nations located within New York State did abate some of the criticism, the commission's detractors used the exclusion of Native Americans as a further example of biased treatment by the court system.

Access. Commission members should have sufficient stature and credibility within their communities to provide the commission with the access needed to facilitate the exchange of ideas and information between the community and the task force. Such stature also will allay concerns in the community that task force members will become pawns of the appointing authority.

Interdisciplinary Representation. There should be a cross-section of disciplines represented on the task force. To avoid over-representation of members of the judiciary and the bar, the commission should include academics, community activists, representatives of business and industry, law enforcement and corrections officers, and nonjudicial personnel. Finally, there should be persons, who, by their history, stature, and position, lend additional credibility to the commission, e.g., Ambassador Franklin Williams and Cyrus Vance on the New York State Commission and Frank Scruggs as chair of the Florida Task Force.

The nature of the representation does not end here, however. The commission should include representation from as many of the different interests in the judicial system as possible. Thus, if the commission is to review practices of unions with regard to allegations of bias, for example, it would be helpful to have a union official or representative as a commissioner. Such a presence will allow for access to other union officials and otherwise inaccessible information; it will also provide wider acceptance of the findings and recommendations.

Finally, there should be statewide representation. To avoid over-representation of members from the large urban areas, a common occurrence in existing commissions, try to select persons who represent all parts of the state, including both urban and rural interests.

Notwithstanding the need to maximize the task force's diversity, the key to a successful commission is the extent to which the members are committed to the mission. As in any endeavor, there will be times when that commitment is tested and should be renewed. There will be times when the extent of that commitment is discovered only through the

commission process. The commission, however, may suffer if that commitment, or its seed, is not present at the outset. Accordingly, there should be extra effort to ensure that such commitment is present, either through word or deed, and that the commitment will continue throughout the commission's life.

D. The Role and Responsibility of the Task Force or Commission Executive Director and Staff

The position of task force or commission executive director is one of great challenge and stress. In the recommended structure, the director is a full-time employee who is ultimately responsible for all tasks and assignments delegated to staff. It is recommended that the director be an equal participant in the deliberations and work of the task force. The executive director should be responsible for defining work load limitations, project feasibility, and cost/benefit boundaries within the task force mandate and goals. Limited time, staffing, or funds prevent most task forces from accomplishing every goal. It is the executive director's responsibility to balance ideology with practical administrative considerations. Not all issues can be researched and not all research can be exhaustive. The executive director should inform the chair and members of the available options and request that goals be prioritized within reasonable limits.

Following is a list of responsibilities that should be shouldered by the executive director.

- Accountability to the task force or commission chair regarding all aspects of the project. This includes a regular reporting schedule as well as distribution of documents and reports to members, the public, and the courts.
- Administrative authority for hiring and managing staff.
- Administrative authority for the following:
 - Clerical support
 - Budget and accounting
 - Grant requests and reporting
 - Research and data collection
 - Public hearings
 - Report preparation and dissemination
 - Public relations
 - Administrative management of external research

- Liaison for task force or commission members and chair. The executive director should be capable of bringing together divergent styles, differing purposes, and challenging personality dynamics to form a workable coalition among task force or commission members.
- Expertise in law, criminology, minority issues, or research theory. The executive director should be capable of both answering questions in the substantive areas of the project's investigation and identifying resource materials.
- Responsibility for all educational programs for the task force or commission. This includes written materials, guest speakers, video presentations, and the hiring of outside consultants to conduct seminars and symposiums.
- Coordination and preparation of all grant requests and research projects. Responsibility for quality control and adherence to reporting protocols.
- Responsibility for the production and editing of all reports.

1. *Selecting the Executive Director*

Whether the individual is called the *project director*, *staff director*, or *executive director*, he or she will have the same goal -- to get the job done. How the job gets done will depend in large measure on resourcefulness and scope of authority.

A recruitment announcement for the executive director should include such qualities as proven administrative ability; good communication skills, both oral and written; ability to work well with others; availability for travel; cross-cultural competence; and the commitment to put in the requisite time to complete the tasks at hand. The search for such a person should be the responsibility of the chair.

The chair should search for someone with whom he or she can work as a team. The talents of the chair and executive director should complement each other and provide the task force with dual avenues of strong leadership. In some cases the executive director is hired by the state administrative office of the courts. The same criteria for selection should apply in this case.

It has been often asked whether the executive director need be a lawyer. The answer depends upon the qualifications and preferences of the chair. It is recommended that one of the two be a lawyer;

preferably, a litigator. The skills, knowledge, and insight that a litigator brings to an investigation of the treatment of minorities in the courts are obvious -- knowledge of the players, exposure to the processes, and experience with the system. Clearly, if the chair is a judge or lawyer, this knowledge and experience base is covered, thus leaving room for other skills, knowledge, and insight to be contributed by the executive director.

A second often-asked question is whether the executive director need be a person of color. Given a goal found in the mandates of most commissions, i.e., to determine the representativeness of the judicial and nonjudicial officers of the courts, efforts to balance representation on the very body engaged in addressing the question should be exerted at every hiring and selection point. Thus, it is imperative that the staff be as reflective as possible of the minority groups to be studied. Accordingly, if the chair is a person of color, the executive director, as the other integral member of the commission's moving force, need not necessarily be. In any case, effort should be expended to select an executive director whose background demonstrates cross-cultural experience, sensitivity to race and ethnic issues, and an appreciation for the subtle, overt, institutional, and individual manifestations of race and ethnic bias.

There is one logistical issue that should also be acknowledged in the selection of an executive director - location. The experience of a number of project executive directors suggest that the chair and the executive director should work and reside near to each other. It will be important for the executive director to confer with the chair at his or her job site since the chair will normally have a full-time job. Where there is substantial distance between their locations, too much time can be lost in transit.

Finally, there is no consensus on whether the executive director should also be a member of the commission. On one side of the debate is the need to elevate the status of the executive director to be commensurate with his or her responsibility. On the other side is the argument that staff functions should be maintained separately from those of commissioners, which is more closely analogous to the policy function of a corporate board of directors.

Two other parties are needed to complete a staff - a research director and secretary. While both play critical roles in the work of the commission, only the secretary need be full-time.

2. *Research Director*

Whether a research director will be full-time or part-time depends upon the amount of original research to be conducted and availability of resources. Research activities of the commission can be identified as follows: organization and information gathering, issue identification and research, and consensus building and report writing. A research director can effectively contribute to all three phases. If funds are limited, however, a part-time researcher will be most useful during the issue identification and research phase, where the need for research expertise is greatest.

If the decision is made to hire a researcher, various abilities will be important, in addition to excellent research skills. Given the usual low level of funding for task forces, the researcher should have a proactive, "entrepreneurial" view of research; in other words, creativity in identifying needed resources, rather than expecting all resources to be provided.

Research direction can be provided by a consultant or a salaried employee. It generally will be easier to control the time and work product and, therefore, the cost with a salaried researcher. Consulting agreements should be carefully crafted to ensure that the desired product is received for the agreed-upon price.

While it is preferable that the research director have experience with the legal profession and the courts, it is not a requirement, especially if the chair, executive director, or other commissioners have legal experience. The commitment of the researcher to the goals of the task force is crucial to the success of the research agenda. The research director should understand and actively support the commission's efforts to ensure that the research strategies or initiatives match the goals of the commission.

3. *Task Force or Commission Support Staff*

It is necessary to have a full-time secretary to the commission. This person may also serve as the office manager and perform other administrative tasks, such as scheduling public hearings and commission meetings. The importance, however, of other support staff cannot be overstated. In the final analysis, they will carry the burden of the project work.

Depending upon the planned scope of work for the task force or commission and available funding, additional staff may be required to perform one or more of the following functions: full-time scheduling of commission meetings, public hearings, focus group sessions, and other information-gathering/exchanging endeavors; full- or part-time data processing; full- or part-time committee staffing; and depending upon the kind of research planned, temporary or full-time assistance with legal and social science research (e.g., literature reviews and case studies).

There are also various individuals and organizations that can provide assistance to the commission's efforts at no cost. As presented in the chapter on funding, they include corporate executive exchange programs and "in-kind" or professional services donated by publishers, colleges and universities, law firms, and volunteers. Volunteers may conduct telephone surveys and mailings, and they may also be willing to provide office administrative coverage. The corporate exchange program provided the services of a full-time fund raiser in New York. In-kind professional services can be a source of additional research or writing expertise; for example, in exchange for proper attribution, several law professors drafted sections of the New York Commission final report.

Again, no matter the number of staff persons, diversity should be a prominent consideration in the selection process. There is a practical side for such diversity. This cross-fertilization may increase access and understanding between minority and nonminority communities. A diverse task force also simultaneously educates both minorities and nonminorities and fosters and promotes greater communication and understanding between racial and ethnic groups.

No matter what funding limitations might exist, the staff should be selected with as much care as is exercised in the selection of other members of the commission. The staff should also be considered a part of the commission. The chair and the executive director should be willing to work across traditional status lines and job titles to involve each staff member in the effort.

A word of caution, however, is in order. The appointing authority and task force chair should be careful that task force staff members' roles are clearly defined. Staff are present to assist the task force in completing its tasks; staff are not in place to direct the task force agenda or control the outcome of the investigation. The task force commission members were selected to bring various points of view and areas of expertise to this endeavor.

This issue may be particularly sensitive when the staff is provided by the administrative office of the courts. Staff roles should be defined in terms of the task force structure, mandate, and the degree of independence needed to produce a credible report.

CHAPTER V



Financing

A TASK FORCE OR COMMISSION without adequate funding is programmed to fail. Assurances for adequate levels of funding for task forces should be, therefore, a major requirement. With the exception of an independent commission, obtaining those assurances from the authority establishing the commission should be one of the highest priorities.

A. Determining Adequate Funding Levels

Determining adequate funding levels is a function of program planning and budgeting. Clearly, the decisions discussed in Chapter III, the extent and breadth of the task force's review, will determine the duration of the commission, staffing requirements, levels of expertise required, and other services needed. These planning issues will drive budgetary considerations, which, in turn, will fix minimum funding levels. Of course, fiscal constraints will challenge many state commissions to develop creative funding strategies.

A review of the programs and budgets of prior task forces is instructive. New York's task force had an average operating annual budget of \$300,000, exclusive of in-kind contributions provided by the office of court administration. Its budget reflected the size of its court system, the wide scope of its investigation, and the state's willingness to engage in original, comprehensive, and, therefore, costly research.

Florida's investigation was similarly comprehensive. Its budget, however, totaled \$479,000 for a three-year period. Florida was able to rely on the efforts of prior commissions, as well as the insights shared by members of the National Consortium. This sharing allowed Florida and other

commissions to refine their programs, taking into consideration previous efforts, thereby avoiding costly start-up and unnecessary expenses.

B. Funding Sources

The New York Commission operated on the assumption that "he who pays the piper calls the tunes." Thus, it was independently funded to establish independence from the appointing authority and to gain greater credibility in the public eye. Other task forces supplemented the appointing authority appropriation with other funds. A number of factors or assumptions, however, may affect the ability of a commission to raise funds. For example, the law, or code of judicial conduct, may restrict the appointing authority, and by extension, the commission, from engaging in fund raising. Second, because the most attractive form of fund raising is that which is tax-deductible, a task force will need the assistance of a tax-exempt fiscal agent authorized to accept tax-deductible contributions. Finally, no matter what the funding source, a fair amount of funding support activity is needed to sensitize and convince potential donors that this is a worthy project and will yield demonstrative benefits for the judiciary and the public it serves.

With these factors in mind, a task force may seek funding from:

- The appointing authority -- the branch of government that creates the commission may commit to a level of funding either through direct appropriation or "in-kind" contributions, e.g., staffing, clerical support, equipment, office and meeting space

- Foundation support -- a number of foundations, committed to the issues the commission is seeking to address, may provide direct funding or technical assistance, e.g., soliciting funds from other sources or providing assistance in the investigation phase
- Corporate donations - companies, especially those doing business with the courts, may be a source of funding and may provide direct support or technical assistance. Of note are "executive loan programs" that may provide the task force with additional staffing
- Bar groups - the assistance of local, state, and national bar associations may prove to be a fruitful source of assistance, again through direct funding, technical assistance, or in-kind contributions, such as meeting space and clerical assistance
- Individual contributions - a general solicitation of the public may garner support through cash contributions or volunteer services

C. Task Force or Commission Financing Models

The form of the commission most likely will determine the nature of its funding. For example, a task force created by a branch of government may expect adequate funding from its creators. If the task force is independent of its creator, it may have to obtain funding on its own. The discussion that follows outlines the various models adopted by former and existing commissions. It should be noted that each model has multiple funding sources, though the creating branch of government may be the main source of funding.

1. The Legislatively Mandated Commission

In states where the chief justice or highest court is reluctant to create a task force or commission, the alternative may be a legislatively established task force or commission. The state legislature normally refers the examination to the court, which undertakes the task and reports back to the legislature. This model also assumes that the state legislature is able to appropriate funds for the proposed examination or study. The Washington State Minority is an example of a legislatively mandated commission. In Washington, the principal source of funding was through special appropriation. The total

appropriation of \$317,000 was channeled through the office of the administrator of the courts, which supplemented these funds with in-kind staff support to the task force. The Washington Task Force also received funding from the state judiciary's board for trial court education and the trust and endowment committee of the Superior Court Judges Association.

One obvious advantage is the commitment by the appointing authority to provide a relatively reliable source of funding. The disadvantages include the inability of the task force to control the disposition of its funds and the need to lobby for appropriations.

2. The Court-mandated Task Force

The task forces of California, Florida, Massachusetts, and New Jersey are examples of efforts initiated by the court system and administered by the administrators of the courts.

The Massachusetts Supreme Judicial Court budget allocation for its commission during fiscal years 1991 and 1992 was approximately \$75,000, with private foundation donations of \$50,000 and \$120,000 per year, respectively. Initially, only an executive director was hired, but within the first year, other staff were hired. At present, there is an assistant director and a program coordinator in addition to the executive director.

The costs of operating the New Jersey Task Force were absorbed by the operating budget of the administrative office of the courts. A project director and staff support for four working committees were provided. Additional staff support was provided for public hearings and other research.

There are several benefits in the case of a court-appointed entity. The chief justice can ensure success by allocating sufficient funds and providing adequate staff support; by urging the judiciary and court personnel to cooperate with data collection and the implementation of reforms; and by enhancing the stature of the effort through his or her support. While some states have found the court-appointed task force or commission to be the most effective mechanism, other states have expressed reservations about relying upon the court's resources. Obviously, the court-appointed task force or commission competes with other necessary court functions. Such competition for funds and in-kind services may limit the group's ability to undertake a comprehensive examination of racial and ethnic bias in the courts.

3. *The Hybrid Task Force*

The Michigan Supreme Court Task Force on Racial and Ethnic Bias Issues in the Courts provides a slightly different model in that it was established by the supreme court and funded through the administrative office of the courts. There were two task forces operating simultaneously and sharing staff - a race/ethnic issues task force and a gender issues task force. These task forces jointly solicited funding for research projects and operating expenses, successfully raised \$17,000 in private donations, and received two research grants, one for \$67,000 and one for \$28,600, as well as an operating expense grant from the Michigan State Bar Foundation and the State Bar of Michigan. The administrative office provided a full-time project director, an administrative assistant, office facilities, project management, and significant administrative support. (The Florida Racial and Ethnic Bias Study Commission also received approximately \$150,000 in grant funding in addition to the funding appropriated by the legislature.)

The advantage of this model is that there is a committed funding source as long as the court system does not suffer budget cuts. It may be also advantageous to have task force members carry out some active fund raising.

4. *The Independent Commission*

The New York Commission is an independent commission. While such a commission derives its authority from a governmental entity, e.g., the courts or legislature, its funding comes from other sources. New York's independent commission was created by the chief judge and received in-kind contributions from the court system. The commission, however, engaged in extensive fund raising in nongovernmental circles for its operating budget.

The main advantage of independent funding is the ability of the task force to investigate freely those areas involving the appointing authority. The independence also confers a level of immediate credibility.

If the commission is to engage in successful fund raising, identification of nontraditional, independent sources is essential. For example, New York obtained funds and assistance from a corporate volunteer program; engaged the efforts of local groups and

churches by direct appeal; solicited volunteers through senior citizen organizations; and obtained proofreading services from law book publishers.

The obvious disadvantage is the absence of a committed level of funding. Funding may also be affected by the popularity of the commission's issues within funding circles. Further, a significant amount of the commission's energy, which otherwise would be devoted to its primary task, is directed to fund raising. The need for a solid proposal, periodic reports, and face-to-face meetings with potential contributors consumes an inordinate amount of executive time. Moreover, the commission may be required to establish 501(C)(3) tax-exempt status to receive tax-deductible contributions, which also diverts time and energy from substantive work.

The funding activity of the task forces and commissions demonstrates an increased awareness of the opportunities for funding from nontraditional sources. The experiences and documentation from earlier efforts have helped successive task forces increase their productivity and efficiency in fund-raising activities. Accordingly, there is little need "to reinvent the wheel." The experiences of those who have gone before can be tailored to meet the needs of both current and future commissions.

D. Task Force and Commission Budgets

Preparing a budget will allow the task force to determine the extent of funding needed. Of course, all expenses cannot be anticipated, but a review of the budgets of other commissions will help to determine particular needs.

There are expenses that likely will be common to most budgets: personnel, travel, research, printing, and postage and handling. The personnel budget should cover all regular staff, both full-time and part-time. The travel category could include reimbursement to commission members for regularly scheduled meetings, as well as to members and staff for hearings, focus meetings, and other meetings. There should be a separate research category that includes costs for gathering, analyzing, and presenting data, as well as for hiring research experts if needed. A category for writing, printing, and distributing reports should be included. The expenses connected with developing and conducting a training program or holding a conference to present the report also should be included in the budget.

If in-kind contributions are available, they should include, if possible, office space and equipment, telephone, stationery, and supplies. Otherwise, a separate category for these items should be included in the task force budget.

With a rough idea of the funds needed, the development of a funding strategy is the next step. The strategy will be directed toward a governmental source as a direct funding request, or toward private sources. The cornerstone of the private-source

strategy is the funding proposal. Whatever the grant source, e.g., foundation, bar association, or church, a grant proposal is essential. Most grantors would like to know, with as much specificity as possible, the purposes for which their money will be used and the procedures to account for same. The National Center for State Courts and existing or prior task forces should be contacted for budget details and sample funding proposals.

CHAPTER VI

Managing the Task Force or Commission Process

A task force or commission on racial and ethnic bias in the courts is a unique entity. By its very nature, participants in the process are a diverse mix of personalities, views, and purposes brought together to agree upon and accomplish a set of goals. The goals and objectives will be developed by implementing the commission mandate. Before these goals can be achieved, however, these divergent views and personalities should come together in a unity of vision and responsibility. Without such cooperation, the task force or commission faces the very real danger of internal conflict and disintegration. This cooperation is especially important when considering the nature of the task force or commission mandate. Because of the sensitive nature of the issues, any investigation of racial and ethnic bias is likely to evoke strong feelings and reactions. Initiating such an investigation in a system as significant as the judiciary necessarily fosters intense scrutiny. It will take effective management to marshal the divergent views and personalities into a cooperative and productive effort.

This chapter will examine various ways in which task force or commission chairs and directors can strengthen the administrative base of the project. By anticipating and eliminating potential “managerial” problems, the task force or commission can dedicate its time and energy to the substantive work of education, research, and reporting. This can be achieved by adopting the following strategy:

- Create clearly defined reporting relationships
- Develop a strong organizational foundation with clearly defined administrative guidelines
- Establish an effective public relations policy

- Use team development techniques to motivate participants and to maintain commitment to the project
- Use intensive training workshops for key issues

A. Create Clearly Defined Reporting Relationships

The task force or commission is accountable to the source of its mandate for the final product, and to the source of its funding for its expenditures. In most jurisdictions these sources are combined into one entity. However, some states have established multiple reporting requirements. Similarly, most states have adopted a unique reporting relationship between the chair, director, and staff. It seems clear that no one task force or commission structure has been the predominant model.

In Chapter V four different task force or commission models are described. Each model reflects a reporting structure that has been used by a state task force or commission. Each model has advantages and disadvantages. In determining the organizational structure of the task force or commission, it is useful to consider the following goals and the likelihood that a given model will achieve these goals.

A task force or commission has a strong organizational structure when:

- There is a low potential for conflict between the mandate source and the funding source. The reporting relationship is not split.
- There is a clearly defined administrative structure. The reporting relationships minimize conflict.

- Administrative resources of the state court administrator's office are available to the task force or commission.
- There is a clear commitment on the part of the judicial branch and the chief justice to the task force or commission mandate.
- There is clearly defined autonomy between the task force or commission and the court system. The appearance of and the potential for improper influence is reduced.
- The task force or commission director reports only to the task force or commission chair.

B. Develop a Strong Organizational Foundation with Clearly Defined Administrative Guidelines

The following guidelines are recommended to assist the chair and the executive director in structuring the commission process. Consistency and accountability are highly effective in moving the project forward. These guidelines are:

- Establish a schedule of meetings early in the process and gain approval and commitment from members for their attendance.
- Notify members of meetings well in advance and provide detailed agendas. Follow the meeting agenda.
- Allocate enough time for the required work and comply with time schedules. If additional time is needed, notify members as soon as possible.
- Review protocol issues with the chair, commission members, and staff. Encourage members and staff to share their concerns with the respective committee chairs or executive director. Discourage direct contacts with the chief justice and state court administrator.
- Do not inundate members with volumes of information. Have supporting material available upon request. Synopses whenever feasible.
- Assign detail work to staff and committees. Broad policy findings and recommendations should be discussed by the entire task force or commission.
- Appoint committee chairs who are highly motivated, are diplomatic, and have excellent management skills. These individuals, along with the chair, vice-chair, and executive director, should serve as the "executive committee." Their role is to clarify issues, troubleshoot problems, plan agendas, expedite decision making, and provide expertise in the substantive areas of the research.

- Do not follow strict parliamentary procedure during the meeting. Strict procedure may not foster a sense of collegiality and consensus. Establish the mechanics for deciding policy issues. Procedures for voting, quorums, dissenting opinions, and other procedural issues should be agreed upon and adopted by the full task force or commission. Avoid showdown votes and minority positions if at all possible.
- Establish a process for making final findings and recommendations. Individuals who are not present to vote on crucial issues should receive copies of items and be required to register their request to be heard by a certain date. This effectively prevents last-minute revisions and dissents.

C. Establish an Effective Public Relations Policy

Public relations policies and standards of confidentiality should be discussed at the initial meeting of the task force or commission. A policy statement should be drafted, which clearly states the following:

- What part of task force work -- proceedings, documents, and deliberations -- will be considered confidential.
- A policy regarding open meetings (presence of the public) consistent with the requirements of any "open meeting" laws. Included in this should be a process for inviting guests to attend meetings.
- A media policy should be developed that provides for:
 - 1) The designation of a media contact person and a public information staff person
 - 2) An approval mechanism for press and broadcast releases
 - 3) The compilation of a press kit that includes general information about the task force, the court system, and the plans of action for the task force
 - 4) The development of a specific press invitation list for the initial press conference announcing the task force or commission, public hearings,

announcements of interim and final reports, and any other special events sponsored by the task force or commission

- 5) The establishment of a clearinghouse of information and a contact person for members invited to speak to the public on task force or commission matters

D. Use Team Development Techniques

The experience of National Consortium members indicates that many of the unique challenges faced by task forces or commissions have resulted from the process of managing the task force or commission itself. This is not surprising. Task force members are a diverse group of individuals, with differing backgrounds, attitudes, experiences, and levels of commitment. They have been asked, in most cases, to investigate and report on the performance of their colleagues and their profession. The focus of their investigation is a highly charged and sensitive issue—racial and ethnic bias. Discussion of this issue calls into question the fundamental fairness and impartiality of the judiciary. It also has the potential of raising personal issues and feelings of task force or commission members as a result of their own attitudes and experiences. These factors increase the possibility that the task force or commission may experience some internal stress and that agendas of the individual members may diverge from the common purpose.

Traditional team-building techniques can be useful tools for the task force or commission chair and executive director. By integrating these techniques into the task force or commission process, it is possible to resolve or avoid difficult situations before they escalate into more-serious breakdowns. This will also enable members to develop a greater level of confidence in the work of the group and to work together more productively to accomplish the group's goals.

1. *The Leadership Team*

The responsibility for leadership rests predominantly with the chair and to a lesser extent with the executive director. The chair and director should work together as a team. Effective leadership is critical to helping the commission accomplish its goals within a prescribed time, budget, and mandate.

The following guidelines are suggestions for helping to promote effective leadership to preserve that balance:

- All major policy decisions and task force or commission initiatives should be approved by the full task force or commission. The task force or commission chair should initially inform the members of the time, resource, and funding parameters for each initiative.
- Members should be encouraged to state their concerns. No problem or request should go unanswered. If a member cannot be accommodated, an explanation should be made promptly.
- The chair and executive director should maintain a strong connection with the members, keeping their fingers on the pulse of the project.
- The chair and executive director should be reliable sources for educational materials and information.
- The chair should be quick to identify a source of friction and try to resolve the conflict. Humor and planned social activities are excellent ways to relieve tension and reduce stress.
- The chair and the executive director are responsible for "coaching" the task force or commission to victory. The necessary ingredients include superior technical ability, untarnished credibility, boundless enthusiasm, and a clear vision of the purpose.

2. *Communication*

The success of the commission report and recommendations may rest on the enthusiastic endorsement of all of the members. A member who feels that his or her input is unimportant or that the results are predetermined might seriously undermine the credibility of the final report. While full and effective communication within the task force or commission cannot ensure that all members will feel heard, it may significantly reduce the likelihood of member dissatisfaction. Below are several methods to enhance effective communication within the task force or commission:

- Define the task force or commission as a forum for exploration, discussion, and discourse. Ask each member to suspend judgmental attitudes and dogmatic belief systems. Emphasize the educational nature of the work.

- Acknowledge the sensitive, sometimes volatile nature of discussions involving racial and ethnic issues. Recognize that views are often informed by stereotyping, cultural isolation, and ethnocentric beliefs. Encourage members to acknowledge their own confusion and fear in discussing these issues.
- Establish clear lines of communication within the task force.
- Encourage members to communicate their concerns first to the committee chair. If the matter is not satisfactorily resolved at that level, the problem should be handled by the executive committee.
- Listen carefully to each member. Before responding, make sure that the content of the message and the emotional intensity of the statement is understood correctly. Avoid making anyone wrong. Offer alternative views and perspectives on a situation.

3. *Member Participation*

It is likely that every task force or commission will have a number of members who will consistently miss meetings and minimally contribute to the work of the group. As a result, other members of the task force or commission may be asked to carry a disproportionate amount of the work load. Other task force members may feel resentment and be concerned that their work will be undermined by chronically absent committee members. It is also possible that these absent members may appear at the end of the process to object to findings and recommendations that previously have been discussed and approved. Below are suggestions for generating consistent member participation:

- The chair or another member of the task force or commission can be asked to speak to and assure the remiss member that his or her contribution is needed and appreciated
- The chair or executive director can informally ascertain the reason for member disinterest and absences and attempt to address the situation
- An important project might be assigned to a seemingly uninterested member in his or her area of expertise, thereby enhancing the likelihood of meaningful contribution
- The member might be permitted to choose an alternate to represent him or her until he or she can become more actively involved

- The task force or commission should be empowered to declare and fill a vacancy

4. *Member Resignations*

If none of the above recommendations are successful in gaining full participation of an inactive member, the task force chair should decide whether to request or accept a member's resignation. In most instances, the appointing authority will make the final decision. The task force should decide at the outset how to handle a resignation. A resignation should be requested if it can be obtained without embarrassing the member, angering the appointing authority, or risking the loss of influential support. If, however, the cost is too high, the reluctant member will have to be allowed to continue, and the consequences will need to be managed.

5. *Conflict Resolution*

It is unlikely that a task force or commission will proceed throughout its entire tenure without generating some conflict both within and without. There are four types of conflict that may arise during the life of the task force or commission.

Ideological or Substantive Conflict. This is a basic disagreement about fundamental philosophy and belief. People are likely to be fixed in their views and to have a large investment in maintaining these positions (e.g., race and ethnic bias is a pervasive problem in our society versus race and ethnic bias has largely been eliminated from our society).

When faced with an ideological or substantive conflict, the educational process is the most effective means of promoting compromise. Participants can shift their belief systems through self-examination. As their own research illuminates long-held views of reality, individuals may willingly revise or abandon their ideology. This may result in the creation of powerful advocates for the task force or commission findings and recommendations. It is critical that ideological differences be allowed to surface and that examination and discussion be encouraged as part of the task force or commission process. Premature rejection and challenge of a member's views may entrench that member into a negative position and prevent dialogue and compromise.

Procedural or Methodological. This conflict occurs when individuals agree on the fundamental principles and philosophies, but differ on the execution or means of translating that philosophy into action (e.g., race and ethnic bias is a pervasive problem in our society; affirmative action is the best method of eliminating it versus affirmative action only highlights its existence and does nothing to enhance minority rights).

Procedural or methodological conflict should be encouraged and nurtured in the task force or commission. A free exchange of ideas, approaches, and methodologies will ensure a vital and credible project. As the task force or commission approaches resolution, the use of goal-setting techniques and consensus building will help bring divergent views into a cohesive plan.

Personality Conflict. Personality conflict arises as a result of differences in personal styles and approaches. In some instances, ideological or substantive disputes are symptoms of personality conflicts. These situations are difficult to manage and are sometimes best left alone. They may require the diplomatic intervention of the chair or executive director if the conflict escalates into a source of dysfunction or embarrassment for the task force or commission. Smoothing ruffled feathers and healing wounded egos is a part of any group dynamic. Honest communication is usually the best approach. These problems should not be allowed to fester and grow. In most instances, these conflicts are short-lived and can be resolved quickly if handled with tact and sensitivity at the time of the conflict.

Power Conflict. A power conflict can result from an individual's desire to enhance his or her own authority, expertise, or importance to the project. Where power is in question, the task force or commission chair or executive director will be best served by accommodating and/or collaborating with the individual member. Any attempt to compete with or assert authority will only create a larger arena for the conflict. If the chair should assert authority, this is best done within the context of the executive committee, with decisions presented as a function of the group consensus (and only after full discussion and input from members).

E. Intensive Training Opportunities

1. Mission and Goal Setting

This intensive training is designed for the start-up phase of the task force or commission and should take place within the first two meetings. It focuses specifically on the creation of the mission and goals of the task force or commission. It is recommended that an outside consultant or qualified staff facilitate this training. All commission members should participate. The training should use traditional corporate goal-setting techniques and group processes. This initial training will set the strategy for all task force or commission endeavors and, ideally, will create group consensus and support for the work ahead. California, Iowa, Michigan, New Jersey, and New York have conducted this type of training.

2. Diversity Training

Several task forces or commissions have found that before their members can adequately investigate racial and ethnic bias, it is necessary for the members to explore the issues within their own group fully. In some instances, this need has become painfully evident far into the project, after positions have solidified and racial and ethnic tensions have become apparent. Racial and ethnic conflict is likely to occur in any diverse group. Personal beliefs, political opinions, and cultural conditioning do not disappear at the task force or commission door.

As a result, it is recommended that the commission sponsor its own diversity training. This training should focus on raising member sensitivity to racial and ethnic issues and setting the stage for a free and meaningful dialogue about the problem of bias in the judiciary. This seminar requires skilled and experienced consultants. All members and staff should participate. It is recommended that the consultants be carefully screened for their ability to enhance the team effort. State task forces or commissions in California, Massachusetts, Minnesota, Oregon, and Washington have used this training.

3. Research Training

Statistical research and survey techniques are both complex and confusing. Task force or commission members often have preconceived ideas

about research methodologies, statistical validity, and survey techniques. Many members find themselves committed to the idea that objective data is fundamentally more trustworthy than subjective data. The underlying assumptions about these concepts, however, may be flawed. As a research agenda is defined, it will be necessary for the consultants or staff to educate the members about research methodologies, data collection techniques, statistics, and survey design. This training should precede the actual design and approval of task force or commission research projects.

Included in the training should be the following areas:

- Types of research and data collection methods, as well as the advantages and limitations of each method
- Review of research methodologies
- Terminology
- Resource allocation and time requirements
- Task force or commission priorities
- Development and validation of survey instrument
- Sample selection
- Data analysis and presentation of findings
- Research conducted by other task forces or commissions

The principal objective of this type of training is to prepare task force members to make realistic, better-informed decisions about a diverse research program. Members then will be educated consumers when hiring consultants and will avoid underestimating or overestimating the uses of various data collection techniques. Finally, they will be in a position to provide informed guidance to the research professionals.

The key to planning a user survey is early involvement of competent researchers and involvement of representatives of the stakeholders. Early and continuous involvement of representatives of these stakeholders should yield the following benefits:

- The questions that are most important to those people who will be using the data are addressed.
- The stakeholders will feel a sense of ownership in the research process and the quality of the study.

- The stakeholders will be invested in the findings, increasing the likelihood that the information will be used for creating change.
- The appropriate terminology is used.

(Manual for Conducting Citizen User Survey of Racial/Ethnic and Gender Bias in a State Court System, pages 4-5.)

For more information on the research phase refer to Chapter VIII. State task forces or commissions that have used initial research-training seminars are California, Massachusetts, Michigan, and New York.

4. Final Report and Recommendations

Most states have found that the final process of developing findings and recommendations is both long and complicated. Even if committees have created individual pieces of the final report, the entire task force should, at some point, approve the fundamental structure and content of the document. Some task forces have conducted intensive day or weekend workshops for this purpose. During this time a first draft report is prepared with all proposed findings and recommendations. The workshop is designed to create consensus on the substantive material contained in the report. These are some of the principal questions that should be addressed:

1. Does the commission approve the content of the document?
2. Can the findings be supported with the task force data?
3. Does the commission approve the structure of the report?
4. Is there consensus on the findings?
5. Does the commission endorse the proposed recommendations?

The Florida, Michigan, and New York task forces conducted intensive workshops during the final report-drafting phase. (For further information on creating the final report and recommendations, refer to Chapter IX.)

CHAPTER VII

The Research Agenda

A. Overview

1. *Establishing the Research Agenda*

One of the fundamental ingredients of any initiative to address racial and ethnic barriers is a sound research agenda that identifies those behaviors and practices that result in racial and ethnic discrimination. It is, therefore, important for a commission or task force to plan, organize, and coordinate its research program to investigate those areas that will help document racial discrimination in the judicial system. A comprehensive and centrally coordinated research agenda will facilitate this process.

The comprehensive research agenda will enable the commission to:

- Prevent duplicative research efforts by the various task force working committees.
- Make the best use of limited research resources and prioritize its research projects. The task force will be able to identify those areas where data either do not exist or are flawed, inadequate, or incomplete.

The task force may launch both short-term and long-term research projects simultaneously. The short-term research projects may be designed to answer questions of immediate interest to the task force and may provide baseline data and background information for a full-blown research project later.

2. *Committee Structure and Mandate*

As a preliminary step, the commission may wish to set up committees to investigate the desirability and feasibility of pursuing various research

initiatives. While the mandate will help to determine the areas of investigation, the committee structure can facilitate the chosen areas of investigation.

New Jersey's task force established four standing committees: criminal justice and the minority defendant; minority access to justice; minorities and juvenile justice; and minority participation in the judicial process. Its committee structure mirrored the research initiatives put into place.

The task forces or commissions in Michigan, New York, and Washington also had committee structures, which closely paralleled their respective research initiatives. The Massachusetts Commission to Study Racial and Ethnic Bias in the Courts established six task forces with responsibility for collecting and assessing data in each of the following areas of study: 1) perception and treatment of litigants, 2) perception and treatment of attorneys, 3) prosecution and adjudication of criminal cases or treatment of defendants, 4) adjudication of civil cases—treatment of litigants, 5) appointment and employment practices in the courts, and 6) education designed to increase cultural awareness and prevent bias in the courts.

The Iowa and District of Columbia task forces were divided into committees covering general areas of investigation, while the California Advisory Committee had subcommittees to cover public hearings; survey design and research oversight, and cultural awareness training. The Iowa Task Force had four committees: intraprofessional dynamics, interaction in the litigation process, criminal, and family. The District of Columbia Task Force committees were personnel, court activities, and litigation.

3. *Staffing and Budgeting*

The availability and level of staffing is another key ingredient of the proposed research program. Task forces have employed a variety of models. The New Jersey Task Force hired a team of outside consultants to oversee its research program. The New York Commission hired its own full-time research team. In Washington, the task force used outside research consultants as well as the services of a full-time staff research anthropologist. Florida, however, contracted all of its research projects to outside research consultants. The importance of engaging expert research assistance cannot be overstated, because the specialized expertise is critical to the development and implementation of a sound research plan. Local and state universities can be excellent sources for this expertise.

The methods used to collect the data will be dictated by the areas of research as well as the research design. Several factors will influence the selection of a problem for study, including 1) the researcher's values (values affect both the problem deemed worthy of study and the method of study considered appropriate), 2) the researcher's methodology (the degree of proof required), 3) the scope of the study (the unit of analysis), and 4) how time is treated (whether the study deals with a cross-section of the population at one point in time or is a longitudinal study conducted over time). [Kenneth D. Bailey, *Methods of Social Research*, Free Press: 1978, pages 13-14.]

The research initiatives undertaken by task forces or commissions are expected to have direct application to the judicial system. Applied research findings are expected to be used to solve problems in the court system, which are of immediate concern (Ibid., pages 15-16), or are viewed as deserving of some type of remedy, even if the reform efforts cannot be immediately implemented. In the latter case, the task force may wish to place the issue on the court's agenda for future reform/action.

4. *Implementing the Commission or Task Force Research Agenda*

The commission should establish standards to guide the research program. Since it is impossible to study all of the areas that need to be investigated, the commission will need to decide the critical areas of exploration. Developing a uniform format for submitting both internal and external research

proposals will also help streamline the process and ensure the quality of the proposals submitted for funding consideration.

There should be a mechanism to monitor the progress of all research projects. The monitoring mechanism depends upon the particular structure and life span of the task force. For example, New Jersey's chief justice imposed no time limit on the task force. The New Jersey Supreme Court Task Force on Minority Concerns established a research and analysis committee, which reported directly to the task force chair. The committee was composed of representatives from each of the four standing committees. Florida's commission was created for a two-year term. Its major research projects were contracted out to external researchers and monitored by a full-time research director. In Washington, a full-time research anthropologist was hired, who coordinated the in-house research projects and monitored the contractual projects; he reported to the executive director.

Consultants and research staff should be given clear guidance about what is expected of them with respect to the final work product; specifically, the timetable for completing the research project and report, as well as the plan for dissemination of the results.

5. *Planning and Launching the Research Programs*

No research program will be successful without adequate funding. Since most states are experiencing severe fiscal crises, it becomes increasingly important that task force research projects be thorough, streamlined, and well planned. The body of research generated by other commissions and task forces should be thoroughly reviewed.

The aim of the research programs for new commissions or task forces should be to extend the body of knowledge developed by other task forces that documents the existence of racial and ethnic bias in the court system. The one exception is that each new commission should conduct a survey to collect baseline data on minority participation in the legal system. The aim of this survey will be to gauge the success of court initiatives to improve the minority employment profile.

To achieve this baseline, the task force may complete an in-house research survey in cooperation with any equal employment opportunity/affirmative action office (EEO/AA). Task force

research staff can work with the EEO/AA office to develop and design a suitable survey instrument. In some cases, it will only be necessary to augment the existing database because the court may routinely keep statistics on the demographics of its work force. New Jersey's EEO/AA office keeps copious data on the state-paid and county-paid judicial work force. A new database was created, however, for the municipal work force. If baseline data do not exist or are not periodically updated, it may be necessary to conduct a census of the judiciary and state bar association. The bar association may have information on minority participation in the legal system. If this information is not current, it may be desirable to conduct a joint bench/bar survey or, perhaps, the bar association will be willing to survey both the judiciary and the bar.

To date, all of the existing task forces have collected baseline data on the participation of minorities in the judicial system. These research materials, including reports, proposals, and survey instruments, are available through the National Center for State Courts.

The success of the task force research program will depend on the human resources available (research staff and consultants) and the availability of funds to conduct the research, compile the data, and analyze the results. The research funds may be earmarked in the task force's operating budget, or outside funding may be sought. Most task force budgets include some funds earmarked specifically for research projects. Additionally, outside funding sources have been sought for major research initiatives.

When the task force decides to seek outside funding for research, the process of writing grants, locating and hiring research consultants, and negotiating contracts places an additional burden on the executive director and other task force staff and may delay, by several months or more, the initiation of major research projects.

The task force should plan its research so that it conforms to the time limit imposed by the chief justice. Florida's chief justice set a two-year limit for the task force to complete its work. New Jersey, on the other hand, had an open-ended time frame. Whatever the timetable is, sufficient time should be allowed to complete the research agenda so that the study findings may be integrated into the final report.

Finally, it is crucial that the research budget includes funds to print and distribute the results. It is important that the task force's efforts to investigate bias in the courts be widely publicized. Failure to distribute the report to the widest possible audience may be viewed as an attempt to suppress or trivialize the findings and recommendations. The bridges that were built to the minority community may be irreparably damaged by a severely curtailed distribution of the final report.

B. Data Collection and Methods

This section discusses the following data collection methods used by former and existing task forces or commissions.

- Literature review: Published and unpublished research
- Public hearings
- Listening sessions
- Court watching
- Focus groups
- Regional bar meetings
- Review of written rules, directives, forums, and statutes.
- Case review of substantive law areas
- Surveys

Research methods are techniques or tools used to gather data. Most task forces have employed multiple data collection methods. When choosing which data collection methods to use, the following issues should be considered: time and available resources (staff and research budget), the kind of information each method will yield, and the obstacles that are likely to be encountered in carrying out the research. Without exception, task forces and commissions that have completed their inquiries or are implementing a research program have chosen both quantitative and qualitative data-gathering strategies.

The ideal research agenda should use both methods to benefit from the information that these approaches yield. The research team should consider the strengths and weaknesses of quantitative and qualitative methods in planning the research program and be clear about the differing burdens of proof and evidentiary rules unique to each method. Careful thought should be given to the advantages and disadvantages each method

poses for the comprehensive research plan. Findings from each method will undoubtedly augment the information gathered and help the task force understand how racial and ethnic bias operates in the state's judicial system.

As discussed earlier, available resources, including staff time and research budget, will largely dictate the research methodology. Since all methods that collect original data require time to design, implement, analyze, and report on the results, it is important to begin planning the research agenda as soon as possible. In fact, once the executive director is in place and the task force staff has been brought on board, the comprehensive literature review should begin.

1. Literature Review: Published and Unpublished Research

The National Center for State Courts serves as a repository for materials submitted by various state task forces and commissions on racial and ethnic bias in the courts. Upon request, the National Center's Information Service will provide copies of these materials as well as a bibliography of documents, reports, and other resources, e.g., survey instruments, questionnaires, public-hearing brochures, and posters. These materials explore and document the existence and character of racial and ethnic bias in the state court systems and provide many recommendations for eliminating such bias.

Because the role of each task force is to document the nature, character, and extent of racial and ethnic bias in its own state court system and at various local levels, it is helpful to conduct a comprehensive review of the literature (both published and unpublished materials) before setting the task force's research agenda.

Since many of the issues a new task force may wish to investigate may be of concern to others, civic and community organizations should be contacted to learn of their work, past, present, and planned. The task force should obtain copies of the published and unpublished reports and position papers of these organizations. The resources and expertise of task force members also should be tapped. Members' professional and community networks may be used to locate resources that will help the task force achieve its mandate.

The state library, as well as local university and college libraries, can help to identify and locate government reports, organizations, and

commissions that have addressed race and ethnic bias in the courts. Local law schools may be of assistance in providing review of case law and other legal research. The most recent population statistics may be secured from state departments of labor; other state agencies may provide current statistics on juvenile and adult incarceration.

A thorough review of available materials will help determine what additional statistics or data are needed and will assist the task force in designing, planning and streamlining its research agenda. Moreover, familiarity with the body of available material, coupled with an appreciation for the data collection efforts of various other organizations such as the state bar, may lead to cooperative research ventures. These joint ventures are mutually beneficial and cost-effective; therefore, projects can be designed, implemented, and analyzed more quickly. The fruits of a comprehensive and well-conceived research plan will translate into findings that may have immediate applicability to some of the specific problems in the state judicial system.

2. Public Hearings

Public hearings have been one of the most widely used methods of data collection. Nine commissions have conducted statewide public hearings.

Statewide public hearings lend added legitimacy to the work of the task force as they provide an opportunity for the lay public (the consumers of the court's services), a spectrum of experts, and civic and community leaders to present their viewpoints and experiences. Hearing the testimony and questioning witnesses helps task force members gain an additional appreciation and understanding of the nature, character, and structure of racial and ethnic discrimination in the courts. Testimony also helps task force members gain knowledge about the problems unique to various regions or specific locales within the state. It is, therefore, important for commission members to attend as many of the public forums as possible.

Planning Time Frame. Ideally, for public hearings a four-to-six-month planning time line should be scheduled. This will allow the task force to publicly advertise the hearings at least ninety days in advance of the first hearing date. Ninety days is usually the minimum advance time that public organizations and companies such as mass transit, public libraries,

university and college libraries, and public utility companies require for advertising a public event. Television and radio stations also require sixty-to-ninety-days' notice of scheduled events for inclusion in their daily community events calendar. Similarly, other public and private businesses such as banks, public schools, and the departments of health and social services need adequate advance time to ensure that flyers and posters can be approved for public display and distribution.

The supreme court or administrative office of the courts public information officer should be consulted for assistance in preparing and distributing press releases. A public-hearing schedule released by the supreme court will lend additional credibility. Press releases should be sent to all major newspapers as well as to local and community papers. For major newspapers, the public-hearing schedule should be printed two weeks, and one week, in advance of the first scheduled hearing, preferably in the Sunday paper. Since minority and community papers are often published weekly or biweekly the press release and public-hearing schedule should be sent to them one month in advance, with the request that the schedule be published in at least two editions. Press releases sent too far in advance may be filed and forgotten. Follow-up calls may be necessary to ensure that the stations have the releases and will use them.

Identifying Witnesses. Task forces should employ several strategies for identifying public-hearing witnesses. Commission members can identify a diverse spectrum of key community and organizational leaders who may be potential witnesses. Special invitations should be sent to these key persons. The following organizations should also be contacted: minority bar associations, sororities, and fraternities; civil rights organizations; civic and community groups; and religious and professional associations (psychiatrists, psychologists, social workers, sociologists, etc.). Task force members and their personal contacts will be crucial to securing the participation of racial and ethnic communities.

A comprehensive computerized mailing list should be compiled to advertise and seek participation in the public forums, as well as for distribution of other task force information and reports. It will be helpful to obtain the mailing lists of other key public and professional organizations who are willing to share their lists with the

commission. Mailing lists from other organizations can be obtained on diskette for mass mailings. The master mailing list should also include the names of persons who have previously contacted the task force to submit comments on the interim or progress reports, made verbal or written inquiries about the work of the task force, shared suggestions or concerns about needed court reforms, and contacted the task force to lodge a complaint.

How Many Public Hearings Should Be Scheduled and Where Should They Be Held? The distribution and location of the state's racial and ethnic population should largely dictate how many public hearings or town meetings are necessary. A detailed examination of state census data will determine where the various racial and ethnic groups are located and concentrated, i.e., which counties and regions. It is important that rural localities are included, as well as urban centers, because the nature and character of racial and ethnic bias may differ in these locales where the proportion of minorities may be moderate to low.

The objective is to have as many public forums or town meetings as are necessary to ensure that all racial and ethnic groups within the state have an opportunity to voice their concerns. It is also important that the selected sites are accessible to public transportation.

Michigan conducted eight public hearings over a six-week period. New York held four public hearings and conducted town meetings in each city with a minority population of 10 percent (excluding counties in which public hearings had been held). Additionally, the New York Commission also held two electronic town meetings. Washington convened five public forums, New Jersey conducted thirteen, Minnesota held ten such hearings, and California conducted twelve public hearings.

Public-hearing Staff Team. Within weeks after the task force has decided to conduct public hearings, the executive director should assemble a team to plan the hearings. The list below outlines some of the crucial preliminary steps and procedures that should be taken into consideration when planning the public hearings.

- Plan a budget for the hearings. Include the following costs: staff resources, meeting space rental, interpreters, videotaping or sound recording, advertisements, mailing, transcription, travel and food, and printing.
- Select the dates when the public hearings will be held. Be mindful of weather concerns, vacation schedules, holidays, and other possible conflicting public events.
- Determine the time and number of hours the public hearings will be in session. The schedule should be flexible enough to accommodate persons who work during the day and can only testify during the late afternoon or in the evening.
- Determine how many hearings will be scheduled.
- Select the locations.
- Reserve the building sites where the hearings will be held. Public schools and libraries, community centers, and university and college facilities may be ideal sites.
- Determine which language interpreters will be needed.
- Arrange for the hearings to be sound recorded or videotaped.
- Develop and implement a comprehensive advertisement campaign. Contact the media. Make a special effort to ensure that minority media are contacted in a timely fashion.
- Use the task force speakers' bureau and mailing list to inform audiences about forthcoming hearings.
- Provide for anonymous testimony. Some potential witnesses may fear reprisals if they come forward, particularly court employees and employees of other government agencies. The experiences of the Michigan, New Jersey, and New York task forces lend credence to this concern.
- Select the key witnesses who will be invited to present testimony and register them for presentations.
- Set a time limit for presenting testimony.
- Draft and distribute directions for preparing oral and written testimony. Translate these directions into other languages.
- Decide how your task force will handle walk-in witnesses.
- Select task force panelists and moderators. All public forums should be convened by a panel of task force members. Usually, one or two

members will either volunteer or be designated by the task force chair to serve as moderators. If the public hearing is in session for four or more hours, there should be at least two moderators, one for the morning session, the other for the afternoon session. Since it is the judiciary requesting the participation of the public, consideration should be given to having at least one moderator at each session who is a judge.

- Prepare a press package.
- Secure caterers for refreshments and meals.
- Print posters and flyers.
- Set-up a distribution plan for the posters.
- Have an advance team review each selected facility.
- Secure insurance, if necessary.
- Mail out the public-hearing calendar, flyer, and instructions to all persons and organizations on the task force's mailing list.

Depending upon resources, either sound tapes, videotapes, or court stenographers should be used. It is important, in any event, to have a verbatim record of the proceedings.

Public-hearing tapes should be transcribed following each hearing and mailed out to all task force members. The packet can also include any written testimony or submissions. The New Jersey Task Force received more than 1,800 pages of public-hearing transcripts and written submissions. The California Committee received more than 3,800 pages of public-hearing transcripts and written submissions.

3. *Listening Sessions and Focus Groups*

Listening sessions are more informal meetings of small groups. They serve a variety of objectives. Some task forces have used listening sessions to help identify special problems. Other commissions have used these meetings as brainstorming sessions. Still other task forces have designed listening sessions to obtain preliminary and impressionistic data on a spectrum of racial and ethnic concerns related to the entire justice system.

Listening sessions may also be more appropriate forums for members of various racial and ethnic groups who, because of cultural factors, are not comfortable in more public settings, or whose culture prohibits such contact.

When listening sessions are targeted for specific racial and ethnic groups, task force members who are members of these racial and ethnic groups should facilitate entry into these communities. Whenever possible, listening sessions should be conducted within the community by task force members. The commissions in the District of Columbia, Massachusetts, Michigan, Minnesota, and New York have used this method to collect data.

Several task forces have used focus groups to collect data. The focus group is another type of qualitative research method in which a small group of people who have shared similar experiences on some issue or subject are collectively interviewed. This is an excellent tool for pinpointing and elaborating subtle and embedded issues or for gaining further insights into previously identified problems. It can be a useful preliminary step to help the commission clarify research problems and hypotheses. Eight of the commissions have used this technique.

The New Jersey Task Force hired an outside consultant to moderate its focus group sessions. The consultant worked closely with each committee, helped develop a plan for conducting the sessions, chaired by the sessions, analyzed the results, and wrote the reports.

Commissions or task forces in Arizona, Hawaii, Massachusetts, Minnesota, New Jersey, New York, and Washington have conducted focus group sessions with lawyers and judges. New Jersey, New York, and Michigan task forces have been the only states to conduct focus groups with prisoners (both male and female).

It is important that the commission have a clear grasp of the contributions that can be made by a focus group. A previously agreed-upon question format should be closely followed during the focus group sessions so that the task force is able to collect the specific data needed. Structured questions ensure that the same kind of information is collected from each focus group. All focus group sessions should be recorded and transcribed, with the transcripts distributed to all task force members as each focus group session is completed.

4. Court Watching

Court watching is a method of data collection that some task forces have used to systematically gather anecdotal and impressionistic information. This technique permits the task force to:

- Compare the treatment of whites and nonwhites within a court and to note any disparity
- Study the character of various courtrooms to compare and contrast courts serving different racial and ethnic populations

There are existing court-monitoring groups from whom task forces can obtain models for courtroom observation forms. The New York Commission contacted three such organizations. The Fund for Modern Courts continues to conduct systematic courtroom monitoring in upstate New York. Another organization, the citywide Task Force on Housing Courts, uses detailed observation forms to gather data on pretrial conferences and trials in the New York City Housing Court. Information that was retrieved included:

- Identifying data
- Description of parties (demographic and legal representation)
- Case type
- Physical condition of the setting
- Case disposition
- Personal behavior

The research instruments are checklists with space for notes.

The third organization contacted by the New York Commission was the Association of the Bar of the City of New York, which has a court-watching project. Courts where judges were up for reappointment or reelection were of particular interest to that project.

When selecting courts and deciding the length of the observation period, the following are suggested criteria that have been used by established court-watching programs such as that of the Bar of the City of New York.

- Select courts that include both minority and nonminority court users
- Match “like” courts serving ethnically different populations so that the researchers may compare the conditions and treatment of court users and attorneys that are performing the same functions, but with differing social mixes of litigants
- Select a sample of courts that are reputed to be outstanding, good, fair, and poor in the treatment of minorities

- Determine the length of each observation period (two hours, three hours, etc.)
- Determine the number of observation periods in each court so that the commission may observe a representative sample of court activity, with sufficient sample of observations to permit data analysis

The New York Judicial Commission on Minorities reviewed several court-watching instruments. When developing a court-watching research instrument, the following variables are among those to be considered for ascertaining courtroom conditions and interaction.

1. Physical conditions of the courtroom and adjacent/related space:
 - Cleanliness
 - Space availability
 - Noise pollution
 - Seating capacity
 - Ventilation
 - Location of staff
 - Presence or absence of client conference rooms
 - Space allotment for victims and witnesses
 - Adequate procedures for transferring persons from jails/correctional facilities to the courtroom
 - Adequate security issues in the courtroom
 - Aesthetic character of the courtroom
 - Child care facilities
 - Signs and directions
2. Availability of critical support staff to provide:
 - Foreign language-interpreting service
 - Procedural advice
 - Directions to the appropriate court
 - Assistance in filling out official documents
3. Apparent race and ethnicity of:
 - Court users
 - Judges
 - Counsel
 - Court support staff
4. Character and quality of interaction between:
 - Judges and attorneys
 - Judges and litigants/court users
 - Court personnel and attorneys
 - Court personnel and litigants/court users
 - Attorneys and litigants/court users

5. Type of case being heard:
 - Date case filed
 - Date of court hearing
 - Chronology of case
6. Presence/absence of counsel for litigants:
 - Litigant appears pro se
 - Assessment of quality of representation
 - Interaction between the judge and litigant
 - Interaction between the litigant and other courtroom personnel

Staff will need thorough training in court watching. Courtroom observers should also be familiar with court proceedings. Both experienced and novice observers should undergo training. Observers should be sensitive to the nuances of race and ethnic bias (verbal and gestural manifestations).

Some judges resist having court watchers in their courtroom even though most court proceedings are open to the public. Approval should be obtained from the administrative judge of the court to be monitored. The administrative director of the court may be asked to facilitate this process. It will be important to be clear about which courts will be monitored, over what period of time, the number of court watchers that will be present, the days that they will attend, what information will be produced, and how it will be used.

5. *Regional Bar Meetings*

The Michigan Task Force conducted regional bar meetings. These meetings with members of the legal and judicial community combined a highly structured question format with an informal discussion. Questions were prepared in advance, and the same questions were posed to participants at each regional meeting. To determine whether this data collection method is appropriate, a commission should consider the proportion of minority judges and attorneys in the state; the location of these judges and attorneys; the proportion of judges to be interviewed who have tenure or job security; and whether the commission can ensure absolute anonymity if requested.

It is possible that some minority judges and attorneys may be reluctant to participate in these meetings. They may believe that they may be either compromising career opportunities or jeopardizing their careers. The California Committee conducted

a special public hearing, in conjunction with the state bar, at the annual minority attorneys conference in 1992.

6. Review of Written Rules, Directives, Forms, and Statutes

Several task forces (California, District of Columbia, Florida, Massachusetts, Michigan, and Minnesota) reviewed written rules, directives, forms, and statutes. They conducted these reviews to ensure that these documents contained no discriminatory language and that the execution of the procedures, as stated in the documents, did not have an adverse effect on minority court users or court personnel.

A review of these documents may be completed during the life span of the investigatory commission or permanent implementation committee. If problem areas are discovered, the appropriate language for revisions should be suggested to the court. Statutory changes should be suggested to the court as well, so that the chief justice can use the recommendations as a basis for suggesting changes in code language to the legislature.

7. Case Reviews and Reviews of Substantive Law Areas

The task forces in the District of Columbia, Florida, and New York reviewed case outcomes to uncover any patterns of disparate treatment between minority and nonminority litigants. One of the principal concerns shared by racial and ethnic bias task forces relates to differential case outcome in civil matters.

The largest body of empirical data collection on civil outcomes was conducted by the Institute for Civil Justice of the Rand Corporation. The sample contained information on over 14,000 civil cases tried to verdict in Cook County (Chicago), Illinois, and San Francisco, California, over a twenty-year period (1960-1979). Race information of the litigating parties was retrieved for the Cook County sample. Chin and Peterson concluded, after analyzing the available information about plaintiffs and other characteristics of the parties, that black plaintiffs and defendants were more likely to lose than their white counterparts. (*Deep Pockets, Empty Pockets: Who Wins in Cook County Jury Trials?*, Santa Monica, Calif.: RAND Corporation, 1985.)

The substantive law areas of child abuse, domestic violence, sexual harassment, racial discrimination and race-bias crimes, rape, enforcement of child support awards, civil injury outcomes (personal injury awards and wrongful death awards, medical malpractice), and housing court dispositions, among others, are all viable concerns that can be examined. It must be recognized, however, that these studies will require a substantial commitment of both time and money.

8. Surveys

Most task forces have used surveys to collect data. There are multiple objectives for using surveys. Listed below are some of the primary objectives cited by task forces and commissions for employing survey techniques.

- Establish baseline statistics on the participation of minorities in the judicial work force
- Establish baseline data on the appointment by the court of minorities to committees, fiduciaries, or other fee-generating appointments
- Measure minority participation in court volunteer programs
- Assess the roles minorities have in the judicial workplace
- Understand the perception of minority and nonminority court personnel and court users on racial and ethnic discrimination in the judicial systems
- Examine the career paths of minorities compared to nonminorities
- Investigate promotion, retention, hiring, and disciplinary practices

Surveys can yield valuable information and corroborate the documentation of race and ethnic bias in the courts obtained through other data collection techniques. A commission may design and conduct some or all of the surveys by using internal resources. (The research program of the New York Commission was designed, implemented, analyzed, and reported on by the commission's in-house research department.) Because of the complexity of developing reliable and valid questionnaires, however, most task forces have contracted with independent, external research consultants to develop and conduct some of the task force surveys.

The National Center for State Courts can provide copies of the survey instruments and reports that task forces have used or will use to collect data. It is important to use experts in survey research in any attempt to adapt the surveys of other task forces. Table 1 shows the extent of survey use by Consortium member states.

A carefully crafted and well-planned research agenda will provide the commission, and ultimately the court, with specific guidelines and directions for implementing needed reforms. The research findings will add to the court's body of knowledge on issues and practices that may have an adverse effect on minority consumers of court services.

**Table 1: Surveys Conducted by Consortium Member States
(May 1992)**

<u>Group Surveyed</u>	<u>State Task Force or Commission Conducting Survey</u>
Lawyers	District of Columbia, Florida, Hawaii, Massachusetts, Michigan, Minnesota, New Mexico, New York, Washington
Judges	California, District of Columbia, Florida, Massachusetts, Michigan, Minnesota, New Jersey, New York, Washington
Court Personnel	California, District of Columbia, Florida, New Jersey, New York, Washington State
Court Users/Litigants	Florida, Michigan, Minnesota, New Jersey, New York

CHAPTER VIII

Selected Issues: Monographs from Other Task Forces and Commissions

SEVERAL STATE TASK FORCES AND commissions have embarked on innovative research projects and programs that expand the existing body of knowledge regarding the treatment of minorities in state courts. This section provides examples of such projects and programs. Specifically, it outlines the key components of New York's work force diversity program, Washington State's cultural awareness education program, Florida's study on the performance of minority candidates on the Florida bar examination, New Jersey's differential court utilization study, and Michigan's court users' survey.

The success of the various programs and research projects discussed in this section hinge on sufficient funds and the cooperation of court staff. The active participation of task force or commission members is another essential ingredient to the success of any innovative activity. As new task forces and commissions examine the existence of racial and ethnic bias in the state courts, they will benefit from the knowledge and endeavors of other task forces and commissions.

A. New York's Work Force Diversity Program

As a result of the public hearings, the New York State Judicial Commission on Minorities found that many minority litigants believed that there were too few minority nonjudicial officials. The New York Unified Court System through the office of court administration (OCA) responded by implementing a workforce diversity program. Before New York's program, few, if any, state courts had developed specific corrective measures to improve minority participation in key nonjudicial positions.

Before formulating its program, the OCA conducted an "availability-utilization analysis," which compared the number of minorities in specific job categories to the relevant labor market. The following general steps were undertaken in this process:

- Verification of ethnic group and gender of all court employees
- Classification of the court's job categories into job groups with similar skills and job responsibilities and comparing this data with equal employment opportunity (EEO) classifications
- Review of census data to determine which occupational groups from the external labor market were comparable to the court's job categories
- Review of the New York State Education Department's statistics to identify the composition of the labor market by specific levels of educational attainment
- Computation of utilization rates and underutilization rates for minorities in each job category in each geographical area

Once the under-representation of minorities in certain job categories was established, the OCA established a committee that recommended and designed a workforce diversity program. The program included systemwide management initiatives, in addition to strategies targeted for specific job categories. One of the systemwide initiatives was the restructuring of the equal employment opportunity (EEO) office and its relationship to court management, especially in the development of realistic hiring and promotional goals for each judicial district. Another pivotal recommendation required managerial accountability

for meeting workforce diversity goals by incorporating these goals into performance evaluations. Other systemwide recommendations included the establishment of formal transfer and relocation policies, the development of a formal, standardized interview process for specific job groups, and cultural awareness training for court employees.

B. Washington State's Cultural Awareness Education Program

Because of Washington's changing demographics and growing number of minority litigants, the Washington State Minority and Justice Task Force concentrated a significant amount of its funding on educating judges and court personnel on the challenges of a diverse population within Washington courts. The primary objective was to build an awareness of possible adverse effects of systemic racial and ethnic bias and to increase sensitivity to on-the-job biased behavior.

Because of budgetary constraints, the program was designed in three phases. Phase I was an introductory two-hour seminar for judges. It commenced with presentations by two minority judges who described their personal and professional experiences and encounters with discriminatory practices, attitudes, and behavior. Their remarks were followed by a one-hour lecture on the philosophical aspects and origins of cultural differences.

Phase II of Washington's cultural awareness program was a series of two-day seminars for judges, attorneys, and court personnel. These seminars included a presentation on national and state demographic trends, various cross-cultural exercises, and remarks by guest speakers who addressed relevant topics on racial and ethnic bias, including the use of interpreters, the effect of prosecutorial discretion, and the role of tribal courts. The seminars concluded with participants preparing personal and organizational goal statements that outlined changes that could be implemented.

Phase III of Washington's cultural awareness program was designed but awaits funding for implementation. This phase envisioned an eight-hour seminar divided into four two-hour choice sessions on special topics. The proposed topics focused on administrative matters and law-related issues. Tentative topics included the recruitment of

minority court employees; use of peremptory challenges to eliminate minority jurors; methods for screening racial and ethnic bias within pretrial release, charging, and sentencing; and procedures for identifying and selecting qualified interpreters. The final selection of issues will be based on a needs assessment and suggestions from the legal community.

C. Florida's Study on Minority Performance on the Bar Examination

Prompted by concerns that the dearth of minority attorneys was linked to the number of minorities who passed the Florida bar examination, Florida's racial and ethnic bias study commission undertook one of the few research studies designed to document how minority law students fare on the state's bar examination. The purpose was to examine whether factors relating to language and structure present a distinct disadvantage for the minority candidate. To conduct this study, Florida retained the services of a psychometrician and test specialist. Before proceeding with its analysis, Florida's commission obtained information on the race and ethnicity of each examination applicant. This required a manual review of Federal Bureau of Investigation fingerprint cards, since Florida's bar ceased requesting race and ethnicity information on examination applications in 1974. The commission also had to establish procedures to ensure that the confidentiality of this information was not compromised.

After determining that disparity exists in the passage rates of whites and minorities on the bar examination, the commission attempted to isolate possible contributing factors. It convened a panel of linguistic and test measurement specialists to systematically review items on the Florida portion of the examination. With the assistance of several minority attorneys, the panel assessed whether cultural factors are present in the examination and whether these factors may negatively affect the performance of minority candidates. This context review indicated that minorities scored lower on examination questions with fact structures containing culturally biased situations or stereotypical profiles of minorities. A separate review of the Florida portion of the bar examination revealed that examination questions often use convoluted language that had no inherent bearing on the legal issue. According to the commission,

these complex and convoluted sentence structures provided an advantage to those who are test-wise and comfortable with the sentence structure. The final phase of the commission's study included a written survey to approximately 1,500 former examination candidates to ascertain their perceptions about factors that may have influenced their performance on the bar examination. This phase was designed to address the relevance of one's law school education to the bar examination and to identify other factors that may affect one's performance, including examination preparation courses.

D. New Jersey's Court Utilization Study

The New Jersey Task Force examined the patterns of court use by minorities as compared to nonminorities. Before this study, there was little research comparing the voluntary use of state courts by minority plaintiffs with that of nonminority plaintiffs. The main premise of New Jersey's project was that minority plaintiffs used the courts less frequently than nonminority plaintiffs. After conducting a literature review and a preliminary survey, the task force hypothesized that the differential court utilization by minorities and whites might be explained partially by deeply rooted cultural values. These values discourage minority citizens from relying upon the state courts for dispute resolution.

The research methodology for this study integrated quantitative and qualitative research. The research process included in-depth, face-to-face interviews with 600 persons. The data set was created using multi-stage cluster sampling. Within each county, census blocks stratified by race were randomly selected. From these clusters of census blocks, households were randomly selected for interviewing. Four counties were selected: Bergen, Essex, Hudson, and Camden. The counties were selected for variation in racial composition, population density, and socioeconomic status. The solicitation of interviewees involved sending a letter to possible respondents. The letter informed them about the research project and the amount of compensation for their time and requested time for an in-person interview.

The interview consisted of both closed and open-ended questions on several major topics: neighborhood integration, possible legal problems, respondent's experience with the state court system and other alternative dispute resolution mechanisms, demographic information, and perceptions about law

and government. The interview also included language competency questions and a debriefing session.

E. Michigan's Court User Survey

For its court user study, the Michigan Task Force on Racial and Ethnic Bias Issues in the Court retained a research consulting firm. In consultation with the task force design subcommittee, the consulting firm identified topics and questions that the survey should address. The result was a survey that focused on litigant perspectives and experiences involving domestic relations, personal injury, felonious assault, and small claims. The pool of respondents was narrowed to those who were involved in a court action in which a judgment or decision was rendered in 1988. The sampling frame also required a representative demographic profile. Consequently, a stratified random sample was used to gather answers to the research questions. Other specifications of this project included:

- A sampling frame of 2,000 litigants with a resulting sample of 720 respondents
- A sample consisting of 50 percent male and 50 percent female respondents
- A sample of litigants from large and small circuit jurisdictions and from areas with both high and low concentrations of minority populations

The Michigan Task Force surveyed respondents by telephone. Letters were sent to potential respondents announcing the interviews. The interviews began with qualifying questions, such as gender, race, and age. Interview questions then focused on the court user's personal experience with racial and ethnic bias or perceptions of bias during the 1988 court case.

Respondents were also asked about any subsequent action that had been taken to correct the biased treatment, such as filing a complaint or a grievance. The interview concluded with the court user's recommendations on how the court might better serve the litigant.

CHAPTER IX

Writing, Presenting, and Disseminating the Findings and Recommendations

IT IS CRUCIAL THAT ALL TASK FORCES and commissions share their respective reports, not only with members of the court and legal community, but with the general public, i.e., the consumers of court services. The dialogue among the commission, the court, the legal community, and the public-at-large, should, of necessity, be continuous if the problems of racial and ethnic discrimination in the courts are to be resolved. The publication of research reports, as well as progress, interim, companion, and final reports, are activities that every task force needs to include in its work plan and schedule.

The commission or task force should initially present any findings and recommendations to the judiciary at a meeting that all judges should be encouraged to attend. This statewide meeting of judges might be the annual judicial conference or college. The proactive role of the chief justice in placing the racial and ethnic bias issue on the court's agenda, and in urging all judges to both read the report and comply with its recommendations, encourages judges to work cooperatively. It also underscores the important role each judge has in solving the problems of racial bias in the courts. There are a number of mechanisms that may be used to distribute task force information, such as interim, companion, progress, research, and final reports, as well as seminars.

A. Interim Reports

Two major factors determine whether and when an interim report will be issued: the length of time that the task force will be in existence and the need to provide the court, legal community, and public with preliminary findings and recommendations. An

interim report allows the court, legal community, and the public to review the findings and recommendations and present additional questions, issues, and concerns. The court may decide, as was the case in New Jersey and New York, not to wait for the final report before implementing some of the recommendations. New York and Washington issued interim reports one year after their task forces were created. Arizona, the District of Columbia, Michigan, and Minnesota also issued interim reports.

The New York Commission interim report, which received extensive press coverage, discussed the poor representation of minority court employees. In response to this finding, the forty-page report called for the immediate adoption of an affirmative action plan for hiring and promoting nonjudicial minority personnel. The effectiveness of New York's interim report is evidenced by the court's subsequent adoption of a work force diversity program that includes a variety of measures for improving minority representation.

The New Jersey Task Force on Minority Concerns preferred a different format for its interim report. Two years after its appointment, the task force published a 296-page report encompassing topics ranging from perceptions of bias to various legal procedures, such as bail and cross-racial eyewitness identification. This type of comprehensive interim report requires an enormous investment of staff time. Task forces and commissions may choose this type of interim report because it illustrates the magnitude of the problems facing the courts.

The Florida Supreme Court Racial and Ethnic Bias Study Commission preferred to publicize its data by issuing a two-part final report. Part one, which was comparable to other state commissions'

and task forces' interim reports, was issued on the commission's one-year anniversary. This eighty-three-page report reviewed three key areas of the state's justice system: the dearth of minorities in the judicial work force, law enforcement treatment of minorities, and the processing of delinquency cases involving minority juvenile offenders. Each discussion set forth the commission's findings and policy recommendations, some of which were directed to nonjudicial agencies. The publication of part one resulted in extensive local and national press coverage. To produce the two-part report, however, the Florida Task Force had to identify its data collection projects within the first few months of its existence. For some task forces and commissions, this time frame may not be feasible. However, if the task force reviews the Consortium material, it is possible to compress research-planning time frames and to benefit from consultation with task force chairs and executive directors.

Regardless of the format, the task force or commission should adopt some mechanism by which it keeps the courts, the public, and the legal community informed about the research findings and proposed recommendations.

B. Companion Reports

A companion report can be issued when a particular topic or issue requires comprehensive discussion or targets a particular audience. New York issued a separate report on Native Americans. Only one state, Washington, issued a series of companion reports. This approach was taken because there were certain constituencies that had a particular interest in certain aspects of the work of the minority and justice task force. To discuss these issues comprehensively, the task force issued separate reports. The companion reports focused on education and training of court personnel; public forums; racial, ethnic, and gender differences in the Washington State Bar; and the employment profile of court personnel. The documents were distributed to minority and legal associations. To capture an even-wider audience, press releases and executive summaries on both reports were forwarded to the print and radio media. Bar publications also carried a synopsis of the 1988 bar survey report.

While it may not be feasible to present the companion reports to the court in a formal setting such as an annual statewide judges conference, it is

certainly desirable to provide the findings to the court and other interested parties as soon as the reports are published. As with the interim reports, the court and public should be invited to comment on the substantive findings.

It should be noted that the publication of a series of reports will divert staff from other essential operations, such as research. For this reason, some state task forces and commissions have found issuing one interim report to be more pragmatic and less time-consuming.

C. Progress Reports

In some cases, a commission may issue a progress report in addition to the interim and companion reports. Progress reports serve as a vehicle to apprise the court of:

- The accomplishments of the commission or task force
- The status of the commission or task force research agenda
- Funding initiatives
- Emergent and unanticipated problems the commission or task force is encountering

A progress report may be issued at any time and is an opportunity for the commission or task force to address not only programmatic issues but administrative concerns as well. Massachusetts and Washington issued progress reports. The Michigan interim report served as a progress report on task force activity rather than a preliminary report of findings and recommendations. The task force benefits from the dialogue with the court and may choose to modify or redesign some of its proposed projects, as a result.

D. Final Reports

The final report represents the major public record of the task force investigation, activities, findings, and recommendations and serves as the court's blueprint for reform. This document should have sufficient breadth, scope, and specificity in its findings and recommendations to serve as a preliminary educational tool for the judicial system as well as the lay community. The credibility of the final report will depend largely on its quality and candor.

The following commissions have published final reports: District of Columbia, Florida, Hawaii, Iowa, Idaho, Michigan, New Jersey, New York, and Washington.

1. *Writing the Final Report*

Prepare an Overall Outline and Decide on Format. The task force may consider drafting a uniform format for the final report. Such a format can ensure that the document not only is informative but also can be used by the entire court community.

Task force staff and members should discuss and outline the format of the interim and final reports before preparing the narrative of each chapter report. Various stylistic formats should be discussed and the one most appropriate selected. New Jersey's basic outline was to present findings, followed by the supporting narrative and recommendations. Recommendations in New Jersey's final report are set apart in boxes, so that they can be more easily distinguished from the findings.

A detailed outline should be prepared from which each committee can compose its chapter. The outlines should be given to the committee members and research teams so that all are aware of the content of each proposed chapter in the interim and final reports.

The task force may find it helpful to set up an editorial advisory board to review and edit the various chapter drafts as well as the consolidated final report. The final document will be more cohesive if a consistent editing policy is in place. Whatever editorial policy is ultimately adopted, the members of the task force should remember that its primary audience is the judiciary.

Prepare a Time Line and a Detailed Outline of Each Committee's Report. A time line for each phase of report writing should be prepared and each committee should be encouraged to meet the deadlines. It is especially important that the committee drafts are completed in a timely fashion so that task force members will have enough time to review and provide written commentary on each of the various committee reports.

To avoid unnecessary duplication among chapters, a detailed outline of each committee's proposed report should be circulated to all task force members. It may be necessary for two committees to discuss the same issue, only in different contexts.

For example, one committee may discuss bail from the perspective of substantive law while another may treat bail as an access issue.

The detailed outline will help the task force plan and organize the final report so that the major issues enumerated in the task force mandate are thoroughly discussed and documented. The final report should be fashioned into a cohesive document rather than a compendium of separate committee reports.

Who Should Write the Report? The commission should decide, in advance, who should draft the separate committee reports. The committee members may decide that the report will be drafted by a committee, a professional writer, or commission staff. Some commissions, for example, assigned this task to the executive director. In other cases, where staff were assigned to each committee, committee staff were responsible for drafting the committee reports. The decision about where the writing responsibility will lie should be made in the final report planning stages so that members and staff can plan and budget their time and energy accordingly.

Final Report Data Analysis and Committee Reports. Each committee and subcommittee should be responsible for completing the final data analysis and reviewing all the pertinent literature and documents related to the committee mandate. The recommendations discussed in each committee report should flow from the findings. Stated findings should be substantiated through liberal use of citations to and quotations from the data sources and references, including interviews and focus group sessions.

The recommendations for reform should be specific and tailored so that they address concrete changes that can be instituted in the court system by the legislature, the state bar, the prosecutor's office, and other entities affected by the commission's recommendations.

Approval of Committee Reports and the Consolidated Final Report. After each committee and subcommittee has drafted and approved its report, the separate committee reports should be submitted to the entire task force or commission for review, comment, and approval. All task force members should review all of the supporting data from which the findings and recommendations flow. Some of the supporting data and materials should be included in an appendix to the final report.

There are several key questions that should be posed when reviewing the committee reports. Does each committee's report fairly and objectively represent the data? Are the findings and recommendations warranted? Do the recommendations flow from the findings, and do the findings support the recommendations? Are the recommendations specific as to implementation? Are the recommendations realistic? Is there a need for further study and if so in what areas?

The committee reports should be mailed to each task force member. A full task force meeting for discussing the reports should be held two weeks after the mailing. Task force members should be encouraged to respond in writing to each committee's report so that the substantive issues that are raised as well as any revisions and corrections may be shared with all task force members.

If revisions are not extensive, it may be possible to circulate the revised report and take a mail vote. Each committee chair should canvas his or her committee members to secure a vote on the revised committee report. If there are extensive revisions, it may be necessary to schedule at least one plenary meeting. By this time, all of the individual committee and subcommittee reports should have gone through another revision and been accepted by the committee membership.

It is preferable that there not be a minority report or dissent. However, in certain instances that may be unavoidable, especially in those cases where some commission members have not been active participants. Committee chairs should be encouraged to bring these issues before the full committee and to attempt to resolve them at the committee level if dissenting members insist upon publishing their opinions.

At the final plenary session the task force should vote on the substantive consolidated final report, which is composed of all the committee and subcommittee reports. For the most part, this will be a formality since all of the individual committee and subcommittee reports have been approved and accepted by the respective committee members and all task force members have had the opportunity to submit their written comments and bring their concerns before the full task force membership.

2. Disseminating the Final Report

Presenting the Final Report to the Supreme Court, Judges, and Court Staff. As is suggested with the interim report, the presentation of the final report

should be made at an assemblage of all state judges. Ideally, the final report should be submitted first to the chief justice and the court. A task force presentation should then be scheduled for the opening plenary session of the state judges' annual meeting.

Because of the sensitive nature of the subject matter, it is extremely important that any formal assemblage of judges be used as an opportunity to forge a partnership with judges who will ultimately be key agents of change in the court's attempt to resolve the problems of racial and ethnic discrimination.

The task forces or commissions in Florida, Hawaii, Michigan, New Jersey, and Washington have published final reports and formally presented the findings and recommendations to annual judicial meetings, the legislature, or both. For example, the Michigan final report and the New Jersey interim report were formally presented to the court at the annual judicial college/conference meeting. The Washington Task Force made its formal presentation before a joint session of the court and the legislature. The Florida Commission presented its two reports to the supreme court in a special ceremony in the supreme court chambers.

When the report is presented at a judges' meeting, an afternoon session should follow the morning session to present more comprehensive and specific seminars on racial and ethnic bias in the courts. All judges at the meeting should be given a copy of the final report and supporting documents. These materials should be mailed to any judges not in attendance.

Seminars on racial bias in the courts should be presented to nonjudicial staff using the same program format as for the judges, i.e., a general session, followed by specific seminars on ethnic and racial bias. The task force may limit the number of courses and offer multiple sections of the same course. This ensures that all judges and staff are exposed to a limited number of introductory courses as well as advanced courses on racial and ethnic bias in the courts. Forums and seminars also should be planned to apprise new judges at all levels of the commission's findings and recommendations.

Press Coverage. Arrangements should be made for press coverage of the commission or task force presentations. At a minimum, permission should be secured to have press coverage for the chief justice's and task force chair's remarks.

A photograph session should be arranged with the chief justice and members of the commission or task force panel either before or immediately following the plenary session. Press releases should be available outlining each day's events and highlighting keynote speakers at both the judicial and staff college.

With regard to the work of the task force generally, as well as the release of the final report, the chair and the executive director need to be prepared to respond quickly and responsibly to any press inquiries that may be prompted by leaks, especially if the leaks are responsible for misinformation or misconceptions about the efforts of the task force or commission. The public information/relations/media specialist at the supreme court or administrative office of the courts should work closely with the commission to develop a sound press policy.

Dissemination of the Final Report to the Public. Dissemination of the final report to the public should occur immediately following the court's release of the report. Anywhere from one to three months following the release of the report should be allowed to mail the report to key persons and organizations. A minimum of ninety days should be allowed following dissemination to members of the public, legal and professional organizations, bar associations, civic and community organizations, and public and private agencies so that they can respond in writing to the substantive findings and recommendations. The task force may solicit comments from key minority organizations, agencies, and individuals. Comments are then considered and appropriate changes agreed upon by the commission before a final report is released.

Covene a conference to ensure wider distribution of the final report. Members of all segments of the legal community, public service organizations, the public-at-large, and key organizations such as minority bars, civil rights organizations, and various community organizations and leaders should be invited to participate. The objective is to educate these groups about what the judiciary is doing to resolve the problems of racial and ethnic discrimination, to solicit the expertise and cooperation of the legal community and the public, and to promote an open dialogue with those entities outside the judiciary.

Education Strategies. Ongoing judicial and staff

education is an essential element in a long-range strategy to eliminate racial and ethnic bias in the courts. The relevant findings and recommendations of the task force or commission will need to be integrated into substantive law courses provided to judges. Courses on racial and ethnic bias should become a permanent part of the orientation for all new judges. Additionally, all new court employees should receive training on racial and ethnic bias. These education and training efforts should become an integral component of the continuing education curriculum.

Legal and Lay Community Education. Although the major task force focus is on the court system, findings and recommendations should be disseminated to the legal community and the public. Members of the commission should make presentations to the state and local bars, minority bars, and law schools. Lectures and workshops should also be presented to the law enforcement and corrections community. Local colleges and universities, public school audiences, community and religious groups, and other groups from whom the task force receives an invitation should also be made aware of the findings and recommendations. The commission should identify key organizations and groups to whom it will present the findings and recommendations and from whom the commission will seek feedback.

Public-speaking engagements by task force members and staff are another avenue of publicity for commission findings and recommendations. To take advantage of such engagements, the executive director should prepare a list of available members who can present the commission findings. The executive director should periodically brief these spokespersons on new or relevant findings to ensure that accurate and current data is always available to the courts and the public.

The importance of publicizing commission findings and recommendations cannot be overstated. Regular communication with the press, general public, the legal community, and key state government officials will eventually aid in the implementation of any recommended reforms. Once established, a task force or commission may be subsequently forgotten by the press and public if it fails to communicate its research findings and data regularly through a variety of mechanisms, such as reports, educational programs, conferences, and other public forums.

CHAPTER X

Maintaining Momentum After the Final Report Is Issued: Implementing and Monitoring the Recommendations

THE ASSURANCE OF EQUAL JUSTICE under the law is the fundamental principle that undergirds our legal system. Failure of the courts to embrace all segments of our population without regard to race and ethnic identity weakens the foundation of the American system of justice. Given the historical pervasiveness of race and ethnic bias in society at large and its demonstrative intractability, the resolve to rectify the identified wrongs requires a long-term commitment. After issuing the final report, a task force should develop an interim strategy for implementing its recommendations and monitoring court progress. This will help keep the pressure on key players and institutions that are needed to implement the recommendations.

A Implementation of Recommendations

The governor and legislature, chief justice, judges at all levels, state court administrator, state judicial conduct commission, bar associations (minority and majority), ethics committees, and nonlawyer court support staff all play crucial roles in implementing task force recommendations.

Because of the paucity of racial and ethnic minorities among senior court officials and administrators, state legislatures, state judicial ethics committees, and the leadership of state bar associations, the follow-up task force committee or commission will have to take the appropriate steps to ensure that minorities are meaningfully involved and adequately represented at all levels in the efforts to implement court reforms.

1. Role of the Governor and Legislature

In the case of a task force or commission established by the legislature or the governor, it is important for those entities to endorse the final report

and to provide the financial resources for implementation efforts. Actual implementation will remain the responsibility of the chief justice and the justices of the highest court.

2. Role of the Chief Justice and State Court Administrator

Clearly, the support and leadership of the chief justice is key to the effectiveness of the task force and critical to the implementation of task force recommendations. The actions of the New Jersey and New York chief justices are instructive.

Upon issuance of the final report, the New Jersey chief justice and the supreme court immediately endorsed the recommendation to appoint a permanent standing committee on minority concerns to oversee the implementation of the task force recommendations. The chief justice has also instituted a range of activities, some of which predated the publication of the final report. These activities included:

- Scheduling formal presentations to the judicial college on interim findings and recommendations
- Requiring mandatory attendance of all judges at the judicial college for the interim report presentations
- Introducing the task force presentation and urging judges to embrace its findings and recommendations
- Requiring that educational seminars on some aspect of racial and ethnic bias and sensitivity training be presented annually at the judicial-and staff-training sessions
- Using the public arena to emphasize and underscore the court's commitment to reforms (June 1991 Graduation Speech, Rutgers Law School, Newark, New Jersey)

- Disseminating the reports to assignment judges, district ethics committees, and bar associations
- Offering continuing support for the task force's ongoing activities, i.e., completion of research projects such as the Differential Court Utilization Project
- Setting and meeting minority law clerk recruitment and hiring goals

The chief judge of the state of New York responded to findings from public hearings, even before the commission presented the final report. The public hearings revealed that the underrepresentation of minority nonjudicial officials was a significant problem in the eyes of minority litigants. The chief judge responded by implementing a comprehensive work force diversity program. After the final report was presented, he established a follow-up commission to oversee the implementation of commission recommendations.

The state court administrator is also an important ally in task force efforts to implement reforms. It is important to sensitize the director about racial and ethnic issues and solicit his or her support in implementing task force recommendations.

The actions of the New Jersey director of the administrative office of the courts (AOC) exemplify a proactive role. The New Jersey director issued a progress report to the task force in May 1991 informing the members of the implementation efforts that were in progress. These efforts included:

- Presenting a seminar to sensitize judges to racial and ethnic bias
- Conducting training seminars for family division judges and case managers
- Instituting a training program on recognizing subtle discrimination in the workplace and managing diversity
- Issuing directives aimed at ensuring that vicinages hire only qualified interpreters and translators

3. *State Commission on Judicial Conduct*

The task force should prepare and present a special course on racial and ethnic bias in the courts for members of the state commission on judicial conduct. Both the overt and subtle manifestations of discriminatory behavior should be addressed. Examples of the sanctions imposed by the court should be used to illustrate the commitment of the

court to fair and equitable treatment for all court users and employees. Since it is the judge who sets the tone of the court, it is crucial that trial court judges be aware that racial and ethnic bias in the court will not be tolerated.

4. *Bar Associations and Ethics Committees*

Inappropriate and biased behavior by attorneys should be dealt with by some mechanism within the bar association and ethics committees. As with the state committee on judicial conduct, annual or periodic courses that address issues on racial and ethnic bias should be presented to the bar.

It is also important to have representatives from the bar associations as members of the permanent task force implementation committee.

B. *Implementation Strategies*

The commission should develop a cohesive long-term strategy to ensure that the collective recommendations remain a high priority on the court's agenda. However, the commission should be flexible enough to review and modify the implementation strategy as the existing exigencies dictate.

A strategy that keeps the recommendations in the forefront will also help fill the void that often occurs between the final report and the establishment of an implementation commission. In fact, the experiences of task forces that have been followed by an implementation commission show that there is often a six-to-eighteen-month lag between the final report and a fully staffed implementation commission. For instance, in Washington, the supreme court established a five-year renewable implementation commission shortly after the final report of its commission was issued. It was, however, another six months before the commission was funded by the state legislature and another twelve months before a full-time director could be hired. New Jersey's chief justice announced, in his August 10, 1992, press release, his intention to implement the task force's recommendation that a permanent oversight committee be established to succeed the six-year-old task force. In fact, there was a twelve-month lag between the report and the appointment of oversight committee cochairs.

Michigan's experience was similar. The racial and ethnic bias task force implementation phase was not staffed until a part-time director was hired in mid-1992—nearly two-and-one-half years after the final report was issued. No committee has been appointed.

1. Retaining Key Staff

If no provisions have been made to carry forward the executive director and full-time clerical support positions, the task force should keep these persons on board for a minimum of six to twelve months following the final report. During this transition period, the task force chair and the skeleton staff support team will provide continuity for the proposed implementation program. Retaining the task force chair, executive director, and full-time clerical support also will facilitate:

- Dissemination of the final report
- Orderly handling of administrative responsibilities, i.e., sending out letters of acknowledgment to task force members, staff, public-hearing witnesses, persons who provided technical support and expertise, and responding to public inquiries
- Receipt and reporting of comments on the final report
- Staff debriefing to the task force chair, chief justice, and administrative director of the courts to ensure that pitfalls and mistakes experienced by the task force are not repeated by the implementation body
- Gathering and assessment of recommendations for the implementation committee
- Assessment and reporting of court efforts already in place
- Completion of task force projects not completed prior to the final report
- Planning, development, and implementation of a task force speakers' bureau to address conferences, meetings, and other public forums
- Orderly transition to the implementation commission
- Preparation and publication of the first annual report
- Planning of a statewide conference on race and ethnic bias issues in the court to coincide with the publication/issuance of the first annual progress report

There are other benefits as well. For examination samples, it would take additional time to recruit, hire, and train task force staff who have not been intimately involved in the work of the task force. Since most states are experiencing serious fiscal crises and the court's budget appropriation may have been reduced, it is more cost-effective (in both salary outlay and the investment of time required to review the task force reports) to retain the staff already on board. The objective is twofold: to maximize the use of scarce person resources, i.e., task force staff support, and to minimize the downtime, i.e., the transition phase between the final report and the implementation commission.

If the commission or task force has not provided a mechanism to ensure continuity of task force membership and staff support, it is important to keep in mind that the new members will need to grapple with what to do next and how to do it. Therefore, keeping the pressure on may fall back on previous task force or commission members who can market the recommendations by serving as speakers and panelists at meetings, conferences, and other public forums. In fact, many of the implementation techniques discussed may be reemployed during this transition period between the final report and the appointment of the follow-up committee or commission.

C. The Implementation Committee

Perhaps the most challenging aspect of the task force work begins after the final report. The bench mark that measures the success of the task force is the degree to which racial and ethnic bias in the courts is eliminated. This phase requires sound and unswerving resolve. Some task forces went out of existence after final reports were issued because the key reforms were targeted for legislative and executive action. In other states, such as New Jersey, New York, and Washington, follow-up committees or commissions have been created or contemplated to oversee the reforms and to update continuously the body of knowledge that supports the reform efforts.

There are several advantages to extending the task force effort into a long-term implementation phase. Those advantages are:

- Maintains the momentum for making relevant changes and reforms
- Ensures the continuity of the task force
- Maintains a cadre of committed persons who have a history of working together
- Sustains the expression of the strength of the court's commitment to the elimination of bias

There may be instances in which the attention and the enthusiasm of some members has subsided, especially where the task force has been in operation for two or more years. (New Jersey's forty-eight-member task force was in existence for six years. Moreover, some of the members of this body also served on the predecessor committee, the Coleman committee, from 1984 to the establishment of the full-fledged task force.) In this case, it may be appropriate to set-up a smaller standing committee and invite or appoint some new members while keeping a core of volunteer veteran task force members on the implementation committee. It may also be helpful to limit the time period that a given member may serve as an active voting member of the permanent committee.

These are some of the specific activities that should be pursued continuously by an implementation commission on racial and ethnic bias in the courts.

- Monitoring positive and unintended changes
- Identifying problem areas
- Directing bias complaints from court users, lawyers, and court personnel to appropriate parties for resolution
- Monitoring the established court grievance procedures
- Ensuring that judicial education programs incorporate materials on racial and ethnic bias in the courts into substantive law courses
- Developing a mechanism to receive commentary continuously from the public bar associations, civic, and professional organizations, interest groups, and service providers
- Issuing an annual report to the chief justice, state judiciary, task force members, and public-at-large
- Ensuring that communication between the chief justice and the minority constituency, the court community, and the public continues
- Creating consensus on racial and ethnic bias as a part of the continuing legal education of the judiciary, staff, and bar
- Ensuring public access to the research, findings, conclusions, and recommendations of the task force
- Maintaining liaison with gender bias and other task forces with similar mandates

CHAPTER XI



Conclusion

“Don’t open the wound unless you are prepared to heal it.”

SUCH WAS THE ADVICE GIVEN BY Chairman Franklin H. Williams to the chief judge as he prepared to establish New York’s commission. While there are a number of issues, such as adequacy of funding, which may pose a challenge to a task force, not one of these issues is insurmountable.

The one insurmountable challenge to a task force, however, is the absence of commitment by either its members or its appointing authority. If a commitment to its goals is lacking from either of these two entities, the effort may better be left uninitiated.

Few could have predicted the depth of anger and frustration demonstrated in Los Angeles in the summer of 1992. Fewer still would have thought

events in a courtroom would provide the catalyst for such an eruption. Yet, the despair was real and present, and it is a challenge to us all.

In this manual we have given a blueprint for the ways in which the court system and the legal profession may begin the sorely needed self-examination, diagnosis, and cure for their real and perceived contributions to this despair. While surely the court is neither the cause nor the entire solution to racial and ethnic strife in our society, its commitment to a commission or task force on racial and ethnic bias represents palpable evidence of an institution’s willingness to take responsibility for its part of the problem and its role in the solution.

APPENDIX A:

The Relationship Between Gender and Racial/Ethnic Task Forces in the Investigation of Bias in the Courts

A Presentation to the National Conference
on Gender Bias in the Courts

Williamsburg, Virginia
May 19, 1989

By Lorraine H. Weber, Esq.
Project Director

Michigan Task Forces on Gender and Racial/Ethnic Issues in the Courts

IN OCTOBER 1987, THE MICHIGAN Supreme Court simultaneously created the Task Force on Gender Bias in the Courts and the Task Force on Racial/Ethnic Issues in the Courts as an expression of its deep commitment to the issue of bias as it affects all under-represented groups in our state. The unavailability of adequate funding and the difficulty in identifying private financial resources resulted in the employment of a sole staff director for both task forces. This position is voluntarily funded by the Michigan State Court Administrative Office, which contributes clerical and administrative support. Additionally, all research projects are privately grant funded and are conducted on a joint basis. As the only project director in the country who is responsible for staffing both a racial/ethnic and gender task force, I believe I bring to the discussion of the relationship of these two groups a unique and strong perspective.

During the last year I have received numerous inquiries from states about proposed designs for race/ethnic and gender task forces. Among the

proposals being considered are ones which outline the development of joint task forces, utilize gender task forces in newly designed minority programs, or combine gender and race in one task force. It is my purpose in this discussion to identify the various strengths and weaknesses of these proposals, and to outline the optimum relationship between these two important endeavors. It is my firm belief that at no time should either endeavor be unfairly disadvantaged by or gain benefit at the expense of the other. This delicate balance is a challenge that each state should face as it considers the creation of bias task forces in its justice system.

Let me begin by stating that the identification and assessment of gender-based bias and racial/ethnic bias in the courts are fundamentally different processes and should be treated as such. It is often tempting to view an issue such as discrimination as a monolithic evil, which can be known in its many manifestations by a concerted effort on the part of a group of concerned citizens. As a white female, I have personally resisted the tendency of our society, as a whole, to deny and

undermine women's understanding of gender bias. Too often, the very people who know and experience the problem are denied the credibility to define that problem to the larger community.

I believe that any attempt to combine gender and racial/ethnic discrimination should fall prey to this same concern. By assuring that these endeavors can be easily and effectively combined, we undermine the seriousness of the problem, we confuse our efforts, and we may diminish the ability of the community affected to define the problem.

My experience with Michigan's task forces has allowed me to identify five broad areas where I believe the investigation of race and ethnic bias and sexism diverge and which further require the separation of the two projects organizationally and philosophically.

1. Race/ethnic and gender discrimination are sociologically different issues. Groups involved in fighting these attitudes are at different stages in the evolution of their struggles. Minority groups who have been actively engaged in a thirty-year struggle are seeing some of the same problems manifest today that they had initially identified. The increased frustration, anger, and sense of powerlessness within the minority community affects their attitudes and approaches to these issues and can present a greater challenge to the task force to generate participation within the community and to overcome its fear, hostility, and skepticism. Women, on the other hand, view these projects as initial efforts for change and bring to the project a greater sense of optimism and a less lengthy, focused history of struggle for social change.
2. The opposite of this sociological difference results in a clear acceptance within the minority community of the reality and existence of race and ethnic bias. The experience of under-represented people in our country reinforces daily the obstacles they face in gaining the benefits and protections of a white system. Women seem to be less likely to identify sexism as unfair, unwarranted, or undesirable. The relationship between men and women is unavoidable and indelibly imprinted on every person's conscious and unconscious behavior. Racial/ethnic relationships often exist outside the personal experience of many people and can be abstracted into an idealized approach separate from personal or professional life.
3. An investigation of race and ethnic discrimination in the courts requires more sophisticated, complex data collection methods. In most courts, statistics related to race/ethnicity are nonexistent while access to statistics based on gender is comparatively easy. Additionally, much overt race and ethnic bias has been eliminated from the behavior of individuals in our society (unlike sexist commentary, which seems to be fairly prevalent at all levels) and the impact of subtle individual or institutional race and ethnic bias can only be identified through expensive and complicated research methods. Unlike gender, the minorities task forces do not have an established body of research in the courts upon which to build.
4. By definition, racial/ethnic discrimination is a broad category, which applies to a variety of different populations. It is therefore very difficult to identify which constituencies are appropriately served by the task force. African-Americans, Hispanics, Asian-Americans, Native Americans, and other affected groups should all be represented in the task force process. Often within these communities there exist conflicting goals and divergent attitudes, which should be balanced in the task force process. Community outreach and public involvement is a difficult task requiring a significant commitment of time, energy, and resources. Even within the legal community, there exists a diverse network of individuals interested in these issues and in some instances these networks do not represent the most effective leadership in the broader targeted communities.
5. In many instances, the gender task forces are assisted by an established network within the profession and can target their constituencies more easily. While male/female issues are sometimes in conflict, these conflicts tend to occur within a narrow group of cases (domestic relations) and tend to spring out of the application of similar stereotypes, which negatively affect both men and women.

As a result of the above, it is my belief that it is difficult and counterproductive to investigate gender and race bias as a function of one task force or commission. Yet, there does exist a powerful argument in support of the simultaneous creation and coordination of both task forces.

The National Consortium of Task Forces and Commissions on Racial/Ethnic Bias in the Courts will be addressing the National Conference of Chief Justices in August 1989. In its presentation it will recommend the following:

- Simultaneous creation of gender and racial/ethnic task forces
- Separate staff, membership, and resources for each task force
- An independent chair who is involved in and responsible for the selection of members, director, and staff and the direction of the project
- Adequate funding and time allocated for the project
- Emphasis on inclusion of community leadership in the initial stages of development
- Use of the Consortium as a resource for advice and support.

It is the Consortium's belief and combined experience that the simultaneous creation of separate task forces is the most philosophically responsible and administratively sound approach to the problem of gender and racial/ethnic initiatives. Yet, despite the necessary separation of the two task forces, there are many areas where they can combine their efforts to the benefit of both projects. By maintaining close, supportive ties to each other, the task forces can maximize their ability to draw on mutual resources and establish joint goals. Following are some suggested areas where gender and minority task forces can and should work together:

- Jointly utilize scarce resources such as mailing lists, public relations pieces, community appearances, and other high cost-items
- Combine political power for funding solicitations, donation of services from interested groups and to create coalitions of judicial and legislative support for their efforts
- Present a solid united front on the issue of bias, which utilizes the most effective legal/substantive/political leverage to effect change
- Combine basic data collection and research to avoid duplication, which can be annoying, confusing, and costly to the recipients of countless surveys and questionnaires
- Coordinate findings and recommendations in areas of mutual concern (i.e., code of ethics, education, judicial selection) to prevent

embarrassing conflicts and to maximize pressure for change

An area in which both task forces should exercise responsibility is that of problems experienced by women of color. This double discrimination may be overlooked by both groups in the mistaken assumption that it is the responsibility of the other task force. It is my opinion that issues related to women of color should be addressed in both reports, thereby highlighting the special nature of the problem and avoiding unnecessary and counterproductive discussions about exclusive responsibility. Data collection in this area should be shared and analyzed by both groups.

A final comment should address the role and influence of a gender task force which is in existence at a time prior to the creation of the racial/ethnic task force. It has been suggested in some jurisdictions that the gender task force can naturally "evolve" into and take on the race/ethnic investigation. I believe this approach to be ill-advised. At its best, it devalues the importance and serious nature of race discrimination by placing it in the role of an "add on" or "afterthought" to gender. At its worst, it reflects a Eurocentric arrogance, which negates the requirement for minority groups to determine and direct their own projects.

An existing gender task force has the responsibility to be a voice which calls for and supports the creation of the race/ethnic task force. Through their established network they can generate public support, leverage political influence, and maximize the likelihood of success of the new initiative. By holding firm in resistance against "another bias investigation," the gender bias task forces can resist the impulse to inappropriately lead the effort against race and ethnic bias. Rather, they can support, encourage, lobby, and focus community attention on the problem of racial/ethnic bias, thereby allowing the natural leaders of this effort to take up the challenge and move forward successfully.

I know that I speak on behalf of the other race/ethnic task force directors when I say that we will make ourselves available to anyone who would like more information about the Consortium or our individual projects. I sincerely hope that you will return home from this conference not only energized to pursue gender discrimination, but also as a force, which will look to preserve the rights of all under-represented groups in our courts.

APPENDIX B:

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