



**Perceptions of Racial and Ethnic Fairness  
in the Criminal Justice System:**

**Listening to Utahns**

A Client Committee Report  
on the Public Hearings  
of the Utah Task Force on Racial and Ethnic Fairness  
in the Legal System



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on the Public Hearings  
of the Utah Task Force on Racial and Ethnic Fairness in the Legal System

The logo consists of the letters "SJJI" in a bold, serif font, centered within a square border. The border is composed of two parallel lines.

**SJJI**

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## **DEDICATION**

*This report is dedicated to the People of Utah who participated in the public hearing process. Your stories challenged us to think about how this effort can make a real difference in people's lives. The Client Committee thanks you for donating your time to participate in improving the criminal justice system for Utah's ethnic populations.*

## **ACKNOWLEDGMENTS**

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<i>Mexican Consulate</i>	<i>Vietnamese Volunteer Youth Association</i>
<i>Migrant JTPA Program for Farmworkers</i>	<i>Wat Muni Siratana Ram Laotian Temple</i>
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<i>Navajo Utah Commission</i>	<i>White Mesa Ute Council</i>
<i>New Hope Refugee Center</i>	<i>Jeanetta Williams</i>
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<i>Honorable David Nuffer</i>	

## **PREFACE**

### ***Definition of Racial and Ethnic Identity Names***

The words that people choose to identify themselves and others, represent their culture, traditions, self identity, and their views of others. Public hearings participants used a wide variety of terms to identify different racial and ethnic groups. After much debate, the Client Committee adopted terminology currently in general use to identify the main racial and ethnic groups discussed in this report. However, when direct quotations from public hearing participants are used in the report, the identity terms used by the participant have been retained. The identity term used for each racial and ethnic group applies to any person of that group who resides in Utah regardless of whether they are United States citizens or citizens of another country. The Committee realizes that the terms will not be fully embraced by all readers and may even offend some. Also, individuals may choose to use more than one group name to identify themselves fully. However, to provide uniformity, the following identity names, in alphabetical order, have been adopted for this report.

African American	A person having racial and ethnic origins in Africa. The term is adopted to include Africans, Afro-Americans, Blacks, Negroes, and those of Latin American origins who identify with this population.
American Indian	A person having racial or ethnic origins in any of the indigenous tribes of North America, not including Hawaii, and, who maintain tribal affiliation or community attachment. The term is adopted to include Alaska Native, Indians and Native Americans.
Asian American	A person having racial or ethnic origins in Asia -- China, Japan, Korea, Southeast Asia -- Vietnam, Cambodia, Thailand, Indonesia, and South Asia -- and countries in the Indian Subcontinent. The term is adopted to include Asians and Orientals.
Hispanic	A person having ethnic origins in North, Central or South America, the Carribean, or other Spanish cultures or origins, regardless of race. The term is adopted to include Latinos, Chicanos and Mexican nationals.
Polynesian	A person having racial or ethnic origin in Hawaii, Guam, Samoa Tonga, New Zealand and other Pacific Islands. The term is adopted to include all Pacific Islanders -- Micronesians and Melanesians.
White/White American	A person having racial or ethnic origins in European countries, not including those with Hispanic origins. The term is adopted to include Caucasian which indicates a geographic area (the Caucasus Mountains) and Anglo, an ethnic designation.
Racial and Ethnic Minority	A person whose predominant racial and ethnic origins do not fall within the term White, Caucasian or Anglo, as defined above. The term is adopted to include minorities and people of color.

## ***EXECUTIVE SUMMARY***

The Client Committee of the Utah Task Force on Racial and Ethnic Fairness in the Legal System (Task Force) was created to examine the experiences and perceptions of offenders, victims, and their families regarding racial and ethnic fairness in the criminal justice system. The Committee was co-chaired by two Task Force members who selected and convened 13 additional members.

To fulfill its mandate, the Committee held 27 public hearings designed to give participants opportunities to provide information publicly or confidentially at the hearings, or through telephone and written reports. Hearings focused on groups by geographical location and ethnicity. Interpreters were provided as needed. The information provided by hearing participants varied in content and focus. Although staff made concerted efforts to solicit information about all segments of the criminal justice system, law enforcement was the focus of many remarks.

This report documents public hearing perceptions of the criminal justice system and the Committee's recommendations to address those perceptions. No systematic effort was made to verify information from the public hearings as the hearings represented only a portion of the Task Force's research. Actual documentation of racial and ethnic discrimination will be determined by research of other segments of the Task Force. Individual perceptions are presented from the perspective of the hearing participants and do not necessarily represent Committee member perspectives. Perceptions noted at multiple hearings and overall themes throughout the hearings are emphasized in this report.

### ***Law Enforcement***

Law enforcement complaints dominated the public hearings. Many voiced the belief that the role of law enforcement in any community should be to protect society and make all residents feel safe.

The overwhelming perception was that Utah's racial and ethnic minorities are subject to discrimination by law enforcement due to:

- targeted police action based on race or ethnicity. Racial profiling perceptions exist within and outside of minority communities.
- the abuse of legal authority by law enforcement. Participants alleged unnecessary verbal and physical abuse, the use of racial slurs, and harsher treatment of minorities.
- language barriers. Racial and ethnic minorities with limited English proficiency often felt defenseless when dealing with law enforcement, perceiving that needed assistance is unavailable, punishment is unfair, and clients are blamed for communication barriers.
- cultural barriers that inhibit appropriate interaction between law enforcement and minority clients. The perception that the system works against minorities leads to an avoidance of the system regardless of personal costs.
- ineffective and intimidating complaint processes. The lack of uniformity between law enforcement agencies in the process of filing complaints is a deterrent to filing complaints. The process is perceived to do nothing to solve problems of police abuse.

Participants advocated hiring minority police officers to help diminish the problems associated with misunderstandings, language barriers, and harassment based on racial and ethnic stereotypes.

### ***Legal Representation***

Many participants raised the question of adequate legal representation of racial and ethnic minority clients by both appointed and privately retained defense attorneys. These perceptions lead to distrust of the attorneys who are supposed to represent client interests. Perceptions included:

- a denial of access due to language barriers and the lack of cultural sensitivity among attorneys.
- a widespread lack of knowledge of the law within minority communities.
- a lack of adequate preparation for cases and failure to communicate with clients concerning the status of the cases by appointed attorneys.
- the existence of prejudice and lack of care for minority clients.

Complaints of discrimination extended to prosecutors. Participants believed prosecutors were unlikely to bring criminal charges against Whites where the interest of a White person seemed to take

**Executive Summary**

precedence over the minority person's interests. Participants stated that if the victim was minority, incidents were deemed accidents and dropped, or the minority person was charged and prosecuted. Prosecutors were thought more likely to prosecute or seek tougher penalties against minorities.

**Courts**

Court-related comments echoed other legal system concerns. Some expressed difficulty in understanding the nature of legal proceedings in a culture different from their own. Stereotyping of minorities and racism were seen as bases for unfair trials, sentencing and disparate treatment.

Additional perceptions included:

- a lack of cultural sensitivity among judges, court employees and court interpreters, as well as a lack of awareness of the impact of ethnic and racial cultures on individual behavior.
- disrespect for minorities in the courtroom.
- an inability of the courts to ensure equal justice.
- longer sentences given to minorities than to Whites for the same crimes, a perception reinforced by a courtroom filled entirely by White people.
- disparate treatment due to inadequately trained, uncertified interpreters in areas outside of Salt Lake and the use of returned L.D.S. missionaries instead of native language interpreters.

**Post-Adjudication**

Public hearing comments on post-adjudication issues focused on three themes: the length of sentences served by minorities, their treatment in correctional facilities, and the fairness of actions by the Board of Pardons and Parole. Inmates related perceptions of unfair punishment especially of those with language barriers, and retaliation based on race by the Board of Pardons and Parole. American Indian inmates stated that their rights to religious ceremonies are not respected in prison.

### ***Juvenile Justice***

Public hearing participants expressed a lack of knowledge and understanding of the juvenile justice system. Accounts of interaction with law enforcement revealed perceptions of targeting and profiling that left clients feeling singled out and presumed guilty at first contact. Participants relayed examples of youth who were presumed to be gang members due to their race or ethnicity. Parents commented on their difficulty negotiating the complexity of the court system, particularly when hampered by language barriers and cultural differences. They were frustrated of being left out of the judicial process when decisions concerning their children were made without their input. The power of court workers to make decisions that impact juvenile lives was another area of concern. Parents also expressed concern about custodial issues and not understanding the juvenile delinquency process with the Division of Youth Corrections.

### ***Victims***

Minority crime victims spoke about their interactions with law enforcement, the medical system, social services and the media. They were concerned that they were not treated fairly by the system because they were not listened to, nor taken seriously. Worse, others expressed statements that imply being re-victimized during interactions with law enforcement and with “the system.” The treatment of those who are incarcerated was also reported as creating a group of victims due to race. Racial and ethnic women shared unique experiences as victims in the criminal justice system.

### ***Conclusion and Recommendations***

The public hearing process was as much a learning experience as it was an effort to collect information from the public. The Committee strove to set up hearings in the least intimidating

environments possible and continually refined the hearing process. Recognizing the potential suspicion with which hearings could be regarded, the Committee worked to establish the trust necessary to hold these hearings. However in some cases people still did not have sufficient trust to come forward publicly, establishing the need for alternative methods of collecting information.

Participant comments indicated a lack of knowledge about the judicial system and individual rights. Many minorities believed they are treated unfairly by the entire legal system. Predominant perceptions included: law enforcement abuse of power including profiling, harassment, verbal and physical abuse; lack of adequate representation; lack of cultural awareness and sensitivity; inadequate communication between the legal system and minority communities; and shortcomings in complaint/grievance processes. The legal system must also recognize that not all minority groups have the same issues. Specific attention is needed regarding intra-racial diversity and rural area issues.

The need to educate the public about the structure of governmental entities became apparent as many hearing comments did not relate specifically to the Task Force's mandate. The Committee has made efforts to forward information to other appropriate public entities. Comments also point to the need for governmental entities to work more closely with one another and with community groups to solve problems. The Committee believes that facilitating communication between ethnic communities and the criminal justice system can be effective in solving problems faced by racial and ethnic minorities in Utah's criminal justice system. Skepticism of the effectiveness of the Task Force's work was expressed at every public hearing with the question, "Now that you've heard our issues, how are you going to correct the problems?" Recommendations grouped into areas of focus are listed below. Actual implementation of the recommendations will be the ultimate test of the system's willingness to address racial and ethnic bias in a serious, committed manner.

- Administration:* Commitment from criminal justice system administration is critical, including funding and support.
- Workforce Diversity & Recruitment:* All segments of the criminal justice system should reflect the populations served. Recruitment in minority communities is essential to ensure a diverse workforce.
- Training:* The legal system at all levels must become more sensitive to the needs of the diverse population it serves. Training should focus on cultural awareness including specific issues such as American Indian religious rights and hate crimes as a significant part of every agency's basic training.
- Outreach:* The criminal justice system should provide opportunities to educate minority communities about their rights and responsibilities in the legal system as well as mechanisms to encourage better communication with the public.
- Complaint & Grievance Processes:* The criminal justice system should have complaint / grievance procedures that are consistent and well-known to the public and that are free from intimidation and potential retaliation.
- Research & Data Collection:* On-going data collection and research efforts are critical to determine the actual existence of racial and ethnic bias in the criminal justice system.

## ***INTRODUCTION***

### ***Client Committee Role and Purpose***

The Client Committee of the Utah Task Force on Racial and Ethnic Fairness in the Legal System (Task Force) is one of eight subcommittees to the overall Task Force. The Committee has the following mandate: To examine and evaluate the experiences and perceptions of offenders, victims and their families regarding racial and ethnic fairness in the criminal justice system. It is co-chaired by two full Task Force members, Haruko Moriyasu, director of Asian Pacific American Studies at the University of Utah, and Filia Uipi, a Utah attorney in private practice. The co-chairs selected and convened a subcommittee of thirteen additional members who have spent the last eighteen months discussing the many issues surrounding clients in the criminal justice system.

### ***Public Hearing Purpose***

The primary method used by the Committee to gather information about the experiences and perceptions of offenders, victims and their families was public hearings. The Task Force determined that public hearings were an effective tool used by a number of other states conducting similar efforts. The Committee was asked to determine the specific details of the hearings, including the number and type of hearings, the format, and the most appropriate settings.

These public hearings form a portion of the Task Force's research on racial and ethnic bias. The research agenda includes qualitative and quantitative research in the adult and juvenile justice systems (see Background Information section). The public hearings constitute an effort at collecting qualitative information from those with experiences with the criminal justice system.

Neither the Committee nor the Task Force made systematic efforts to verify information provided by participants at public hearings, though some cases were forwarded to appropriate

investigative bodies. The purpose of the hearings was to understand the *perception* of fairness among clients. Individual perceptions are presented from the perspective of participants and do not necessarily represent Committee member perspectives. Perceptions noted at multiple hearings and overall themes throughout the hearings are emphasized in this report. Actual documentation of discrimination will be determined by the remaining research of the Task Force, the results of which will be published in its final report.

### ***Public Hearing Process***

The Committee held twenty-seven separate events to listen to experiences and perceptions about racial and ethnic fairness. Twenty-one of the events were full public hearings. One was held at the Utah State Prison's Draper facility. Three were called "mini-public hearings" because they reached out to a smaller audience. Three were called "focus groups" because they attempted primarily to provide information about the Task Force's effort to collect information, along with an invitation to relay stories and concerns. All meetings were open to the public (except for the Utah State Prison hearing), and everyone was invited to comment.

Hearings focused on groups by geography and/or by ethnicity. For example, hearings were held in areas across the state in rural and urban areas, in Northern and Southern Utah and along the Wasatch Front. The Committee also held hearings by ethnicity, focusing for instance, on Polynesian communities, the Hispanic community in Salt Lake City, and the urban Indian population. Comments were made by members of minority groups and by White Americans.

Up to 200 people attended individual hearings. Interpreters were provided if necessary, as determined by guidance of the hearing hosts. Interpreters for Samoan, Spanish, Tongan, Vietnamese,

Khmer, and Lao were used at different hearings. For Spanish interpreters, certified court interpreters were used in all instances possible.

Court reporters transcribed each public hearing. Transcripts were used to create a published summary of each hearing. The summaries attempted to capture the overall themes noted at each hearing. They include the names of Task Force and subcommittee members in attendance, the approximate attendance of participants, and participant quotes from the hearing.

Methods used to publicize the hearings depended on location, guidance provided by hosts, and ethnic group(s) targeted. Radio public service announcements and informational interviews in English and other languages were often used. The Committee placed fliers and posters in ethnic markets, stores, and churches. At times, printed material was published in one or two languages, depending on the population the hearing was attempting to reach. Mainstream and ethnic print media were utilized to announce hearings in specific communities. Media coverage included stories to advertise the hearings as well as coverage of the hearings themselves.

### ***Public Hearing Schedule***

Public hearings began with a pilot hearing in May 1998 at Taylorsville City Hall with the Polynesian population. The first official hearing was held in July 1998. Hearings continued, averaging two to three a month, until April 1999. A full list of public hearings is provided below, with focus groups and mini-hearings also noted.

<b>Hearing Location</b>	<b>Hearing Date</b>	<b>Estimated Attendance</b>	<b>Hearing Hosts</b>
Taylorsville City Hall <i>mini-hearing</i>	May 14, 1998	25	Polynesian Advisory Council
Migrant JTPA Program for Farm workers, Ogden	July 16, 1998	30	Migrant JTPA Program for Farm workers

Hearing Location	Hearing Date	Estimated Attendance	Hearing Hosts
St. Mary's Catholic Church, Park City	July 19, 1998	45	St. Mary's Catholic Church, St Olaf's Catholic Church, Carolyn Webber
Sorenson Multi-Purpose Center, SLC	August 15, 1998	50	Sorenson Multi-Purpose Center, Centro de la Familia de Utah, Division of Indian Affairs, Offices of Ethnic Affairs
Centro Civico Mexicano, SLC	August 16, 1998	30	Mexican Civic Center, Mexican Consulate
Centro Civico Mexicano, SLC	August 20, 1998	30	Mexican Civic Center, Mexican Consulate
Logan City Hall	September 2, 1998	70	Office of Hispanic Affairs, Utah State University Multicultural Student Services
Vai-Ko Latai Restaurant & Pool Hall, <i>mini-hearing</i> for Polynesian community, SLC	September 15, 1998	25	Salt Lake City Multicultural Advisory Committee
Central City Community Center, SLC	September 25, 1998	30	Salt Lake Branch NAACP
Sam Smith's home, <i>mini-hearing</i> , SLC	September 26, 1998	25	Salt Lake City Multicultural Advisory Committee
San Felipe's Catholic Church, Wendover	October 7, 1998	0	Salt Lake Community Action Program
Indian Walk-In Center, SLC	October 17, 1998	20	Indian Walk-In Center, Salt Lake City Multicultural Advisory Committee
Centro de la Familia de Utah, <i>focus group</i> , SLC	October 20, 1998	25	Centro de la Familia de Utah
Horizonte Training Center, SLC	October 29, 1998	100	Salt Lake City Multicultural Advisory Committee
West Valley City Hall	November 4, 1998	20	Office of Polynesian Affairs
Ogden Community Action Agency	November 5, 1998	150	Ogden Community Action Agency/CSBG, Image de Utah
Utah State Prison, Draper facility	November 18, 1998	25	Utah State Prison
San Juan School District, Blanding	November 23, 1999	40	Navajo Utah Commission, White Mesa Ute Council, San Juan School District
New Hope Refugee Center, SLC	January 23, 1999	25	Vietnamese Volunteer Youth Association
Davis County Library, Layton	January 30, 1999	20	Image de Utah
University of Utah, SLC	February 18, 1999	35	Center for Ethnic Student Affairs
Wat Muni Siratana Ram Lao Temple, <i>focus group</i> , Sandy	February 21, 1999	100	Lao Buddhist Temple, Office of Asian Affairs

<b>Hearing Location</b>	<b>Hearing Date</b>	<b>Estimated Attendance</b>	<b>Hearing Hosts</b>
Orem High School, Utah County Information Fair & Community Meeting	February 27, 1999	150	Hispanic Advisory Council, Ethnic Minority Interagency Council, Mexican Consulate
Paiute Tribal Office, Cedar City	March 5, 1999	70	Paiute Indian Tribe of Utah
Opera House, St. George	March 6, 1999	200	Southern Utah Hispanic Committee, St. George Police Chief Robert Flowers
Ute Tribal Auditorium, Ft. Duchesne	March 26, 1999	75	Ute Tribe
Cambodian Buddhist Temple, <i>focus group</i> , WVC	April 10, 1999	150	Cambodian Buddhist Temple, Office of Asian Affairs

### ***Types of Statements***

During public hearings, participants were given a number of different methods by which they could provide information to the Task Force. These methods were devised to provide people with as many ways to make their statement as possible, emphasizing the importance of receiving the information, over knowing who made the statement.

1. Statements could be made “on the record,” whereby individuals spoke directly to Task Force and subcommittee members in attendance. These individuals could state their name for the public record or remain anonymous.
2. During each hearing, participants were informed that they could talk to individual Task Force and subcommittee members in private. In some instances, private rooms were set up to take statements from individuals who felt uncomfortable speaking publicly. In other instances, Task Force and subcommittee members spoke privately with participants after the hearing and created a written record of their statements.
3. The Committee developed survey forms that participants could complete, which provided an opportunity to share information with the Task Force without speaking publicly. These forms were printed in English, Khmer, Spanish, and Laotian and made available at hearings along with written information about the Task Force.
4. Finally, participants were given a phone number they could call to relate their stories anonymously and in private with Task Force staff. A number of individuals who were unable to attend a hearing exercised this option. Staff took calls in English and Spanish.

***Information Collected***

The type of information collected at the public hearings varied broadly. Many individuals chose to comment not on the criminal justice system, the focus of the Task Force, but on other areas, such as the civil court system, the educational system, social services, immigration and naturalization issues, and interracial relations. There remains a need for other agencies to look at these important issues that fall outside the scope of the Task Force's mandate (see Follow-Up section).

Comments about the criminal justice system tended to focus on law enforcement. As law enforcement was not the only focus of the Committee's concerns, staff made concerted efforts to solicit information about other segments of the criminal justice system, such as the courts, probation, parole, jails and prisons, and issues related to attorney representation.

While members expect that a number of the stories shared at hearings will be documented and verified through the Task Force's quantitative research efforts, many other stories are impossible to verify due to lack of data collection and record keeping. For instance, while there are those who shared stories of racial or ethnic bias related to arrests, citations, processing by the courts, or some other segment of the system, there are many others who shared stories of harassment and racial discrimination where no citation was issued nor arrest made. Committee members think it is important to note that those who have documentation about their treatment have potential for further investigation important to solving problems of existing discrimination. Those who are harassed without any documentation of that abuse are silently victimized, since their stories cannot be validated by the Task Force. Committee members found these statements particularly compelling and convincing due to the similarity and sheer numbers of statements received across ethnic groups and geographic regions that established

notable patterns of abuse. An important purpose of this report is to give voice to those who have been mistreated by the criminal justice system.

### **Conclusion**

This document constitutes the Committee's report to the full Task Force regarding the findings, conclusions, and recommendations from the public hearings. The report quotes many participants of public hearings. Written transcripts exist for most of the hearings. Some quotes have been shortened for brevity. For other quotes, clarification text has been added in brackets. In all cases, the authors have attempted to maintain the spirit and integrity of the participants' comments.

The report is divided into several sections. The first section consists of information about case processing in the juvenile and adult criminal justice systems. There is also background information on the overall Task Force, to which this report is being submitted. The second section consists of several thematic chapters that outline the major themes around which participants spoke. These chapters coincide roughly with the subcommittee structure of the Task Force. The third section discusses areas of follow-up that the Committee has undertaken since the hearings. The final section includes the overall findings and recommendations of the Committee as well as concluding remarks about the public hearing process.

## **THE JUVENILE JUSTICE SYSTEM IN UTAH**

The following is a synopsis of the processing of a delinquent matter through the juvenile justice system. Most juvenile court cases are not open to the public in order to protect the privacy of the minor. Many variables can impact the direction an actual case takes. This brief outline is offered only as a sketch of the majority of cases.

### ***Law Enforcement Function***

Law enforcement officers have the responsibility to determine if a minor is to be referred to juvenile court. Officers may arrest a minor upon observing an illegal activity. The minor may be held temporarily, but must otherwise be released to the care of a parent, custodian, or other responsible adult. The minor may be detained at a local detention facility only if the welfare of the minor or the protection of the community requires detention of the minor. If a minor is detained in a facility, the juvenile court will conduct a detention hearing within 48 hours to determine whether detention should continue. The referral officers are required to file a formal referral with the juvenile court within 10 days of the minor's arrest (72 hours if the minor has been sent to a detention facility). The referral may be in the form of a citation for certain misdemeanor offenses.

### ***The Detention Hearing***

The detention hearing is conducted before a judge or commissioner who is informed why the minor was booked into detention. The judge/commissioner will decide if the minor should remain in detention for further hearings or can safely be released to a parent to await court intake action. If the minor is continued in detention, a future court date will be set for arraignment and the intake process will occur at the appropriate time provided jurisdiction is established.

***Juvenile Court Intake***

Upon receipt of a referral, the juvenile court will determine whether further action is warranted. After determining there is jurisdiction to continue, the minor and a parent will meet with an intake officer who informs them (a) it is a voluntary meeting, (b) they have a right to have counsel present to represent the minor, and (c) any information gathered cannot be used in court on the issue of guilt or innocence but may be used as part of a dispositional recommendation. The intake officer will discuss the offense and gather social information. A determination is made whether the interests of the public or the minor are best served by a non-judicial adjustment or an appearance before the court with a written report and recommendations. Citation matters can often be handled through payment of a fine or can be processed through a group setting.

***Non-judicial Adjustment***

Certain cases may be resolved by the probation department through agreement with the minor. Through this non-judicial adjustment, a minor can be required to pay a fine and restitution, attend counseling, and perform community service. Non-judicial adjustment is not an official juvenile court action, but may be considered in subsequent proceedings. If non-judicial adjustment is not appropriate, the probation department will request the filing of a delinquency petition.

***The Petition***

Juvenile court cases must have a petition or criminal information filed either through the county attorney's office or the probation department.

### ***The Hearing***

The arraignment hearing is the first opportunity for the minor to admit or deny the allegation(s). If the minor admits to the allegation(s), the matter can be disposed of with a court order. The court can take into account the report generated from the intake process, comments from the minor and parents or any other interested party such as the prosecutor, victim, school, therapist or others. If the minor denies the allegation(s), the matter is followed by further hearings. Subsequent hearings could include pretrial, trial, or disposition.

Pretrial occurs when the minor or his/her attorney and the prosecutor attempt to settle the matter. If they reach an agreement, the matter can be handled with a court order. Trial is set when no resolution can be found. Testimony is taken, and evidence is given. The court can either dismiss the case or find the allegations are true and resolve the case with a court order. A disposition hearing is held after adjudication. The court's order could then include, but is not limited to, any number of the following: fine, restitution, community service, probation,\* substitute care,\* out of home observation and assessment,\* community placement,\* or secure facility where the case is governed by the Youth Parole Authority.

The judge also has the option of dismissing the matter either upon motion by the prosecution or upon his or her own finding or motion. Review hearings are held periodically at which time the court can continue, or modify prior orders, or terminate jurisdiction, and the minor exits the system. The minor has a right to legal representation at all proceedings. If the minor cannot afford an attorney and the parents qualify financially, the court may appoint an attorney to represent the minor.

***Continuing Jurisdiction***

Juveniles who are under continuing jurisdiction will either be placed on probation or in community placement. For probation, the minor is usually in the home. Court orders are monitored by a probation officer employed by the court. Restrictions are typically imposed and services provided, and parents are actively involved in the minor's probation. In community placement, the minor is in the care, custody, and guardianship of the Division of Youth Corrections or the Division of Child and Family Services and is often placed out of the home. The goal is to provide services and reunite the family.

\*Cases under continuing jurisdiction requiring periodic review hearings.

## **THE ADULT CRIMINAL JUSTICE SYSTEM IN UTAH**

The following is a sketch of the phases of the adult criminal justice system in Utah. Adult court cases in Utah are open to the public. A number of variables can impact the direction of a case. This brief outline is offered as a sketch of the majority of cases.

### ***In Jail or Out of Jail?***

When a law enforcement officer has probable cause to believe a crime has been committed, it is his/her responsibility to take action. For minor criminal behavior, a citation can be issued. A more serious crime will result in a trip to jail. There are several ways to get out of jail. A person can get out of jail by placing money or property with the court or by paying a fee to a bail bond company which the company then posts as a bail bond for the person. If the individual does not show up for court, he/she will lose that money or property. In some cases, a person is released from jail on their “own recognizance,” or simply a promise to appear in court. If the individual does not show up for court, a warrant will be issued and he/she will be arrested and returned to jail. In Salt Lake County, an agency called Pre-Trial Services offers supervised release where the person is required to report regularly, possibly required to attend treatment and promises to attend all court appearances. Some people charged with certain serious crimes are not entitled to post bail or pretrial release and remain in jail until the case is resolved in some way.

### ***From Law Enforcement to the Court***

Once a law enforcement officer has probable cause to believe a crime has been committed, it is his/her responsibility to notify the prosecutor. The person charged with the crime is called the

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defendant and is told where and when to appear in court. There are two different adult courts where a criminal defendant might be told to report.

***The Justice Court***

Minor criminal behavior may be handled in the Justice Courts. These courts operate in counties and municipalities across the state. The judges are not necessarily attorneys, but are trained to perform judicial duties. Defendants often attend court without an attorney. These judges can impose fines and short jail sentences on defendants who enter a guilty plea or who are found guilty.

***The District Court***

More serious criminal behavior is handled in the District Courts that are located throughout Utah. These courts can impose fines, jail sentences, prison sentences, and the death penalty.

***What Happens the First Day in Court?***

The defendant will be told about the criminal charges, called an information, and what rights he/she has in court. This process is called arraignment. Defendants have the right to represent themselves, hire an attorney, or if unable to afford one, the court may appoint an attorney. If the charge is a minor one, called a misdemeanor, the defendant enters a plea this first day. If the plea is guilty, the defendant can be sentenced right away. If the plea is not guilty, a trial date will be scheduled. On serious charges, called felonies, the defendant can enter a plea if he/she waives further proceeding in the case.

***A Preliminary Hearing***

In felony cases a preliminary hearing can be requested by the defendant where the basic facts of the case are reviewed in front of a judge. The hearing must be held no later than 10 days if the defendant is in jail, and no later than 30 days in other cases. If the judge does not believe that there is evidence

the crime has been committed by the defendant, charges will be dropped. If the judge believes that there is probable cause that the crime was committed by the defendant, a date for arraignment will be scheduled. In some cases the attorney and the defendant choose to forfeit a preliminary hearing and proceed to arraignment.

### ***Felony Arraignment***

At felony arraignment, the defendant is given a copy of the charges which contains details about the crime and the evidence. The charges will also be read aloud in court. If the plea is not guilty, pre-trial conference and trial dates will be set. If the plea is guilty, the judge explains to the defendant the rights he/she will have waived and certain consequences of the plea. The defendant has the right to be sentenced after two days and before 45 days of the plea. The judge ensures that guilty pleas are given freely without threats or promises.

### ***Trial***

Some trials are held with a jury and sometimes the defense attorney will recommend a trial before the judge. If a jury is selected, a process is in place to ensure the jurors are people who will do their best to be impartial and fair. The prosecuting attorney must try to convince the judge and/or the jury beyond a reasonable doubt that a crime was committed and that the defendant committed the crime. The defense attorney will try to raise issues of doubt in the prosecution's case against the defendant. The defendant has the right to confront the witnesses against him and subpoena his/her own witnesses. (A subpoena is an order to attend court and give testimony.) The judge or the jury will decide if the defendant is guilty "beyond a reasonable doubt." If the judge or jury determines that there is reasonable doubt about the defendant's guilt, the case is dismissed and the defendant is free to go. The defendant

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cannot be charged with this same crime a second time even if new evidence is found. If the defendant is found guilty, a date for sentencing will be set. Sentencing for felony cases must take place after 2 days and before 45 days.

***Pre-sentence Investigation***

Usually the judge delays sentencing for 30 to 45 days so that the State of Utah Department of Corrections can complete a Pre-Sentence Investigation Report. An investigator interviews the defendant, the law enforcement officer, the defense attorney, the prosecuting attorney, the victim(s), family members, and sometimes therapists and employers. Official documents are obtained as well as a complete history of prior arrests and convictions. The report concludes with a sentencing recommendation that is determined by a sentencing matrix. The sentencing matrix considers the defendant's prior convictions and the seriousness of the crime. This process is in place to provide a method of determining sentences that is the same for defendants with similar criminal histories. The judge uses this report as a guide in sentencing decisions.

***Sentencing***

The goal of sentencing is to protect society from further crime, punish yet offer rehabilitation to defendants and provide satisfaction and/or restitution to victims. The judge has many options available to try to accomplish this goal including jail, prison, probation, restitution, community service, fines and treatment.

***Probation***

Probation is the alternative to jail or prison and usually has numerous conditions that the defendant must meet. Often a jail sentence is served before probation begins. The court or probation officers

monitor the defendant's progress in treatment, restitution and fine payments, community service, and employment and/or school. Failure to comply with the conditions of probation or committing a new crime will result in a return to court. The judge can revoke probation and impose the prison sentence, order jail time and continue probation, or simply continue probation after a warning. After a period of time, and when the conditions have been satisfied, probation will be terminated.

### ***Prison versus Jail***

Sentences of up to one year are usually served in a county jail facility. Prison sentences are imposed for felony convictions. The State of Utah has an indeterminate sentencing system in place that gives the prison a range of time to hold an inmate rather than a specific time. For example, the prison sentence for a second degree felony is 1 year to 15 years. Inmates are classified in the prison based on a matrix similar to the one used by the pre-sentence investigator. As inmates progress, they can be reclassified and possibly earn an earlier release. The Board of Pardons & Parole holds periodic hearings and determines when someone will be released on parole. Sometimes, in order to protect society, the Board of Pardons & Parole does not grant parole because of the nature of the crime and the inmate's behavior while in prison. The inmate is then released after the maximum time is served.

### ***Parole***

Parole is similar to probation with conditions and monitoring. An inmate is usually released from prison to a halfway house as a transition back into society with rules about employment, treatment and restitution. If the parolee fails to comply or commits a new crime he/she returns to prison. After a period of time, and when the conditions are satisfied, parole will be terminated.

## ***Utah Task Force on Racial And Ethnic Fairness in The Legal System*** **BACKGROUND INFORMATION**

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

William P. Afeaki, *Office of Polynesian Affairs*

Daniel J. Becker, *State Court Administrator*

Paul W. Boyden, *Statewide Assn. of Prosecutors*

Susan V. Burke, *Governor's Commission on  
Criminal & Juvenile Justice*

Jerry G. Campbell, *Salt Lake District Attorney's  
Office*

Reverend France A. Davis, *Calvary Baptist Church*

Judge Lynn W. Davis, *Fourth District Court*

David Dominguez, *BYU, College of Law*

Christine R. Fox-Finlinson, *Callister Nebeker &  
McCullough*

James H. Gillespie, Jr., *Northern Utah Community  
Corrections*

H.L. "Pete" Haun, *Utah Department of Corrections*

F. John Hill, *Salt Lake Legal Defenders Association*

Judge Glenn K. Iwasaki, *Third District Court*

Sheriff Aaron D. Kennard, *Salt Lake County Sheriff*

Donna Land Maldonado, *KRCL Community Radio*

Dan Maldonado, *Division of Youth Corrections*

Judge Tyrone E. Medley, *Third District Court*

Chris J. Martinez, *Image de Utah*

Charlotte L. Miller, *Past-President, Utah State Bar*

Haruko T. Moriyasu, *University of Utah, Asian Pacific  
American Studies*

John T. Nielsen, *Intermountain Health Care*

Judge G.A. Petry, *Uintah County Justice Court*

Ileana M. Porras, *University of Utah College of Law*

Michael R. Sibbett, *Utah Board of Pardons & Parole*

Jesse M. Soriano, *Utah Coalition of La Raza*

Senator Pete Suazo, *Utah Legislature*

Judge William A. Thorne, *Third District Court*

Filia H. Uipi, *Attorney at Law*

Judge Andrew A. Valdez, *Third District Juvenile Court*

Judge W. Brent West, *Second District Court*

Jeanetta Williams, *Salt Lake Branch NAACP*

Michael D. Zimmerman, *Utah Supreme Court*

### ***Task Force Mission***

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

*The Utah Task Force on Racial and Ethnic Fairness exists to organize and lead the effort to honestly examine and address real and perceived bias toward racial and ethnic minorities within Utah's criminal justice system. The Task Force shall conduct necessary research, develop and disseminate findings and recommendations, advancing and advocating in all quarters for the implementation of those recommendations.*

*The primary activities of the Task Force shall include:*

1. *Research:* *The identification and utilization of appropriate research methods, the collection and evaluation of the data to determine the extent to which race and ethnicity affect the dispensation of justice through explicit bias and implicit institutional practices. Methods may include, but are not limited to, the utilization of prior studies, surveys, public hearings, focus groups, and the evaluation of existing policies.*
2. *Findings:* *The publishing of findings of the data gathered as a result of the Task Force's assessment. Findings will be published in a final report to the Judicial Council, with preliminary findings available via interim progress reports to the Judicial Council.*
3. *Recommendations:* *The creation and publishing of recommendations for all aspects of the legal system, including appropriate agencies, community groups, and private citizens to ensure equal access to justice. Recommendations shall include appropriate strategies for implementation as recommended by the Task Force.*
4. *Partnerships:* *The development of partnerships both in the legal system and in the broader community to assist in the efforts of the task force to include a broad cross-section of Utah's communities, particularly its ethnic minority communities, both in the fulfillment of its mission and in ensuring the implementation of its findings.*

### **Subcommittee Structure**

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

- Pre-Adjudication Committee: to examine those segments of the criminal justice system that occur prior to any appearance in court, with a primary focus on law enforcement;
- Representation Committee: to examine the criminal justice system after arrest, from charging through disposition, with a primary focus on prosecution and defense;
- Courts Committee: to examine aspects of the criminal justice system that relate specifically to the adjudication process;
- Post-Adjudication Committee: to examine the criminal justice system after sentencing, with a primary focus on probation, parole, prisons and jails;

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- Client Committee: to examine and evaluate the experiences and perceptions of offenders, victims and their families regarding racial and ethnic fairness in the criminal justice system;
- Community Resources Committee: to examine referrals to community programs, community resources, with a focus on quality and effect of programs on racial and ethnic minorities; and
- Juvenile Committee: to examine the juvenile justice system for real and perceived bias due to race or ethnicity.

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

**Research Agenda**

The Task Force developed a research agenda for the adult and juvenile systems. The research is conducted separately for each system. Juvenile research includes focus groups and exit interviews. A quantitative study duplicating earlier research on minority overrepresentation in the juvenile justice system will provide comparative data. Specific research on law enforcement is also underway. The adult system research includes focus groups and key informant interviews. Quantitative efforts to determine the existence and extent of racial and ethnic bias will also be conducted in each procedural area of the criminal justice system. Examples of areas of research focus include women of color, victims, and services provided by community treatment programs.

**Time Line**

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

## **LAW ENFORCEMENT**

Complaints about the law enforcement in public hearings across the state were the “front-runners” at every hearing. This chapter focuses on the issues, concerns, and perceptions that were discussed, as well as findings and recommendations from the hearing testimonies.

### ***Profiling of Minorities***

There is an overwhelming perception that racial and ethnic minorities in Utah are subject to discrimination by law enforcement due to targeted police action based on the race or ethnicity of the individuals involved. The following is a summary of public hearing statements on this issue:

At multiple hearings, White women stated that the only time that they are ever stopped by police is when they had a Black man in their vehicle. Officers reportedly followed their cars, pulled them over, and attempted to ascertain their safety. One of the women stated that the officer implied that she might have been “kidnapped.” These participants both underscored the offensiveness and inappropriateness of the officers’ actions and their belief that the officers did not intend offense.

Participants report that Hispanic men, women, and youth are often mistaken to be “criminals” and are therefore harassed and abused simply because they “fit the description.” One participant stated that he had been in Park City approximately 17 times and saw a Hispanic driver pulled over by the authorities about 16 of those times. Other participants echoed this statement with similar observations.

Perceptions from public hearings indicate that law enforcement officers tend to stereotype all minorities. One African American female stated that she was with a White, male friend in a park and a police officer asked her friend where he “picked her up” and was she a “professional” (University

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of Utah Hearing). One female participant in St. George stated that one of her friends was looking to buy a car. He saw a car parked on the street with a “for sale” sign in the window; so he stopped and looked in the window. The people in the house called the police. When officers arrived, they arrested him. She stated that the officers assumed that because he was Hispanic, he was either going to break in or commit some other criminal act.

As these statements demonstrate, public perceptions of racial profiling exist within and outside of the racial and ethnic minority communities. Racial profiling is deemed to include traffic stops, pedestrian stops, as well as the process of police response to calls made by the public.

***Abuse of Power***

The perception of law enforcement abusing their legal authority is widespread. The following is a summary of concerns as testified by Utahns in various public hearings:

Law enforcement officers are seen to abuse their authority when dealing with people of color and treat minorities poorly. One statement was about a farm worker coming into Utah from California on his way to Idaho to harvest potatoes. An officer pulled him over for having an open container in the car, arrested him, and confiscated all his documents. The very next day, he was let go and told he had to appear in court. For the month and a half before the court date, he lived “hell on earth” because he had no money, no place to live, and couldn’t receive state services because he wasn’t a legal resident. He was able to live only by receiving handouts from the community.

There is the perception that minorities are treated and punished more harshly by the legal system than non-minorities. Participants noted a clear double-standard. One statement was based on an accident on Washington Boulevard in Ogden. Two White individuals were speeding and racing down the street, and a Hispanic individual was hit in a crosswalk by one of the drivers. It is not clear

if the drivers were cited or tested for alcohol. The perception is that they were both “let go.” Similar experiences were related at hearings in Fort Duchesne and Cedar City.

Several participants stated that police officers had violated their constitutional rights by searching them or their property without a warrant. For the most part, alleged suspects were not told why they were being detained, questioned and/or even arrested. Furthermore, they were denied their basic rights to an attorney and a phone call. They were denied the due process of law. Note, for example, the testimony involving a Hispanic woman:

She was taken to a room, questioned . . . officer come in and she was assured she was not going to be arrested if she . . . answered every question they were asking her . . . After they finished . . . they asked her . . . walk with them outside . . . they took her up against the police car and handcuffed her . . . [she] asked them, “Why am I being arrested?” And they wouldn’t say a word, and they just shoved her . . . into the car and asked her if anybody else had been with her . . . she had mentioned she had a cousin . . . they drove . . . to where this guy was sitting, and the police went out, pulled this guy out of the car and searched him, handcuffed him. He didn’t know what the heck was going on . . . She was in the . . . jail for . . . two to three hours and she was . . . never . . . told exactly why she was being arrested . . . She was [treated] like she was a criminal, and was finally . . . let her go.(Logan Hearing).

Further perceptions may be summarized as follows:

- When dealing with the legal system, people of color often need services and treatment specific to their culture - - - “one size does not fit all.”
- Fear and lack of trust create a defined division between the minority community and Utah law enforcement agencies.
- The role of Utah law enforcement should be to protect society and make community members feel safe - - - regardless of the color of their skin.

### ***Racial Slurs***

In several public hearings, participants demonstrated that police abuse is not always physical. Participants stated that the verbal abuse and racial slurs exhibited by law enforcement officers are highly offensive and should not have to be tolerated. An African American male testified that he

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entered an intersection as did the car behind him, in the same lane. The law enforcement officer turned on his lights and followed them. He thought that the officer would pull over the car behind him. Instead, his car was pulled over, and he was told that he had run a red light. He suggested to the officer that if anyone had run the light, it would have had to be the car behind him. The officer then responded, “Oh, you’re one of those smart N----rs.” The officer then checked out the license and registration and told the individual that he would “let him go this time” (Confidential Statement).

A White female, who is part of a bi-racial family, also testified that she was stopped by a police officer who, after looking in her vehicle and seeing her bi-racial children, asked her why she was a “nigger-lover.”

An American Indian female recounted the numerous times she has been pulled over by police and asked to see her license and registration. The second question is always, “How much have you had to drink?” This participant stated that she doesn’t drink alcohol. She filed a complaint. When she was subsequently stopped and recognized by the same officer, he stated, “Oh, I’m sorry, ma’am, we’re just trying to catch drunk Indians” (Fort Duchesne Hearing). She believes this is clear discrimination and harassment.

One male public hearing participant stated that he is aware of at least one Neo-Nazi on the Salt Lake Police Department. He has seen the officer’s tattoo which identifies him as such. This statement was echoed and confirmed by two other individuals giving testimonies at public hearings.

***Police Brutality***

There are numerous allegations of unnecessary physical abuse by Utah law enforcement officers. Some of the personal observations and perceptions are as follows:

- Law enforcement abuses its authority and power when dealing with people of color. Whether

due to mistakes or an unwillingness on the part of law enforcement to communicate with the people they are trying to serve, officers are perceived as abusive.

- A lack of proper training results in poor judgments against minorities. Officers do not assess problems adequately when entering the homes of racial and ethnic minorities.
- Police officers use racial and ethnic stereotypes that result in harassment and mistreatment of minority women.

### ***Language Barriers***

Some Americans have experienced a language barrier while visiting a foreign country. Whether on vacation, military duty or a church mission, having a language barrier is never pleasant, even when the situation is known to be temporary. Some minorities deal with this problem every day of their lives. Many perceive that legal system workers display little patience, assistance, and understanding. Some perceptions resulting from the public hearings are:

- Most problems in the legal system related to race and ethnicity have to do with the lack of communication and understanding between minorities and “the system.”
- Racial and ethnic minorities, whose native language is not English, often find themselves defenseless when dealing with law enforcement, and more often than not, do not get the assistance they need.
- Non-English speaking minorities are given unfair punishment and are often defenseless due to language barriers. They are usually “blamed” for not being able to communicate in English.
- Reasonable representations and constitutional rights are not given to many non-English speaking minorities due to communication barriers with law enforcement.
- Law enforcement officers discriminate by disbelieving or not listening to racial and ethnic minorities.
- Language barriers prevent officers from learning the true nature of events they investigate, and interpreter services are not often utilized.

***Cultural Barriers***

Even when language barriers do not exist, cultural barriers may still inhibit proper interaction between law enforcement and racial and ethnic minorities. Some minorities are afraid to use the system due to a fear that it inherently works against them because of the color of their skin. This fear leads to trouble as they completely avoid the system, even when it is to their own advantage to participate in it. A female participant wondered whether a past speeding ticket was issued to her fairly. She felt that the officer was waiting just for her with his radar so that he could give her a ticket. She believed he followed her because she is “brown.” She admitted that she hadn’t taken care of the ticket and mentioned a concern about going to traffic court because she thought she might go to prison for the speeding violation. Since then, she has been driving with a suspended license. Recently, an officer stopped her, and she gave her sister’s name instead of her own in order to avoid going to jail. She mentioned that she thinks that officers have a “bad attitude” towards her based on her appearance rather than any criminal acts (Vai-ko Latai Restaurant & Pool Hall Hearing).

This hesitancy to interact with the legal system due to fear of law enforcement was underscored by a woman from Provo who stated that the last place she or her family would turn to for help would be the police. She recounted how this perception of hers was reinforced when she recently did need to turn to the police for help and had since become a target of police abuse (Indian Walk-In Center Public Hearing). Committee and Task Force members found this fear and mistrust of law enforcement quite concerning.

***Complaint Process***

A clear understanding of the Utah legal system, faith in the system, and communication with law enforcement officers seem to be very difficult barriers for many minorities in the system. These issues

are revealed by the number and content of statements regarding the complaint processes of law enforcement agencies. For example, a social service worker in Salt Lake recounted an experience where she filed a complaint with the police department for officer misconduct on behalf of an undocumented immigrant who was a victim of rape. After the complaint was filed, the officer called and threatened to report the woman to immigration (Sorenson Center Hearing).

A summary of the perceptions are as follows:

- Filing an Internal Affairs complaint with law enforcement does nothing to solve problems of police abuse.
- Complaint processes are intimidating and do not protect individuals from future harassment, retaliation or retribution against family members.
- Complaint processes vary so much between law enforcement agencies that the public does not have adequate knowledge of how to file complaints. Also, individual expectations of complaint processes vary because of this lack of knowledge of the differences between law enforcement agencies.
- Complaint processes are not seen as responsive to the needs of individuals who have been mistreated.
- Law enforcement discounts complaints of racial and ethnic minorities.
- There is no true mechanism of follow-through on recommendations given by civilian review boards.
- Individuals perceive a lack of closure on complaint cases, stressing the frustration of never hearing a result of the complaint for months or years.
- Many police disciplinary policies do not ensure against internal agency biases due to a lack of civilian involvement in the investigation of alleged officer misconduct.

### ***Police Work Force Diversity***

It is widely perceived that if there were more minority or diverse representation in the legal system, minorities would receive fair and equal treatment when going through the system. Law enforcement is no exception from that perception. Public hearing participants believe that the hiring

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of minority police officers would decrease the misunderstandings and language barriers, as well as the harassment based solely on blatant racial and ethnic stereotypes. Some public hearing perceptions are:

- The treatment of racial and ethnic minorities in the legal system could be improved if there were more racial and ethnic minorities working for the system.
- The law enforcement system lacks workforce diversity which could be used to establish a better relationship with the minority communities. Utah law enforcement agencies need to hire more racial and ethnic minority officers.
- Those who work in law enforcement share a mind set that does not allow for fair treatment of racial and ethnic minorities. Police department diversification would help solve racial issues.

**Conclusions & Recommendations**

The public hearing perception across the state, among minorities and non-minorities, is that minorities are not treated fairly by law enforcement. The statewide feeling is that the role of law enforcement in any community should be to protect society and make community residents feel safe, yet through the abuse of authority, minority members are harassed instead of protected.

All law enforcement officers in Utah must be P.O.S.T. certified (Peace Officers Standards and Training). According to P.O.S.T., its training curriculum currently includes four classroom hours of cultural diversity training. The learning goal of this lesson is to “understand how a law enforcement officer’s role . . . relates to cultural diversity, prejudice, bigotry and discrimination” (2.5.0, P.O.S.T. Curriculum Core Block Instruction,7/99). An additional goal states that the cadet,

will understand how prejudice and stereotyping are by-products of an individual’s socialization and how prejudice prevents a law enforcement officer from making unbiased judgement (2.5.4, P.O.S.T. Curriculum Core Block Instruction,7/99).

The Committee concludes that these clearly stated goals contrast sharply with the widely held perceptions stated at the public hearings. Although it may be impossible to prove that all of the

allegations are true, the perceptions are too repetitive and widespread to ignore. If underlying facts exist to support the above perceptions, there is a serious problem of racial and ethnic discrimination by law enforcement. To address the disparity between these perceptions and the goals of P.O.S.T. training, the Committee makes the following recommendations:

- Law enforcement agencies should make efforts to have a workforce that is reflective of the diversity of the population they serve. Recruitment efforts should be made to encourage minority youth into law enforcement careers.
- Utah law enforcement officers need diversity awareness and training as a significant component of officer basic training (P.O.S.T. and police academy). Supplemental training is important but insufficient to address these issues.
- Law enforcement officers should be encouraged to learn at least one additional language so that they can have better communication with the community. Officers with second language skills should receive additional compensation.
- Law enforcement administrators and directors should demonstrate zero tolerance for racial profiling in officer conduct and decision making.
- Law enforcement agencies should attempt to educate minority and non-English speaking communities about the proper role of law enforcement in the community.
- Law enforcement agencies should keep accurate racial and ethnic data on all stops (traffic and pedestrian), searches, citations, arrests, and citizen complaints. Stops should also include data collection about reason for stops (i.e., gang-related stops, traffic violations).
- Complaint processes should be user-friendly, allowing individuals to file complaints in a non-intimidating environment.
- Efforts should be made to protect complainants from potential future harassment, retaliation and retribution against family members as a result of filing a complaint.
- Complaint processes should provide information about the disposition of a complaint to the complainant within a reasonable time period.

This chapter addresses the main issues raised by public hearing participants regarding inadequate legal representation for racial and ethnic minorities in Utah's criminal justice system. Complaints about the quality of legal representation for minorities were numerous, coming from both rural and urban areas, and voiced by all racial and ethnic groups. While most of the chapter addresses legal representation in the criminal justice system, it also touches on the quality of legal representation in civil legal matters such as child custody cases. Finally, the chapter concludes with an overview of the effects of these perceptions and recommendations to address these perceptions.

The right to effective legal representation for all who are accused of a crime punishable by imprisonment or death is a cornerstone of the Utah criminal justice system, guaranteed by the Sixth Amendment of the United States Constitution. To provide effective legal representation for clients, attorneys have many roles and duties to fulfill.

As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. . . . (Utah Rules of Professional Conduct Preamble<sup>1</sup> (1999)).

As officers of the courts, attorneys must merge this duty to their clients with their duty to uphold the legal system. At all times, attorneys should seek to improve the administration of justice, the legal system, and the legal profession.

Public hearing statements suggest that many people feel that attorneys in Utah do not adequately perform these roles of advocate and counselor for their racial and ethnic minority clients. Often access to adequate legal representation was denied due to language barriers, the attorneys' lack of cultural sensitivity, and a widespread lack of knowledge of the law within ethnic minority

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<sup>1</sup> The Utah Rules of Professional Conduct have been adopted by the Utah Supreme Court as a guideline of ethical and professional conduct for attorneys practicing law in the State of Utah.

communities. Further, some attorneys were perceived to be helping the legal system perpetuate inequality rather than helping the legal system to provide equal justice.

### ***Appointed Attorneys***

The most commonly voiced perception was that appointed attorneys<sup>2</sup> did not provide adequate legal representation especially for minorities. Since many racial and ethnic minorities cannot afford to hire an attorney, they must rely on the legal services they receive from appointed attorneys. Many public hearing participants believed that appointed attorneys do not provide reasonable legal services for the poor and particularly for poor, ethnic minorities. A White woman complained that her public defender failed to show up to represent her at a court hearing.

We are poor and they tend to treat the poor in a very adverse way. . . . So when you do [make recommendations in the final report], just remember the poor in there too, because the poor seem to get just as much slack as the Native Americans, the Mexicans and the black. We're not as bad unless you happen to be black and poor or Native American and poor, but it still happens (Cedar City Hearing).

A Polynesian man, commenting about the Salt Lake Public Defender's Office, stated:

. . . I think the perception out here in the ethnic community is that we do not get quality legal representation, and without legal representation, we don't have a chance (Sorensen Center Hearing).

Appointed attorneys failed to prepare cases adequately and communicate with their ethnic minority clients about the status of the cases. A Hispanic man said, "I found that attorneys, the public defenders, go in with the minuscule amount of preparation" (Sorenson Center Hearing). Another woman stated:

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<sup>2</sup> Appointed attorneys include public defenders and other court-appointed defense attorneys. Some counties, such as Salt Lake County, have public defender offices that employ defense attorneys who represent defendants who cannot afford to hire an attorney. In other counties, the courts appoint and pay attorneys in private practice who have been hired on contract by the county to represent indigent defendants.

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My brother requested a jury trial and they kept putting it off. He had the Weber County public defender, I spoke with him trying to get his bail reduced, and he didn't even know he was a client (Ogden Community Action Hearing).

Another woman added:

The public defender said nothing in my defense . . . I have no paperwork from anybody, not the lawyer, not the clerk, not anybody. I don't know what my fine is exactly (Ogden Community Action Agency Hearing).

Many public hearing participants also perceived appointed attorneys to be uncaring and prejudiced against ethnic minorities. An American Indian court interpreter related a situation where a defendant asked her to talk with his defense attorney about a large sore the defendant had on his leg which required medical attention. The attorney replied, "That's not part of what we're going to discuss right now. That's not my problem" (Sorensen Center Hearing). Another American Indian participant stated, "When they appoint a public attorney, they don't give a darn for us. They just push us in . . ." (Cedar City Hearing).

Perceptions of discrimination by appointed attorneys were common to all minority groups. A representative from a nonprofit organization investigating the treatment of Hispanic youth reported, "Right now we're working with three other Hispanic cases, and we're seeing . . . a lot of discrimination with the attorneys . . . especially public defenders" (Ogden Community Action Hearing). A man told about an African American woman in the Tooele County jail who felt discriminated against by her public defender, saying that he "hasn't even read all her paperwork and doesn't even know most of the details of her case" (Central City Community Center Hearing).

Many participants distrust the legal system and the attorneys appointed to represent them, due to the perception that minority defendants do not receive adequate legal representation. Participants often voiced the opinion that defense attorneys were more likely to "work for the system" than to

represent the interests of ethnic minorities. A woman stated that her brother was assigned a public defender to represent him. After the first meeting between the prosecutor and the public defender, the victim's sister contacted the hearing participant about her brother's public defender and told her to hire a lawyer for her brother because:

the lawyers in there were laughing and talking about how they're going to hang him. He [the public defender] was going to appear to be on his side just for appearances, but he wasn't going to do anything for him (Ogden Community Action Hearing).

This perception that appointed attorneys "work for the system" to the disadvantage of their ethnic minority clients is, at least in part, fueled by the perception that appointed attorneys are prejudiced against their minority clients.

[You] get a public attorney but they don't care. . . . They get their percentage from the state. They got our boys in jail for no reason at all. They don't understand our Paiute nation or our native people, [or] the language. We don't have no justice. The white people have justice. They [get] a chance (Cedar City Hearing).

### **Prosecutors**

Complaints about discrimination by attorneys against racial and ethnic minorities extended to prosecutors. The complaints included both incidents involving minority defendants and incidents involving minority victims.

Participants at the public hearings, particularly in rural areas, believed that prosecutors were unlikely to bring criminal charges against Whites if the interests of a White person were directly opposed to the interests of a racial or ethnic minority. Participants complained that the minority individual was usually charged with the crime and prosecuted while no charges would be filed against the White person. In one incident, some White men pulled an intoxicated American Indian out of

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a car and beat him. The American Indian man was taken to the hospital and later arrested. The White men involved were not arrested.

How can a person that's so intoxicated, that couldn't walk, try to fight these other guys who were not drunk? And stuff like that happens around here and nothing's done. [It's] because [what] Indians say is dismissed as hearsay [as if] you [have not] said anything, like you were not there (Fort Duchesne Hearing).

Participants stated that if the victim was a racial or ethnic minority, the incidents were viewed as accidents and dropped or the minority person was charged with a crime and prosecuted.

There's a lot of incidents . . . where the tribal member has been killed by a non-tribal member, nothing's been done. But when a tribal member is involved with a non-tribal, then sure as hell they're going to do something to that Indian (Fort Duchesne Hearing).

Prosecutors were also perceived as more likely to prosecute or seek tougher penalties against individuals because of their race or ethnicity. One American Indian woman reported an incident in which her son was charged for possession of drugs that were found in a room that he shared with his White girlfriend. The police found the drugs after responding to a domestic argument. The hearing participant complained, "His girlfriend is [White], and why did they just take just one person to court?" (Fort Duchesne Hearing). A Polynesian man voiced similar frustrations that many in his community felt when dealing with prosecutors and the criminal justice system.

As I talk to other Polynesian parents who have kids in the system, they share with me their feelings of desperation and hopelessness. I feel like the system is fed up with Polynesians, they want to put us away at any costs. Some prosecutors will go hard no matter what (Taylorsville Hearing).

***Factors Leading to Inadequate Legal Representation***

Complaints about the treatment of racial and ethnic minorities by attorneys were not limited to appointed attorneys and prosecutors. Both public and privately paid attorneys were perceived as providing inadequate legal services for minorities. In many cases, the lack of adequate legal

representation was perceived to be caused by language barriers, cultural misunderstandings, a lack of knowledge about the legal system, and discrimination.

Language barriers prevent some minorities from receiving adequate legal representation. While many racial and ethnic minorities speak English as their primary language or they are fluent in English, language barriers are still a major concern for others. The criminal justice system tries to assist defendants with limited English language skills by providing interpreters if the defendants request one. However, the quality of the interpretation may not always be adequate to ensure understanding. Also, minorities may have sufficient English language skills to carry on everyday conversations but do not understand technical legal terms. One participant stated:

When people go to speak to another individual, say, a Native American to a Caucasian, they may say things in English and not be understood correctly because they're translating from their language because English is their second language (Cedar City Hearing).

Some attorneys fail to recognize language barriers faced by their clients when they have some limited English language skills. One court interpreter stated that once when she reported to court:

The defense attorney says, "What are you doing here? We were doing fine without you." But it was obvious that this Navajo man could not speak. . . . This Navajo could not relay the message he was really wanting the judge to hear. I had to tell the individual that my position was to be there on behalf of the court, not on behalf of the legal defenders (Sorensen Center Hearing).

In some cases, a lack of English language skills prevents minorities from obtaining any legal representation. Without proper legal representation, non-English speaking minorities may be wrongly convicted, or they may be forgotten in the bureaucracy of the legal system. One participant stated that she had met a woman from Mexico who was being held in the Farmington jail.

She's been there for two years. Immigration hasn't talked to her. She doesn't know what's going on. And she has sat in Farmington jail not knowing what she's doing, where she's going. They won't give her any answers or tell her anything (Ogden Community Action Hearing).

Language barriers can also lead attorneys to stereotype and discriminate against their clients.

A Hispanic woman encountered an attorney who associated a lack of English language skill with ignorance and a lack of intelligence. She went to a lawyer who assumed that she didn't understand English. While the lawyer was conversing with another lawyer, one of them stated:

“Sometimes these ignorant Spanish people don't understand the contract or they don't read the contract. . . . You need to be careful with the Spanish people signing these contracts.” This of course, made us feel really bad due to the fact that we're not ignorant, and in this community we are being thought of and treated as ignorant people (St. George Hearing).

A lack of cultural sensitivity is perceived as a reason attorneys provide inadequate legal representation for racial and ethnic minorities. Cultural backgrounds influence how people process information, helping to shape value systems. For example, an American Indian man illustrated how culture can create different values and different understandings by comparing the value of oral and written words in two different cultures. In White American culture, written language is very important while the Navajo have a strong oral history tradition.

If you can trace it back in history from it's beginning and go through it and say this is how it is, then this is valid to a Navajo person. . . . Because it's not written, to a white lawyer or a white judge, it is thrown out, and so this is where a lot of our problems exist (Blanding Hearing).

Cultural differences may result in an English-speaking minority misinterpreting legal terms or concepts:

[W]e can speak the English language, to a lawyer, I can hear him express himself . . . we both agree on it, and low and behold, my understanding was not correct, because he understood it differently. And because he's a lawyer, he has the upper hand (Blanding Hearing).

Misunderstandings caused by cultural insensitivity may lead minorities to make decisions without understanding the legal and practical consequences of their decisions, particularly in the area of plea bargains.

The problem of communication is present throughout this judicial and correctional system. There's a good chance that we'll be discriminated against because of the inability to understand. When they come from the court system, all they know is they got a white public defender, who talks them into a plea bargain (Utah State Prison Hearing).

A lack of cultural understanding may also cause an attorney to recommend plea agreements to their ethnic minority clients that are unworkable or have unforeseen consequences for. Immigrant minority defendants are particularly at risk of misinterpreting the consequences of a plea agreement because they often have limited English language skills and are unfamiliar with the American legal system. Under United States law, non-U.S. citizens residing in this country may be deported because of their criminal record. However, many participants stated that defense attorneys do not always communicate the risk of deportation associated with a particular plea to their immigrant clients.

[Public defenders] are more readily willing and able to plea bargains, and for immigrants plea bargains can really hurt them. And I understand that a plea bargain to a first-degree from a third-degree felony can really jeopardize one's immigratory status here in the states (Sorensen Center Hearing).

Often, public hearing participants stated that appointed attorneys purposely failed to explain that a plea agreement may have put the defendant at risk of being deported. A woman reported that her father was coerced into accepting a plea arrangement without being informed by his appointed attorney that the guilty plea would result in more jail time and his deportation to Mexico.

They [the judge and the public lawyer] said, "If you plead guilty, you will only be six months in jail and you will be released." That was a lie. He says that after the hearing, they started laughing at him and they told him, "You're screwed. You have to get you[r] things ready and you're going to prison again (Migrant JTPA Hearing).

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Participants held the perception that attorneys pressure or coerce both immigrant and non-immigrant minority clients into entering plea agreements. An American Indian man stated:

Some of us don't understand what a plea bargain is. . . . Some of the public attorneys come to us and tell us, this is what's going to happen. But when we say yes to it, it's just like we might as well stay behind bars and deal with it there (Cedar City Hearing).

Participants also perceived that a lack of cultural sensitivity often leads attorneys to discriminate against ethnic minorities and see them as ignorant or inferior. One man complained that the two attorneys he hired did not follow through with the case and the attorneys failed to keep him informed of the status of the case until it was over.

A general lack of knowledge about the criminal justice system among racial and ethnic minorities is perceived to enhance the chance that minorities will not receive adequate legal representation. Many people in the general public lack a general understanding of how the criminal justice system functions. However, for minorities, the problems caused by a lack of knowledge about the criminal justice system are often complicated by limited English skills and/or cultural differences.

One woman stated:

On the reservation it's much easier, because you have all your family there and the language and people understand you. But in the big cities, we don't know where to go . . . [w]e get ourselves deeper and deeper into problems just because we don't know what our rights [are] and we don't know where to turn or who to talk to (Indian Walk-In Center Hearing).

Many racial and ethnic minorities also lack knowledge about what steps they should follow if they have a complaint about the legal services they received from their attorney. Participants often asked Task Force members what they should do if they received inadequate legal services. Most were unaware that they could file complaints against an attorney with the Utah State Bar. Because they believed they had no recourse if an attorney failed to provide adequate legal representation, many participants expressed disillusionment with the entire criminal justice system.

### ***Civil Legal System***

Public hearings included several complaints about discrimination in the civil legal system. While the Task Force's mission is to examine the criminal justice system, many do not understand clearly what differentiates civil and criminal legal problems. Therefore, this section will briefly address public perceptions of the quality of legal representation in the civil system.

Many believe that minorities are discriminated against by the civil legal system due to a lack of adequate legal representation. The reasons for inadequate legal representation are similar for both the civil and criminal legal systems. However, civil system problems can be greater because minorities often lack any legal representation and are not appointed attorneys by the civil system.

The potential for stereotyping and discrimination due to language barriers are also greater in the civil system. Unlike the criminal system, interpreters are not provided by the court in the civil system. When language barriers combine with a lack of legal representations, ethnic minorities may not have access to justice in the civil system. A Hispanic man complained that he was hit by another car that illegally crossed the intersection. When the man went to court, the court informed him that he would need an interpreter but he did not have anyone to interpret. Therefore the judge said, "Well, the young man that ran into you, his mother speaks Spanish, and so seeing as how no one is here to translate for you, she will be the one translating" (St. George Hearing). The man could understand some English, and he believed that the mother was not interpreting properly. The judge ordered him to pay the expenses to fix the young man's car.

Participants also stated that a lack of cultural sensitivity and discriminatory attitudes on the part of civil attorneys have a negative impact on minorities. For instance, traditional child rearing practices in one culture may be seen as abuse by White American standards. A Polynesian social

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worker reported that some assistant attorneys general and guardian ad litem attorneys deliberately keep some parental custody cases open because they fear that if Polynesian children are returned to their homes, the parents will abuse them (West Valley City Hearing).

Discrimination can also cause attorneys to dismiss culturally sensitive courses of action. In one case, an attorney prevented a Polynesian family with limited language skills from receiving assistance from a social worker who shared their language and cultural background. A Polynesian social worker complained that the attorney did not like the idea of a Tongan social worker working with this family. The attorney told the family that they, “should be able to understand that now they’re in America. They need to learn English and if they can’t learn English they need to comply because they are now here in Utah” (West Valley City Hearing).

**Conclusions & Recommendations**

Based on public hearing information, the Committee concludes that a perception exists that racial and ethnic minorities do not receive adequate legal representation in Utah’s criminal justice system. All attorneys, whether they are court-appointed defense attorneys, private defense attorneys, prosecutors and even civil attorneys, are perceived to provide minority clients with inadequate legal representation. Factors that cause this inadequate representation include language barriers, attorneys’ lack of cultural sensitivity, lack of knowledge about the legal system in racial and ethnic minority communities, and stereotyping and discrimination by attorneys.

The Committee makes the following recommendations:

- Workforce diversity among attorneys and their staff should be increased to minimize language barriers, promote cultural sensitivity, and decrease the perception that the legal system is run by and for the benefit of Utah’s White community.

- Increased funding would allow local governments to lighten the case load of public defenders and prosecutors by hiring more attorneys and staff. To fill these positions, public defender and prosecutor offices should seek ethnic minorities and people who speak Spanish and other languages. Counties should also recruit ethnic minority attorneys and attorneys with foreign language skills to fill appointed legal defender contracts.
- Legal organizations should also encourage ethnic minority youth to become attorneys and work within the criminal and civil legal systems (i.e., outreach and educational programs).
- Attorneys and their staff should participate in cultural sensitivity training. State and local governments should require publicly funded attorneys to participate in ongoing cultural sensitivity training.
- State and local governments should require cultural sensitivity training for public defenders, prosecutors, and legal staff.
- To encourage cultural sensitivity in the private sector, the Utah State Bar should offer continuing legal education classes in cultural sensitivity training for attorneys and paralegals.
- Courts, state and local governments and legal organizations should offer programs that educate the public about how Utah's criminal and civil legal systems operate. Programs could include civics classes for minority communities, tours of the courts for schools and youth clubs, or having a court community outreach administrator to serve as a liaison between the courts and the public.
- The public should receive more information about the Utah State Bar's consumer complaint process so that minority clients who have complaints about the services they receive from an attorney can file a complaint with the proper channels.
- The Utah State Bar should distribute information about their services to ethnic minority community organizations across the state.
- All court information, including the Bar's consumer complaint form, should be translated into Spanish and other foreign languages.
- The budget for appointed attorneys should be separate from the budget for county prosecutors. Since funding a public defender's office with funds from the prosecutor's office's budget can create the appearance of a conflict of interest, local governments should ensure that the budgets are separate.
- Plea agreement forms provided by the courts should include information about the potential effect of pleas on immigration status.

## ***THE COURTS***

This chapter seeks to address the perception of discrimination and bias against racial and ethnic minorities within the judiciary and courts. While comments about the courts were not received at every public hearing, there are several main points around which participants focused their comments: a lack of cultural sensitivity in the court system, unfair trials that are due to racism, the stereotyping of minorities which results in unfair sentencing and disparate treatment, experiences with judges and court employees, and experiences with court interpreters.

### ***Lack of Cultural Sensitivity***

There is a perception among racial and ethnic minorities that the judiciary and the courts lack the necessary cultural sensitivity to ensure equal treatment and justice. Judges and clerical staff who are uninformed of the impact of ethnic and racial minority cultures on individual behavior and interaction with other cultures cannot ensure that defendants understand fully the nature of the legal proceedings of a culture different from their own. Defendants are also not aware of their rights and responsibilities under an American system of government and law.

One respondent spoke of the ignorance and indifference that exists within the legal system as related to the daily lives of American Indians. According to one American Indian woman:

I think lawyers need to come down off their high horses and quit asking for so much money, and quit telling us we don't have a phone, and [therefore] can't help us. It's hard when you live on a reservation and you don't have phone lines and some still don't have electricity and water. Judges and lawyers know how it is. They make all the rules and laws up there, and they don't come down here (Blanding Hearing).

Her comments reflect a feeling that those within the legal system fail to understand the hardships of many members of racial and ethnic minority communities. People who lack basic amenities are considered to be second class citizens. Her comments also indicate a perception that the legal system

will not take the extra step to reach out to members of racial and ethnic minority communities, particularly when those members have limited financial means.

The perception that the legal system is skewed in favor of those with the resources to “afford” justice is not uncommon. Somewhat less obvious is the general perception that the disparity is acceptable because those who cannot afford quality legal representation in the courts are members of underrepresented minority communities. Because these communities lack political clout, those with the power to address the disparities do not have the necessary impetus to effect meaningful changes.

The judiciary and the courts assume that a resident is knowledgeable about his/her responsibilities under the law. Many racial and ethnic minorities are unfamiliar with these responsibilities due to a lack of education or appropriate notification of the expectations of the legal system with reference to a citizen’s duty to the system. One participant illustrated this perception by discussing his experiences with jury duty. He did not know that jury duty was required, so when he did not respond to his juror questionnaire, he received a letter advising him that he could be held in contempt. As an American Indian, the concept that he could be compelled to sit in judgment of his fellow man was foreign to him. Yet, no effort was made to find out why he did not respond to the juror questionnaire nor did anyone bother to explain his legal responsibilities other than to threaten to apply criminal sanctions against him (Blanding Hearing).

### ***Unfair Trials Due to Racism***

One participant noted that he was the only African American in the courtroom during his trial. He asked how justice could be dispensed fairly if those selected to serve as the fact finders on juries do not reflect the communities from which defendants come. The reporting party has currently

served fourteen years in prison on a ten to life commitment. He felt that the absence of a person in the courtroom with life experiences similar to his own denied him the opportunity for a fair trial.

Another participant discussed the pressure brought to bear on criminal defendants of color. He recalled statements that he, as an African American, could not win since his jury would be composed only of white jurors. He stated that African Americans are systematically excluded from jury panels through the use of peremptory challenges during jury selection. He says, “Our evidence and witnesses are disparaged based on their origin instead of its merits.” He claims that public defenders routinely advise their clients to plead to “overcharged” crimes as part of a plea agreement to secure better sentencing. However, he notes that African Americans “spend the highest amount of time [incarcerated] per crime than any other group in prison” (Utah State Prison Hearing).

### ***Stereotyping of Minorities Results in Unfair Sentencing***

The narratives given by racial and ethnic minorities as well as White people revealed patterns of disparate treatment due to stereotypes commonly attributed to minorities by officers of the courts.

According to one participant:

When you walk into a courtroom, you’re already stereotyped as a troublemaker or a gangster because of your name. Why should I be prosecuted differently, spoken to differently, or given longer sentences because of my race (Utah State Prison Hearing).

Numerous comments indicated that participants believe that racial and ethnic minorities are given longer sentences than Whites for the same crimes. In some cases, this perception caused people to lose hope or become cynical in their interactions with the court system before they even enter the courthouse. The experience of a courtroom filled entirely with White people serves to reinforce this perception of a system that does not provide equal access to justice.

### ***Experiences with Judges***

Utah judges are ethically bound by the Utah Code of Judicial Conduct and can face sanctions for violations. Some canons in the code address issues related to racial or ethnic bias among judges.

For example, Canon 3B(5) states,

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit . . . staff, court officials and others subject to judicial direction and control from doing so. A judge should be alert to avoid behavior that may be perceived as prejudicial.

This canon also addresses judges' ability to require lawyers "to refrain from manifesting . . . bias or prejudice" based on those same factors. (Canon B(6)).

Despite these canons, numerous public hearing participants named judges that they felt treated them or their family members unfairly. One Hispanic participant stated that the judge called him a "spic" during sentencing (Ogden Community Action Hearing). Others felt strongly that a judge had treated them disrespectfully due to their race or ethnicity. The overwhelming perception was that had their race or ethnicity been different, judges would have been more respectful and treated them with dignity. In a confidential statement, one Asian American individual in a small claims court case, at which he did not have legal representation, felt that the judge pro tem would not listen to him due to his accent.

Judges are also perceived as allowing disrespectful behavior towards minorities in the courtroom. One widely publicized case that was raised several times at different public hearings involved a judge that allowed a public defender to make comments based on racial stereotypes about Mexicans in a courtroom setting. While the judge and others apologized for their actions, these types of incidents further the perception of judicial bias based on race and ethnicity.

When participants were asked if they had reported judges to the Judicial Conduct Commission, many participants seemed unaware of the complaint process. Others had filed complaints but had not yet heard the outcome of their cases.

### ***Experiences with Court Employees***

A supervising court clerk described an incident in which one of her employees made inappropriate comments based upon another clerk's race. She chastised the individual who claimed not to know it was wrong. Months later, the same individual again made similar remarks. Although the supervising clerk placed a written reprimand in the employee's file, she felt that management did not take the situation seriously enough or support her (Ogden Community Action Hearing).

In another incident, a man related that his daughter had gone to court to pay a traffic ticket. On arriving, she was told the fine was \$75. Since she did not have the money with her, she left and returned the next day. A different clerk helped her and said the fine was \$40. When she asked why there was a difference, she was told that the first clerk "didn't like Hispanics" (St. George Hearing).

These incidents underscore the perception that blatant racism currently exists within the judiciary. As one participant noted:

Part of the [problem] is because we do not have minorities working in our court system, period . . . And until you fully integrate the system, . . . we're going to have this bifurcation and polarization in the community (Ogden Community Action Hearing).

### ***Court Interpreters***

Although not employees of the court, court interpreters play a vital function in judicial proceedings. People with limited English proficiency rely on court interpreters in order to understand what is occurring in the courtroom. Currently, Spanish is the only language for which there are state court certified interpreters. Interpreting for languages other than Spanish has a less detailed

qualification process to enable an interpreter to provide court interpretation. Court interpreters in Utah are bound by a code of professional responsibility. This code addresses issues such as those related to accuracy and completeness of interpretation, impartiality and avoidance of conflict of interest, professional demeanor, confidentiality, and scope of practice.

Hearing participants noted that in smaller communities, rural and/or ethnic in nature, confidentiality of the interpreter is sometimes perceived as an issue. For example, interpreters for languages such as Korean or Khmer can be difficult to find, and often the only interpreter available will know one of the parties well. Accordingly, the code of professional responsibility regarding impartiality and avoidance of conflict of interest states,

The following circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve include:

1. The interpreter is a friend, associate, or relative for any party involved in the case . . . (Code of Professional Responsibility for Court Interpreters, Appendix H of Rules of Judicial Administration, November 1, 1996).

A number of hearing participants also commented on the use of non-certified Spanish interpreters outside of the Salt Lake area. Participants stated that outside of Salt Lake, and especially in rural areas, interpreters are not trained sufficiently and often perform their jobs poorly. In addition, participants commented on the use of returned L.D.S. missionaries as interpreters instead of native speakers of the language. The perception is that these returned missionaries have an unfair advantage for interpreting jobs, given their membership with the dominant religion in Utah. In addition to this bias, participants point out that these returned missionary interpreters lack the bicultural background necessary for quality interpreting.

**Conclusions & Recommendations**

The Committee makes the following recommendations to address perceptions of bias in the court system:

- Training at every level of the courts (i.e., clerical staff, court interpreters, judges, administrative staff) must include a major cultural sensitivity component. Supplemental programs alone are insufficient to break down racial and ethnic stereotypes and change inappropriate and illegal behaviors.
- Better supervision of clerical staff and support from administrators to front line supervisors in dealing with issues of race are needed.
- A grievance procedure needs to be developed for the public to make complaints about clerical staff of the courts. This procedure needs to be conspicuously posted in each courthouse. Procedures for making complaints about the judiciary need to be better publicized as well.
- The judicial complaint process of the Judicial Conduct Commission should be advertised within minority communities.
- The courts should seek actively to have their workforces reflect the communities that they serve. The judiciary should seek to ensure that ethnicity and race are not barriers to employment in the courts. Clerical staff with bi/multi-lingual abilities, particularly those with cross cultural skills, need to be a part of the workforce to better assist those with language barriers. These individuals should be appropriately compensated for their additional skills.
- The courts should seek to actively recruit minority candidates for employment positions.
- Certification for court interpreters should be available for languages other than Spanish.
- Potential interpreters from racial and ethnic minority backgrounds, especially those outside of the Salt Lake area, should be actively sought by the courts and trained for certification.

## ***POST-ADJUDICATION***

Throughout all the public hearings, issues related to the post-adjudication phase of the criminal justice system were not as common as other topics. Issues related to youth during the post-adjudication phase of the juvenile justice system were raised more often than adult post-adjudication issues (see Juvenile Justice chapter). The largest amount of information received on this topic came from the hearing held at the Utah State Prison facility in Draper.

A central theme of these comments was the length of sentences served by minorities. Participants perceived that minorities serve longer sentences in prison in comparison to White inmates. Inmates stated that this fact is reflected by the disproportionate numbers of ethnic inmates currently in prison. Participants also perceived that minority inmates receive unfair punishments within correctional facilities and that those with language barriers are treated very poorly. Native American inmates stated that their right to practice their religious beliefs is not respected in prison. Inmates also felt that the Board of Pardons and Parole does not follow the due process of law. This concern was repeated throughout the prison hearing. Many inmates shared their fears of the risk of retaliation based on race by the Board of Pardons and Parole.

### ***Minority Overrepresentation in Prison***

The perception of the inmates at the prison hearing was that Utah prisons hold a high number of minority inmates. Prison occupancy statistics collected by inmates contribute to this negative perception and perpetuate a loss of hope in a system that works against all minorities and particularly against African Americans. One African American participant explained this loss of hope in the following way. “Black people are not anti-law, but they don’t see law working for them or helping

them make the adjustments” (University of Utah Hearing). Another male participant indicated that it is those White Americans with racial prejudice placing minorities in all sentencing categories.

If you look at every category, you’re going to see people of color, no matter how we want to turn our heads and bury them in the sand, people of color are not getting a fair shake. And it’s all because we have people that are racist that are occupying high position status (University of Utah Hearing).

A Hispanic male participant found the numbers unfavorable toward the Hispanic community.

I did a little study myself and I found that 5 percent of the Utah population is Latino. Eighteen percent of this prison population is Latino. Latinos have more convictions [per capita] here in Utah (Utah State Prison Hearing).

### ***Unfair Punishments in Correctional Facilities***

Racial and ethnic minority inmates expressed experiences and perceptions of inequality in the treatment of minorities in correctional facilities. For example, one Hispanic female stated her experience of officer misconduct during a urine test:

I feel I have been mistreated. This white female [experienced] the same thing happening to her. She grieved as I grieved it. She got a response, and I never got a response (Utah State Prison hearing).

Another Hispanic inmate expressed that there is no due process. Blame is placed automatically upon minorities.

When you get written up by an officer, you are automatically guilty. I was written up, sent to maximum security for six months and I was found not guilty. It’s ridiculous (Utah State Prison hearing).

A Polynesian inmate believes that prejudice exists simply because of the genetic makeup of his race. “Polynesian people are big in size and have an intimidating look. No matter how I present myself to an officer, I’m still [considered] this gang member.” Even though his cell-mate admitted guilt to jamming the door, he was punished. The inmate stated that he believes this incident occurred because he is Polynesian, and the jailer would not believe that he was not guilty. An African

American inmate stated that blame is placed on minorities and not only does society support it but minorities expect it.

There's a buzz circulating within our community. It says if you're a minority you've got nothing coming. You will do more time. This buzz is pervasive; consequently, there's little incentive for a minority inmate to address his core issues (Utah State Prison Hearing).

### Inmate Recommendation

An Asian American female inmate suggested incorporating another grievance mechanism to alleviate the racial tension.

If quarterly we would get somebody, an officer or an ethnic coordinator to hear our problems rather than just keep grieving or [writing complaints.] If we could have that I think it would help a lot. It would bring people together: blacks, Latinos, Asians and whites (Utah State Prison Hearing).

### ***Effects of Language Barriers***

Many incarcerated minorities expressed that they feel powerless and are given unfair punishments because of language barriers. As rehabilitative programs are primarily available to English speaking inmates, those with limited English proficiency are often not allowed to participate.

One inmate spoke of his fellow inmate who spoke very limited English:

They don't have any type of programming; no classes, no school, nothing like that. How can you expect an individual to be rehabilitated, when he's not getting the type of help that he needs (Utah State Prison Hearing)?

These programs are deemed crucial for release, and minorities whose native language is not English do not have the same opportunity to attend these programs. A Vietnamese inmate describe this problem by stating, "There's no programs for us or jobs and so we are stuck here." This inmate continued by expressing what happens when you can't understand the rules to protect yourself.

We never have a chance to file a grieve . . . but some words we don't understand the law and stuff like that so that's why it gets us in trouble. We deserve to learn something in here so we

can get out we can get a better life. If me and a white guy fight, the first person they're going to put in maximum security is me. I'm the one that's going to go first (Utah State Prison Hearing).

### ***American Indian Religious Rights***

A perception that was raised at the prison hearing and reappeared at the Fort Duchesne hearing concerned religious discrimination toward American Indians within correctional facilities. Most American Indians knew their religious rights and had trouble convincing correctional staff of the laws. "We have a racial conflict going on where the native brothers are being denied what has already been fought and won in the court systems" (Utah State Prison Hearing). Inmates believe that the problems stem from racism and from a lack of proper training of correctional workers. This lack of training results in disrespectful behavior toward American Indian religious rights.

An American Indian male inmate told of his frustrations:

I have not been treated fairly. I have documentation saying that I'm approved to have these items [prayer bag, medicine pouch, etc.], but when I go into a more secure area they think that it's either a security threat or it's something they don't understand, so it is taken away from me and I have nothing that links me to my religion or my higher power (Utah State Prison Hearing).

Participants also perceive discrimination when American Indians' religious rights are denied and access to other religious leaders is available. One inmate stated that the prison, "had two people [come] in to do the talking circles, and [they] quit coming because they were so badly treated by the rude officers" (Utah State Prison Hearing). One participant at the Ute hearing attributed the lack of religious officiators due to a lack of proper information.

We're always lacking information. Communication is so bad around here, I mean even with the state and county and tribe. So therefore, nobody is eager to get over there and perform the sweat ceremony, because who you have to go through. Even that is a secret. So everything is not open or the information is not there (Fort Duchesne Hearing).

Women inmates stated that they are denied their rights to the sweat lodges. “The men are allowed to do their sweat lodge and talking circle. They have a sweat lodge and I don’t understand why we can’t have one” (Utah State Prison Hearing). American Indian women perceived a combination of racial and gender bias that affected their rights to religious practice.

Above all, the concern is that despite any efforts to correct the problem, their complaints are not heard. “We have written letters, talked to people that run the religious programs here, but to no avail.” Another participant expressed her frustration as she stated,

I have been fighting this since 1994. I wrote to tons of people. I mean, I wrote to Washington. We’re supposed to be allowed to have this. The women are being totally discriminated against (Utah State Prison Hearing).

### ***Parole Perceptions***

A female participant felt that a parole officer was racially discriminating against a Hispanic male. She stated that the parole officer’s discretion “to come in and ask for a urine test at 3:00 in the morning,” was abusive toward a Hispanic male simply because he has “tattoos and looks like a gang member” (Horizonte Training Center Hearing).

### ***Board of Pardons and Parole Perceptions***

Inmate participants believe that the discretion of the Board of Pardons is abused and adversely affects minorities. Most Hispanic inmates perceived that they are not provided with due process of law before the Board of Pardons and Parole, stating that language barriers should not impede the rights of non-native English speakers for a fair hearing.

What about most Hispanics that only understand Spanish? Are information packets available in Spanish? Should Hispanics be provided a playing field of equality? Don’t understand the process, nor is it explained to them (Utah State Prison Hearing).

**POST-ADJUDICATION**

Participants stated that indeterminate sentencing gives the Board of Pardons and Parole “the ability to give biased prison terms.” This lack of uniformity is seen as an injustice prone to racial discrimination.

Minorities served a substantial amount of time more than their white counterparts. The indeterminate sentence scheme has outgrown its usefulness, maybe there’s a possibility of moving toward some other form of sentencing to help alleviate some of these problems (Utah State Prison Hearing).

Moreover, the criterion set by the Board of Pardons is unfavorable toward African Americans.

The Board of Pardons criteria for favorable consideration includes community support. Most African American prisoners are from other states and are classified as not having community support (Utah State Prison Hearing).

This results in longer prison sentencing. Request for parole in their home state is also denied.

***Inmate Recommendation***

A Hispanic male inmate suggested the elimination of indeterminate sentencing practices in order to eliminate racial and ethnic bias.

I feel that one of the most basic components of this discrimination is the indeterminate sentencing laws of Utah. If determinate sentencing were to be invoked, it would take away the power or abuse of power which corrupts the theory of fairness the Board of Pardons was meant to represent. Sentencing would then strictly become a number’s game, and the judges and the court system would be responsible for issuing sentences, which could be challenged in the legal system if extreme. Today there are no checks and balances used to monitor the decisions of the Board of Pardons (Utah State Prison Hearing).

***Other Post-Adjudication Issues***

An African American female brought up the issue of being denied basic hair care needs.

We only get to press our hair once a month which is a long time. Everybody else gets to go to hair care once a week. When we tell them about our hair, they don’t care. They don’t have [any] hair products on the commissary for us. When we asked, one officer made a statement and said that we weren’t supposed to have been born because they don’t like the way it smells when we do hair presses. They are very rude (Utah State Prison Hearing).

In Cedar City, it was the opinion of one participant that the Iron County correctional facility discriminated against an American Indian visitor by requiring him to wait hours before allowing a visit where others only waited minutes. He was also accused of being drunk.

I had to go through a little talking with the former director . . . when I went to visit a person, I was directed to him and in his office I was accused of being drunk. That was in 1991. But I still encounter this type of discrimination (Cedar City Hearing).

Another opinion was the issue regarding correctional facilities and prisons as not being cost effective. A Layton participant believed prevention would make a better investment.

When we put 3.5 million in a building to incarcerate people that is a poor investment in a capitalistic society, and safety is not the end product. Prevention is the best way to stop the pipeline to the jail house (Layton Hearing).

A volunteer prison chaplain stated,

We have turned our state criminal justice system into a rather profitable system in which we build prisons and jails and then fill them in hopes we are going to alter their tendency for crime. We are turning them into very dependent people who rely on a system that gives them everything they need. It is more like a dragnet (Cedar City Hearing).

Participants stated that there are other solutions to crime and that the judicial system needs to look at other alternatives rather than only sentencing people to prison. Said one participant, "It's evident, at least from everything that I've read and the people I've met in prison, that not everybody needs to be in prison. Some could benefit from creative sentencing" (Cedar City Hearing).

### ***Conclusions & Recommendations***

The individuals who came forward and spoke at the hearings felt that they had been treated unjustly on the basis of their race. This belief seemed particularly strong in the post-adjudication segment of the criminal justice system. Participants' concerns seem to suggest three main categories for recommendation by the Committee: research, education and services.

**POST-ADJUDICATION**

- The Task Force and the correctional system should review statistical information regarding the demographics of the prison, probation and parole populations to determine the reasons for overrepresentation of minority groups. Attention should be paid to separating out the statistics for Hispanic from White and other specific groups (i.e., not just Asian, but Korean, Vietnamese, etc.) Data collection about inmates with limited English proficiency is essential.
- Functional systems need to be in place to inform inmates of policies and procedures regarding the operation of the prison, probation, parole, grievance procedures, and the operations of the Board of Pardons and Parole.
- Information about prison procedures should be made available in the offender's primary language. This information should be available to family members, religious leaders, and community members.
- Cultural sensitivity training should be implemented at all levels in the prison system to improve interpersonal communication between staff and inmates, and between inmates. Cultural sensitivity training should not be limited to Whites but should also include sensitivity training between and among racial and ethnic minorities.
- Correctional staff, inmates and tribal members should receive training on the issues related to Native American religious practices in the prison.
- The workforce of caseworkers and correctional staff should reflect the population of inmates it serves. This workforce diversity should include second language capabilities.
- Case workers and correctional staff should be screened for negative behaviors resulting from racial bias.
- Non-English speaking racial and ethnic minorities should have equal opportunity to attend rehabilitation programs that are critical for release from incarceration.

## **JUVENILE JUSTICE**

This chapter addresses the perspectives expressed by public hearing participants about the juvenile justice system. Faced with the prospect of having a child involved in the justice system, many parents expressed feelings of helplessness because of their own lack of knowledge of the system and the feeling that they have little input into the process. Public hearing participants throughout the state also expressed frustration, fear, and dismay about their interaction with the juvenile justice system. Although at first blush one sensed the anger and distrust clients have for “the system,” the public hearings also exposed the sincere desire of people for improved relations.

### ***Law Enforcement and Racial & Ethnic Minority Youth***

Law enforcement is the front line of the system. Many cases do not go beyond this initial contact; yet law enforcement sets the tone for how many view their experiences with the justice system. Individual participants relayed accounts of how they have felt targeted by law enforcement. One such incident was about a young African American male shopping at a local mall with some friends. After being asked to leave by security, the teen was “grabbed and searched” by security. This particular young man happened to be the student body president at his junior high school. The aunt relating the incident felt this would not have happened had it not been for the color of her nephew’s skin (Central City Community Center Hearing). Other stories told by youth support the perception that minority young people are often treated as criminals in retail establishments.

Interactions with law enforcement can create long lasting impressions with youth. The use of racial slurs by officers was related by one young white teen. She stated that she and her sister were with their African American boyfriends when they were stopped by police. When the officers used racial slurs to refer to the young men, their statements were challenged by the two young women.

In response, the teen said that the officers threatened to take them to jail (Horizonte Training Center Hearing).

Numerous participants reported incidences in which a group of minority youth were gathered near a group of White youth. They related that they or their children had observed police approach the minority group, question them and/or photograph them, while the White youth were not bothered by police. Participants were clear in relating that no charges or arrests were made despite the questioning and photographing, leaving them feeling that contact was racially motivated.

Participants told multiple stories about how minority youth are presumed to be gang members by law enforcement. Participants expressed that the closeness of the extended minority families has been stereotyped in a racial manner. While it is not unusual for several family members to socialize together, law enforcement often misinterpret this behavior as hanging out or being a gang. An American Indian male teen expressed frustration stating, “The police around here are so bad. When Indian kids are walking, they harass them all the time.” He expressed dismay over a specific incident where a group of cousins was stopped by police who apparently thought “they are going to do something wrong.” He felt police were focusing on the American Indian juveniles and overlooking the nearby parking lot of a local hardware store where non-Indians had gathered,

smoking and drinking [in public] and stuff...but when it comes to the Indian kids walking down the street, they get booked and go into juvenile court (Cedar City Hearing).

Others feel targeted as troublemakers and believe they are harassed by law enforcement even when they are doing nothing wrong. Parents expressed fear that this targeting would only hurt their children by increasing and accelerating their interaction with the juvenile justice system.

It is not only that participants were frustrated by feeling singled out, but they also expressed concern about being presumed guilty at first contact. This perception was described as harassment

and abuse, and emotions ran high as participants related their stories and expressed their opinions. Many participants felt accused and convicted at the point of first contact despite evidence that a crime had not been committed. Such was the case related by the aunt of an American Indian girl who was accused of shoplifting a makeup compact from a store in Roosevelt. When the young girl moved toward the bathroom, she was stopped and accused of hiding the compact in her pocket despite her protests that she did not have the compact. She informed her accuser of the precise location of the compact. Upon arrival, police questioned her and instructed her to strip to her swimsuit for a search.

The indignity of this search was expressed by the aunt when she stated:

Almost the whole police department was right there and they were all standing there gaggy-eyed looking at my little niece, and that made me upset . . . Of course, she didn't have nothing. She had a swimming suit on. Where are you going to hide a compact? (Fort Duchesne Hearing).

Sandy Hansen, Ute Tribe legal counsel added:

When the non-Indian police arrived, the little girl who was charged with shoplifting took the police to where the compact was . . . she took the cop there, showed him the compact (Fort Duchesne Hearing).

Also in Fort Duchesne, a mother told of her 12-year old, American Indian son, who had no juvenile record, and was attacked by an older, White boy who had been in trouble before. The officer handcuffed her son, threw him in the police car, and helped the other boy get up and brush off his pants. The older, White boy was not charged, and this woman's son ended up in juvenile court. The mother implied that her son was automatically presumed to be the guilty party and that he would have been treated better were he not American Indian.

Another American Indian female participant also expressed a similar concern. She related an incident regarding her son's experience at school. The school's vice principal, who happened to be married to the local chief of police, suspected that the youth had been selling drugs. While he was

in school, his locker as well as his person were searched on more than one occasion. Despite the fact that he was required to remove his clothing, his mother was not notified until her son told her the following day. The mother felt that her rights as a parent had been violated. Because of their race, she felt that she and her son were treated disrespectfully. She stated that the relationship between the vice principal and the police chief made it impossible for her to object to the treatment in any meaningful way (Fort Duchesne Hearing).

Finally, some confidential testimony was shared with Task Force members about juveniles who were taken by law enforcement officers to remote locations and beaten up. These reports indicate that the youth were not charged with anything but were threatened that if they told anyone, the officers would retaliate. This type of testimony often has few possible methods of verification but was quite disturbing to many members of the Committee.

### ***Inadequate Legal Representation***

The risk of receiving inadequate legal representation due to an ethnic minority's lack of knowledge about the legal system is especially high for ethnic minority juveniles. In the juvenile system, children do not automatically receive legal representation once they enter the system. Since many minority families cannot afford to hire an attorney, these juveniles may not receive legal representation promptly, particularly if their parents have a limited knowledge of the justice system and a lack of English language skills. One juvenile court worker stated, ". . . minority families do not understand the system, or court terminology. Often they will also have poor representation at court, so they are set up to be in the system from the get go" (Ogden Community Action Hearing).

Another juvenile justice system worker spoke passionately for the need for legal representation for youth, saying:

Every kid [who is considered for secure care or incarceration] should deserve an attorney regardless of their family's money. . . Any kid who's gone to secure care after the age of 16, [who] commits a felony is automatically in the adult system . . . Those kids don't have attorneys when they go into secure care. They're sitting ducks when they come out. And unfortunately, the same kids that can't afford attorneys when they go into secure care are, unfortunately, kids of color (Ogden Area Community Action Hearing).

Even when juveniles have representation, sometimes attorneys do not warn clients about future risks of which their client should be made aware. Since many have limited knowledge about the justice system in addition to limited English language skills or cultural differences, they often do not know what questions they should ask their attorney to ensure that they receive adequate legal representation. An American Indian man related how a lack of knowledge about the procedures for expungement of juvenile records procedures worked against his daughter.

I feel that the judge, attorney or district attorneys didn't give us a fair chance because they wouldn't allow parents to talk too much. What made me mad was [the] appointed attorney didn't give us a chance to talk about what was going on with the justice system. . . . Our daughter got in trouble with the juvenile system when she was just a little girl for a reason which wasn't [a] fair judgement. Well, she's [20 years old] and had a little incident this year. The judge looked at her juvenile record again. She's been clean and married for five years. . . . Having records [expunged] is one thing that I wasn't aware of it. We didn't have the chance to be involved in this (Cedar City Public Hearing).

### ***Juvenile Court Experiences***

Public hearing participants were as vocal about the courts as they were about law enforcement and legal representation issues. The hearings made it clear that when racial and ethnic minorities come into contact with police, there is an "us and them" attitude. The lines are clear. However, the lines are not as clear when the public talks about the courts. Not only is the court system perceived generally as a complex and difficult maze, the challenges of negotiating it successfully are hampered when combined with language barriers, cultural differences and lack of understanding. Public hearing participants expressed concern that court workers wield a lot of power to make decisions that impact

their lives. This power differential and participants' lack of understanding of the system combine to adversely affect minorities, especially when workers fail to take cultural factors into account.

Court workers (i.e., probation officers, intake workers, clerks) are typically seen as either an advocate or an adversary. When a worker is familiar with a culture, the family usually views him or her as an advocate. The opposite is true if a worker either does not understand a family's culture or shows indifference regarding the family's background. Workers are often required to make home visits. One woman expressed concern over culturally insensitive workers visiting her home:

I worry that when people who are not from our background come into our homes to investigate an incident they perceive different things as not safe, when really they are just culturally different (Taylorsville Hearing).

Parents also expressed concern and anger over decisions being made about their children without their input. While in court, attorneys, workers, and the judge discuss the charges, plea negotiations, and possible disposition. The minor and parent must listen as decisions about the juvenile's future are being made. Often, a parent is given an opportunity to address the court; however, this is not always the case. One American Indian female stated succinctly:

I was sitting in the audience [at court] and the lawyers were talking about these people that were going to court just like they were pieces of meat, and what they were going to do with them (Cedar City Hearing).

At another public hearing, a male Polynesian who is employed by the Division of Child and Family Services told of the indignation felt by one family. According to the family, they were told by a guardian ad litem and assistant attorney general that they:

Should be able to understand that they're in America. They need to learn English and if they can't learn English, they need to comply because they are now here in Utah (West Valley City Hearing).

The message the family received was that their form of discipline, their culture, and their language were unacceptable. This push to change and conform is further magnified when a minor is removed from his parents' home and placed into a secure facility. The state then has official custody, and the state's norms are imposed formally upon a minor. One community activist warned:

You need to take a close look at the juvenile court and the Youth Corrections systems. We have young people in there that are scared. Where are our guardian ad litem that are supposed to inform our children of their rights? They are not there . . . We need some immediate action because this is getting out of hand (Ogden Community Action Hearing).

Concern for their children heightens their awareness of court workers' attitudes and behaviors, parents said. A clear message from many of the hearings was the concern that parents feel for the lives and futures of their children. An adult male made the following comment:

I do not see the racial prejudice. I do not feel that the problems we are talking about tonight have to do so much with race as with lack of education. We need to educate our people about the system, and we also need to educate those in the system about us, our culture and our differences. Most of us here are concerned mostly about our kids. . . (Taylorsville Hearing).

The man went on to express concern about the attitudes of workers in the justice system, and wonder about their qualifications for their job. When participants asked about the kind of diversity training that is given to intake workers, they raised an important educational issue facing the courts. Many believe that education is the simplest way of addressing the issue to change inappropriate behavior towards racial and ethnic minorities. Yet, one female court worker confessed that, "Training is offered but it is outdated and conflicting" (Taylorsville Hearing). Stressing the need for training, one ethnic minority court worker put it this way:

If a worker has been there [working] for a long time . . . their work is not reviewed. So if the worker mistreats a minority client, no one knows about it . . . In my experiences, judges try to be as fair as possible regardless of race, but we need to help our people understand the system and know how to access resources (Taylorsville Hearing).

Some participants, both parents and juvenile justice system workers, stated that they perceive some minority court workers as being harsher on juveniles of their own racial or ethnic background than they are on others. The participants who raised this issue often did so to point out that racial and ethnic bias training is needed by all employees, regardless of their race.

A few participants spoke directly about their experiences with juvenile court judges. Juvenile court judges are ethically bound by the Utah Code of Judicial Conduct and can face sanctions for violations. Some cannons address issues related to racial or ethnic bias among judges. For example, Canon 3B(5) states,

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit . . . staff, court officials and others subject to judicial direction and control from doing so. A judge should be alert to avoid behavior that may be perceived as prejudicial.

This cannon also addresses judges' ability to require lawyers "to refrain from manifesting . . . bias or prejudice" based on those same factors. (Canon B(6)).

Some parents expressed the impression that treatment by judges was affected by race. Juvenile court workers told of the different ways some judges sentence minority youth versus White youth, stating that minority youth tended to get harsher sentences for the same crimes. One attorney suggested that perhaps prosecutors "are giving better deals to whites" (Taylorsville Hearing). Some parents said that judges and court employees seem to stereotype kids before they've been given a chance to succeed. Other parents felt they were not treated respectfully by the judge. One American Indian mother conveyed this story:

I landed in jail after I asked for representation. The [judge] became very angry at me and said that I should have taken my daughter, grabbed her by the hair and took her to school. I was very upset because I don't believe in child abuse and I made that remark. I said, "But your

Honor, that's child abuse." He said, "You're in contempt of court; you are going to jail." I went to jail for my daughter (Cedar City Hearing).

### ***Post-Adjudication Experiences***

Public hearing participants spoke of a number of experiences that occur after the sentencing phase of the juvenile justice system. General comments about the Division of Youth Corrections included parental confusion about custodial issues as well as a lack of understanding of the juvenile delinquency process.

Some comments about Youth Corrections were positive. Juvenile justice workers commented on the high quality of Youth Corrections' diversity training. One adult agreed but said that Youth Corrections needs to continue to diversify its workforce. A counselor stated that s/he has "never seen any case workers show signs of racial prejudice" (Taylorsville Hearing). Others disagree.

One participant told of a young Polynesian male who was serving a commitment at the Decker Lake youth secure facility. In the Tongan culture, males slapping one another on the back is a form of endearment. However, those not familiar with this form of affection have viewed this behavior as assaultive or disorderly. This young man was placed "into solitary confinement for going around slapping other guys on their backs . . ." which is considered to be ". . . abuse, according to Western Culture" (Sorenson Center Hearing). Cultural sensitivity training was ordered after the incident, and the participant related that:

People were brought in to help educate the personnel within that area, and there haven't been, as far as we know, very many other problems concerning cultural issues (Taylorsville Hearing).

Another juvenile justice worker cited the following cultural difference as affecting outcomes of cases between American Indians and other youth saying,

Native American kids are so honest, they hurt themselves. They are not like white kids unless we taught them how to lie. They lay out to us what's taken place. They tell you the truth. They admit it. We double, triple book them . . . . and this all builds up a big rap sheet (Blanding Hearing).

An issue that participants say face youth after sentencing is what it means to be a "Youth Corrections kid." Adults stated that once youth get known as "Youth Corrections kids" they are routinely harassed by law enforcement (Sorenson Center Hearing).

### ***Interactions With Other Systems***

Even more so than with adult experiences, stories about youth tended to cross multiple governmental systems (see Follow-Up Section). For example, stories crossed over from school system to legal system, or from one community to another as people moved to Utah from other places. Although not technically about the juvenile justice system, these stories demonstrate the experiences and perceptions of those who now interact with the system. As with the adult system, their impressions of the schools or of the justice systems of other states affect and influence their opinions of Utah's juvenile justice system.

In the case of the American Indian student whose locker was searched and was ordered to remove his clothing as a result of a suspicion of selling drugs, the mother reported further that after being searched on more than one occasion, the minor pleaded with her stating:

Mom, I don't want to go to school anymore if they're going to do this...if they keep harassing me. She (the vice principal) makes me feel this small, like anything I do...she's going to bring that police officer in and search me...I don't want to go to school (Fort Duchesne Hearing).

Another participant stated an experience of having five children in the public school system. She said, "Our kids are abused verbally, mentally, physically and nothing's done about it. The school system still has those people working there at the school as of today" (Blanding Hearing). Finally, another participant stated that the schools and the juvenile justice system are both "part of the public system.

What is unfair is that youth are being punished twice, once by the judiciary and once by the school, for the same crime” (Taylorsville Hearing). He was referring to the experiences of a Polynesian youth convicted in the Granger robberies, but his comments seem to apply to the concerns of parents generally throughout the state.

Many participants made statements comparing their experiences in Utah to their experiences living in other states. One mother expressed how her son felt labeled upon entering a new school in Utah. While living in another state where they were part of a larger ethnic minority community, they enjoyed good relations with the schools, police and retailers. When the young boy was enrolled in Utah, he gravitated to other youth of his same race. The mother complained that in less than a month, the school had stereotyped her son as a gang member. Another man expressed the sentiments of many others throughout the state when he said:

I came from my reservation in Arizona, and I lived in California and Texas and overseas in Europe. But I have never, ever experienced the degree of racial discrimination as I have had here . . . (Cedar City Hearing).

### ***Other Juvenile Issues***

Another concern that one parent raised was implied by many others at public hearings. The Blanding mother stated:

Our children just have too many rights...You know, we have rights too, as parents...they think that ‘Mom, you can’t say nothing to me,’ and ‘Mom, you can’t do nothing to me.’ And there we are, trying to discipline them (Blanding Hearing).

While many parents did not articulate the concern in quite this way, they did express a sense of powerlessness to raise their own children. These parents are concerned that their rights to discipline have been taken away. Parents express frustration with the mixed messages they have received. Parents who want to fulfill their parental obligations, are left wondering what to do.

Finally, a statement made by an American Indian court employee points to the diversity of perspective about the mistreatment of racial and ethnic minorities in the juvenile justice system.

There are two sides, the victim and the predator. If you're the victim, you'll sit back and say, 'I'm Navajo. I'm Mexican. I'm a whatever, some minority. I'll just take the backseat. I'll sit in the back row. Hey I'll get through it.' There are two sides of the story, I wish a lot of the parents would come into the classroom and sit behind a behind a one way glass window and watch their kid . . . There are high risk kids that have broken families, that have a prior record and have other aggravating circumstances. They go to court and sit in front of the judge. Then the judges asks, 'Hey, what's your story?' The kid sitting there replies, 'I don't know.' I've heard that so many times. So, there's two sides of the story. The parents hear one side. The judges hear the other side. It's kind of hard (Blanding Hearing).

### **Conclusions & Recommendations**

The Committee makes the following recommendations to address perceptions of racial and ethnic bias in the juvenile justice system.

- Law enforcement administrators and directors should demonstrate zero tolerance for racial profiling in officer conduct and decision making.
- Utah law enforcement officers need diversity awareness and training as a significant component of officer basic training (P.O.S.T. and police academy). Supplemental training is important but not sufficient to address these issues.
- Law enforcement agencies should make efforts to have a workforce that is reflective of the diversity of the population they serve. Recruitment efforts should be made to encourage minority youth into law enforcement careers.
- Law enforcement, the courts, bar, youth corrections, and public schools should collaborate to provide the public with information about the juvenile justice system.
- Cultural sensitivity training should be offered to court employees through new employee orientation and ongoing court education programs. Management training and probation officer training should include significant diversity training components.
- The juvenile courts should provide a forum for the public to ask questions of judges and create an open and accessible atmosphere. For example, in one juvenile district a *Meet the Judges* night is held for the public.
- The juvenile courts and schools should provide opportunities for students to learn about the justice system and its resources. Such opportunities can be provided in school curriculums and through peer court experiences.

- Ethnic minority advocate positions should be created by the juvenile courts as a means of helping families through the court process. The availability of an advocate who is knowledgeable about the system, has a bi/multi-lingual capability, and has demonstrated cross-cultural skills would create a perception of a friendlier and more caring system.
- Cultural sensitivity training should be offered regularly to youth corrections employees and contract treatment providers.
- Juvenile justice system services should be provided to the entire family to insure that family issues are addressed as well as those of the minor. The current lack of services results in juveniles being sent back to a family where problems have not been resolved.
- The juvenile courts and youth corrections should make efforts to increase workforce diversity in order to help juveniles and families feel that the system is sensitive to their needs.
- All agencies in the juvenile justice system should make active efforts to recruit members of ethnic communities to career positions.

One woman's comment about how her family copes with the issue of racial prejudice conveys her sentiment that racism is alive and well in Utah. Calling racism "...very real and it's scary..." she used the words "terrorized" and "horrified" to describe a specific incident when a family member was arrested. She said that they cope with racism by acknowledging that it is wrong, and, "We make a joke about it so we can deal with it -- that he was arrested for being brown on Friday night" (Fort Duchesne Hearing). But racism is not a joke, and it should be exposed to those who practice it and to those who have the power to change it.

## **VICTIM ISSUES**

Crimes committed against minorities in Utah is an issue of critical importance. Whether minority victims are afforded respect and dignity by the system, whether they are given the same options as White victims in the handling of their criminal cases, and whether they perceive that their race affects the outcome of their cases are all issues of concern. This chapter addresses perceptions conveyed at public hearings related to victims issues.

Individuals spoke about their experiences interacting with law enforcement, the medical system, the media, and social services agencies. Many expressed concerns that they were not treated fairly by the system because they were not listened to, nor taken seriously. Worse, others expressed statements that imply being re-victimized based on their interactions with “the system.” Often those statements involved those who felt victimized by their interactions with law enforcement. Participants commented about the treatment of those incarcerated by the system as creating a group of victims due to race. Women of color also shared unique experiences as victims in the criminal justice system. While victim-related comments were not the most common at the hearings, they were received regularly and the content of those comments was consistent at different hearings.

### ***Re-victimization of a Crime Victim by “The System”***

A strong theme noted at public hearings was the experience reported by minority crime victims who felt they were treated poorly by the system. The ways in which they were treated varied, but the consistent message was one implying that if their race or ethnicity had been different, their treatment by various segments of “the system” would have improved.

Participants reported that the criminal justice system does not treat minority crime victims fairly because it tends to dismiss their credibility, to discount their importance, and treat them as

suspects or criminals rather than victims. A Ute woman told about an American Indian friend who, while intoxicated, was pulled from his car and beaten-up by several White men. Subsequently, her friend was arrested for fighting but the others, who started the fight, were not arrested (Fort Duchesne Hearing).

Another American Indian woman told a lengthy but instructive story, that in many ways was symbolic of the many stories heard at hearings.

We were driving through Roosevelt . . . These white boys, they were in a truck and started calling [my daughter] names. They pulled into a Chevron station in Roosevelt. And my husband pulled in on the side of them . . . he asked, "Can I speak to you guys?" He said, "My daughter said you called her a bitch." And that guy said, "Yeah, I did. What are you going to do about it?" The other boy comes up behind him started to push him and all three continued to hit him. I was about five months pregnant. I was yelling at people to call the police. And one of the boys turned around, and I jumped on him, and I grabbed him. He threw me down on the ground. He said, "What are the cops going to do? They're not going to do anything to me. Go ahead and call them." . . . When the cops got there, . . . two of the boys ran in the store and threw some stuff [from inside their car] in the trash can.

The police officer asked us what happened, and we told him. Those boys said that we were harassing *them*. They all asked the questions, we told them what happened, and they let the boys go. "Why are you letting them go?" He said, "Because you were the ones who started it." And I said, "We didn't start it. He just asked the question, 'Why did you call them names?'" And he said, "Well, there's nothing I can do." . . . My husband ended up in the hospital the next day, with a fracture on the side of his face. My son had a bruise on his face. One of the ladies that works at the Chevron station reported that those boys were drunk, that they were throwing beer cans in the trash can. She saw them do that. They let them go. When they drove away, they squealed out of there screaming, hollering, taking off. To this day nothing has happened.

. . . The next day they said there were no witnesses, there wasn't anything they could do to those people. They said to call [a certain officer]. He's the one; he filed a wrong report. The next day we went to talk him. He had something totally different down [on the report]. [That officer is one of the biggest problems over there. He's a very prejudiced one. And sometimes the attorney won't even do anything about it (Fort Duchesne Hearing).

Also, as told in confidential testimony, a woman recounted her treatment by paramedics who were summoned to her home while she was having an epileptic seizure. The paramedics refused to enter the home, saying, "We don't go anywhere near you Mexicans, until the police get here." After

20 minutes, police arrived and the woman's White husband went outside to complain to the officers about the paramedics. The paramedics then ran into the house and insisted on taking her to the hospital. Despite assurances that there would be no charge for services provided, the family received a bill and ultimately a summons to appear in court for non-payment.

In other statements, minority victims told of a lack of follow through in their cases, either due to an unwillingness to respond to situations or via a denial of services by various segments of the system. Participants registered numerous complaints about feeling treated unjustly, ignored, and not taken seriously by the criminal justice system.

Individuals told stories about a lack of law enforcement response to crimes committed against minorities. For instance, a White grandmother trying to protect her biracial grandson from neighborhood bullies stated that,

the white boys [in the neighborhood] all ganged up on him, about 20 of them, drug him through the street, run over him with bicycles. I called the police department. They were too busy. The law, they did not want to help this child. He sat there on the couch begging the officer, 'Please help me. These people hurt me.' I told the cop, 'You're a racist' (Ogden Community Action Hearing).

An attorney at the same hearing told a story about a young Hispanic man involved in a fight with a court bailiff where no action was filed against the bailiff.

A Hispanic social service worker in Salt Lake told of her experience helping a rape victim in Provo to get police help and medical treatment:

. . . she said, "I need to get to the hospital and I also need to call the police. I was gang raped. I went to the hospital, but they told me to go home to get somebody that speaks English." So I called 911 . . . "I don't know what her problem is. She just keeps crying," the woman [from dispatch] said. When I get there, [the officers] were still at the house. Her nose had been broken and her eye was swollen, and she had broken ribs. The officers said, "Well, why didn't she tell them [to stop], you know?" And I said, "Well, I don't think that's what you are supposed to be asking, I think you are supposed to be asking who did it." . . . It had been four

hours since she had been raped and nobody helped her. After that we filed a complaint with the . . . police and to this day we haven't heard anything (Sorenson Center Hearing).

Even in situations where a death is involved, the Committee heard stories about a lack of investigation and/or follow through when the victims were minorities. Two examples given at hearings that focused on American Indian communities are symbolic of those heard at the hearings. Sandy Hansen, legal counsel for the Ute Tribe, recounted an incident where a tribal member was run over by a non-Indian woman. The police report did not identify the driver of the vehicle, and no statement was taken from the driver, even though witnesses stated that the victim was visible before being struck. No legal action was taken against anyone for the death (Fort Duchesne Hearing).

An elderly American Indian man told of his own painful situation.

Not very long ago I lost my wife who was killed in a [car] accident. The person that did it, I don't know how fast he was coming, [but he] demolished my car and my wife was dead right in the car. I don't [know whether] justice [is served] for the white people. But if it [had been] an Indian, . . . they would have already handcuffed and thrown [him] in jail. The guy that done it, he's running loose somewhere . . . I really miss my wife. I think you would, too. But now that I lost my wife, that means quite a lot to me (Cedar City Hearing).

As a former police officer stated in conclusion,

there's a lot of incidents like that where the tribal member has been killed by a non-tribal member, nothing's been done. But when a tribal member is involved with a non-tribal, then sure as hell they're going to do something to that Indian. [I know that] what these people are saying is true (Fort Duchesne Hearing).

### ***Wrongful Encounter with Law Enforcement that Victimizes***

A common theme throughout the public hearings was that of individuals who felt victimized during their encounters with the criminal justice system. These statements expressed frustration and outrage at treatment by police officers. Some participants stated explicitly and others implied their belief that their treatment was based on their race or ethnicity.

Stories recounting victimization by law enforcement included one individual who was arrested in a case of mistaken identity. A woman recounted the story of being arrested and jailed falsely. As related in her statement which was also well-publicized by local media, this Hispanic woman was jailed and not allowed to breast feed her infant who, allergic to all infant formulas, went without eating for 22 hours. As she said in her remarks,

My sister showed up at the jail at 3:00 in the morning with the baby and a note from the doctors, and they would not let her in through the doors. I had to go through the humiliation the following day of being shackled and going in front of the judge. Finally, they let [my baby] come down to feed, once we told them that we were going to involve the *press*. The jailer . . . finally listened to what I was saying, the story that I was home, that it wasn't me, that at the time I was pregnant . . . She decided to go look up the original arrest, mug shot, and . . . [then] she realized that it was not me. That's all they had to do was listen to me [that] night. It was [a] Sunday night and they only had three other people in there besides me (Ogden Area Community Action Hearing).

Another case of mistaken identity was related by a woman who was pulled over in her car by the highway patrol. She said she was told originally that she was pulled over for not having a front license plate. She was subsequently informed that she was under arrest for theft. According to her statement, she was treated disrespectfully and threatened by the officers. She subsequently filed a complaint and was told, "It's his word against yours, and we're going to take his word" (Ogden Area Community Action Hearing).

Other stories reflected misunderstandings, such as a wrong address for a search. The statements implied that law enforcement officers appeared to feel justified in making the mistakes and chose not to apologize to the individuals involved.

### ***Victimization of Minorities in Custody***

Many of the comments received at the hearings centered around the treatment of minorities in the custody of the criminal justice system. A woman related the following story about her son, highlighting mistreatment by police, the courts, and jailers.

My son got arrested by five police officers, and all five beat the hell out of him. They . . . broke his knee and they broke his jaw and they busted his ear drum. They took him to the hospital and had to do emergency surgery. After they released him . . . , they put him back in the ambulance . . . the officer riding with him . . . beat . . . him again with his night stick. When he got to jail, they refused to give him his medication for his pain. They wouldn't let him walk on his crutches. While in prison, he was bitten by an inmate with hepatitis. They wouldn't give him medical treatment up there until I called and told them I was going to file a civil lawsuit . . . When Judge . . . sentenced my son to prison, he really literally laughed at him and called him a "spic" and the jailers there called him a 'wetback' and told him he was nothing but another statistic. (Ogden Community Action Hearing).

A court interpreter told of the following situation involving federal halfway houses.

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

These statements are indicative of the many who spoke about poor treatment of minorities who are in custody. Often told by family members, these statements were accompanied by admissions that the inmates had committed crimes but that those crimes did not justify mistreatment by "the system."

### ***Stereotyping and Treatment of Minority Women***

Harassment and abuse of minority women was also reported in testimony given. Many, particularly immigrant women with limited English, expressed fear of the system. These women have been threatened with the withholding of benefits, being turned in to the authorities and deportation.

The fear of the consequences of reporting to authorities keeps the women from taking the necessary steps to seek remedies. They are too frightened to exercise their rights, and do not become a part of the legal system

Ethnic women receive the same kinds of treatment that ethnic men receive from the system. Young ethnic women may be profiled as being gang members, and easy targets for harassment and abuse. They may also be profiled as being prostitutes and targeted for sexual harassment. They are objectified, and often do not have a voice.

### ***Other Victim Issues***

Other significant comments that were heard at public hearings are not easily categorized but deserve mention. A White woman from St. George testified about her knowledge of a situation involving a local social service agency. Her concern was for female immigrants with questionable legal status who are vulnerable to victimization by those in power. She tells that,

There was someone working in a welfare office here . . . with [female] immigrants. He would have them come to the office when it was closed, and he was raping these women. He was telling them that if they wouldn't put out their favor that they wouldn't get their checks or . . . their benefits. This happened to a lot of women here. They are extremely frightened to talk . . . because [they fear they will be deported]. I know it was reported to the domestic violence people here who had heard it a hundred times before (St. George Hearing).

Hate crimes is another important issue that was not mentioned often at the hearings but deserves attention. According to information provided at a recent hate crimes conference, racial and ethnic minorities are one of the most common groups affected by hate crimes. Victims of hate crimes did not register many comments about the fairness of their treatment by the criminal justice system. However, one man from Ogden told of an encounter that happened in 1977 where he was beaten severely. The crime was not recognized as a hate crime, and no prosecution took place at all (Ogden

Community Action Hearing). Proper recognition and reporting of hate crimes is of significant concern to the Committee.

### ***Conclusions & Recommendations***

The treatment of minority victims is an essential aspect of racial and ethnic fairness in the criminal justice system. The Task Force must fight the racial stereotype to see minorities only as defendants and perpetrators of crime and should examine closely the experiences of minority victims' experiences and perceptions of their treatment. The Committee makes the following recommendations:

- Criminal justice system players, from line staff through administrators must be aware of their individual biases in order to avoid prejudiced treatment of minority victims. The tendency to discount the statements or experiences of people of color may be unconscious for some but is still inexcusable and dangerous behavior. Training to address this type of bias is essential for all those who work within the criminal justice system.
- All segments of the criminal justice system should develop ways to effectively address language barriers. Trained interpreters should be utilized. The provision of interpreters should be the responsibility of the service provider. Language barriers should not be allowed to dangerously delay service provision nor sacrifice the quality of those services.
- An accessible, user-friendly mechanism for victims to report their dissatisfaction with their treatment by the system should be established. This complaint process should be publicized to the ethnic communities and should include clear and well-defined follow-up and notification procedures.
- The race and ethnicity of crime victims should be maintained electronically in databases so that further studies of minority crime victims are possible in the future.
- Local law enforcement, the legal community, and community organizations should be offered training on hate crimes in order to promote consistent recognition and reporting of hate crimes.

## **GROUP EXPERIENCES**

The purpose of this chapter is to highlight public hearing issues that are specific to individual groups of people. Not all racial and ethnic minorities have the same issues, although many issues of harassment, abuse and profiling may be similar in form and application regardless of the racial and ethnic groups involved. Committee members believe that it is important to give attention to intra-racial diversity. In addition, several comments at rural hearings point to specific issues that affect less populated areas in Utah. Individual racial and ethnic groups are discussed in alphabetical order below, followed by a discussion of rural issues.

### ***African Americans***

Law enforcement abuse was the number one topic of discussion by African Americans. The main issue raised by this group was being stopped regularly by police when driving or walking. The profiling often includes insinuation of gang involvement.

Four black boys in their early teens, in the park with our church group, went to ride the Ferris wheel. They waited as the ride was going until it stopped. White passengers refused to exit the ride, claiming they were afraid of the gang standing there. Operators called the police. The police arrived and insisted that the black boys leave the park. When adults were summoned to the site, the officers and ride staff claimed they were a gang and had to leave the park (Written Statement, Central City Community Center Hearing).

Individuals also note that officers do not apologize when a misidentification has been made, thus lowering the degree of respect accorded to officers. In another incident, an African American professional was stopped by a police officer and called a “n---r” for suggesting to the officer that he had made a mistake. After the officer took his driver’s license and car registration and determined his identity, he called the man by his professional title and did not issue a citation, but did not apologize for his behavior (Written Statement, Central City Community Center Hearing).

Another issue cited by African Americans is the combination of religion and race and its detrimental effect on most African Americans in Utah. Whenever public hearings had a significant representation of participants of African American background, comments focused on discrimination faced by those who are both not a member of the dominant faith and not of the dominant race. An African American inmate had this to say:

I have been under the jurisdiction of the Utah Department of Corrections for 17 years. During that time I have personally experienced or witnessed a legal system that shows indifference, blatantly discriminates and devalues African Americans, solely because we are not members of the dominant culture here in Utah. From the moment [we] come in contact with the Utah legal system, we are presumed guilty of crimes that we are charged with . . . Public defenders routinely advise [us] to plead guilty to overcharged crimes . . . [and] inform [us] that, “You are black in a white, LDS state, and you will be convicted if you take these charges to trial.” . . . Trials are inherently against African Americans in Utah . . . we seldom, if ever, are judged by a jury of our peers . . . Our evidence and witnesses are disparaged based on their origin instead of its merit. Judges originating from the dominant culture in Utah, more often than not rubber stamp the proceedings and finalize the warehousing of us (Utah State Prison Hearing).

Finally, an issue that participants raised at hearings was the situation faced by African American males in Utah. As one mother said, “Our African American men, they get them in the system at a young age so they set them up for failure” (Central City Community Center Hearing). Another echoed the concern, stating that it was commonly known to affect family’s decisions of where to live once their young boys became older:

Among the [African American] church population in Utah, the perception [is] that if you miss a black man on Sunday morning, go down to the jailhouse because he will be on his way to the prison, and especially if he’s 18 to 19 years of age. There is a tendency that when young black males graduate, for the parents to ship them out of the state about a week after graduation to keep them from encountering the judiciary system . . . It doesn’t matter how [well they did in school or sports], if they don’t leave the state, they can count on being in the system within six months (University of Utah Hearing).

### ***American Indians***

Comments from American Indians focused on racial stereotyping and jurisdictional issues. The stereotype of “drunken Indian” leads many American Indians to feel profiled by law enforcement and others in the legal system.

Every time when I come from a pow wow, you know, the city police are always stopping me. They say, ‘Hey, Indian, what [have you been] drinking?’ And I don’t touch liquor. But back when [*officer name*] and the old timer policemen [were around], they didn’t bother us, you know, they didn’t do nothing to us. They had respect for us. Now the policemen try to make criminals out of us. (Cedar City Hearing).

Also, participants told of situations where their cultural customs are not honored. For example, two non-Indian participants told of an American Indian male who had a drum circle and sweat lodge in his backyard. One evening when drumming with some grade school kids,

The police came and told them they had to stop. They said it [was] because it’s offensive. [The drum circle members] pointed out that the other neighbors, teenagers, were playing their music. [The police] responded with, “Yeah, but it doesn’t bother [the neighbors]. Your drumming bothers them” (St. George Hearing).

The women stated that whenever he uses the sweat lodge, which did not require any special building permit, officers show up at the house and tell him to stop. Even though it was not illegal behavior, the officers told him that “it’s not normal.”

In addition, many American Indian inmates told of situations where their right to practice their traditional religious beliefs were not honored by correctional institutions. While a process does in fact exist for Native American religious practices in the prisons, many participants either were not aware of it or did not perceive that the system was effective. One woman commented:

I had a son in prison, and they refused him his eagle feather. He had to prove his Indian blood, which this country [and] state makes an Indian prove, if you’re light complected... They denied him his rights to go to sweats until we proved it . . . We should talk about the reason, because denying that is to say that you must prove your heritage to attend a sweat is like saying that you can’t be Mormon unless you have ancestors that pushed the handcars. It makes no sense (Fort Duchesne Hearing).

Finally, issues related to jurisdiction between state or local governments and tribal governments are unique to American Indian groups. The recent jurisdictional agreement in the Uintah Basin was a source of much controversy at the hearing in Fort Duchesne. Some tribal members believe that due to this agreement, American Indian youth are suffering. One participant suggested that the Task Force read a copy of the jurisdictional agreement to examine and understand the discrimination that goes in that area of the state. The disdain for the agreement is pervasive.

According to an American Indian man:

What these folks are relating is true what they are saying. This is the worst place I've ever been in my life. It's gotten worse since this jurisdiction (Fort Duchesne Hearing).

An elder concurred:

I've lived here for the last 66 years, so I've seen a lot of things that happen in Roosevelt in the way of discriminating and judging people and labeling people. I would say it's a little worse than in my time. [Then], there was discrimination and there was a lot of labeling toward Indian people, but they did not treat us the way these new people treat us. And a lot of them we were able to talk to them. . . . Those police officers in those days, they had a heart, they had a conscience. Like I said, they discriminated against us, bashed us with words and stuff, you know. We let it bounce off of our skins. But nowadays, I feel we don't have any rights (Fort Duchesne Hearing).

American Indians throughout the state also think they lack sufficient information and communication from the major systems they encounter: cities, counties, state and tribal governments. This lack of communication is conveyed as an issue of great concern.

### ***Asian Americans***

A well publicized incident in Roy, Utah demonstrates a type of situation encountered by Asian Americans in Utah. When police arrived at a resident's home, a resident was holding a knife. He was asked to drop the knife, but because he did not hear well and did not understand English, he did not drop the knife and was killed by the officer (Sorenson Center Hearing, New Hope Hearing, Layton

**GROUP EXPERIENCES**

Hearing). This incident conveys parts of the immigrant experience, including language and cultural barriers, that affect the daily lives of some Asian Americans in Utah. A lack of trust in law enforcement and the courts, based on experiences in one's country of origin, is not unusual for many newer immigrants, especially those from countries where the legal system was not perceived as helping its citizens. Also, many individuals may lack specific knowledge about how to access the American legal system due to language and cultural barriers.

Asian American youth suffer similar harassment and abuse encountered by other racial and ethnic minorities. If found walking with other Asian Americans or with other minorities, males have been stopped, photographed and told they are now in the gang files. Asian American youth end up feeling that they are treated according to profiles instead of as individuals. Young people have been followed by security through malls regardless of the way in which they are dressed. For example, a young Asian American woman who had recently graduated from law school and was dressed in business attire reported that she was followed by security from the time she entered the mall until she exited (Confidential Statement). In another instance, a youth was taken by law enforcement officers to a field, beaten and told not to tell anyone. He told no one until his brother saw the bruises, and the youth related what had happened. The incident was not reported to the parents nor to authorities (Confidential Statement). Implied in the incident was racial discrimination.

Perhaps most important, is the fear of the stigma associated with getting involved with the legal system that affects Asian Americans in Utah. Families may not want to call attention to themselves or run the risk of bringing dishonor to themselves or their families. Thus, they do not seek out legal information that could be advantageous to them. In the recent shooting at the Triad Center, when the suspect's name was announced, a person whose name was similar in pronunciation

expressed concern that all Asians with similar sounding names would be associated with the shooting. In addition, Committee members noted that Asian Americans were less likely to attend the public hearings and make statements in public or report incidents for fear of the stigma. However, on an individual and more private basis, Asian Americans have reported their experiences.

Finally, Asian Americans struggle with being often perceived as recently arrived immigrants. This stereotypical perception affects the way Asian Americans are treated by the entire legal system. Asian Americans that have lived in this country for generations may know and understand the system well, but they often encounter others' expectations that are based on these stereotypes.

### ***Hispanics***

Hispanics participants perceived that police target them when stopping and arresting individuals, especially undocumented individuals. Participants perceive a lack of education or training on the part of law enforcement that affects the way they are treated. One Hispanic male participant said:

Police abuse is a reality that has been accepted even by . . . the police commissioner of New York. He didn't believe that any system could exist which could end police abuse as long as an officer had racial prejudices. What guarantees can the chief of police give us that none of these agents have racial prejudices? None. And they want to sell us on the idea that some civilians in our community would collaborate in the effort to train those police officers. The act of imposing a police, which is a military dictatorship, is due to the fact that [some Utah public officials] accuse all the illegal aliens of being criminals (Centro Civico Mexicano Hearing).

Immigration issues are faced by all Hispanics in Utah, regardless of their documentation status. Those with recently acquired legal status and those who were born as American citizens state that they are targeted and harassed by law enforcement, usually until their citizenship is proven. Those with undocumented status state that they face difficult situations, including threats and abuse,

when police officers act as immigration officials. The Committee acknowledges that most undocumented immigrants travel to the United States to settle and to have a better life for themselves and their children. However, participants stated that police tend to harass immigrants more than immigration officials. And the harassment often affects Hispanics, regardless of their immigration or citizenship status.

Many expressed that it appears that the local and state legal systems have decided to deport all undocumented individuals with which they have contact. No thought is given to situations faced by family members when the main wage earner is deported. A female participant stated that:

Her husband plead guilty to a DUI and possession of false documentation and was deported. He didn't speak or understand English and was told to plead guilty. The company he worked for did not want to pay her the rest of her husband's salary. Other people are also not being paid and if they complain, they are told that Immigration will pick them up (Confidential Statement).

The above quote also conveys another aspect of discrimination reported by Hispanics. Exploitation by employers and nonpayment for hours worked were relatively common themes among Hispanic participants. Community leaders also stated that they receive these types of complaints often.

Hispanic females also reported being treated disrespectfully by law enforcement. Many expressed reservation about filing complaints or taking other action for fear of continued harassment or, if undocumented, of deportation. As one woman expressed:

I had to call a police officer to have a problem resolved. Because of my last name is [*Hispanic last name*], they assumed that I don't know the language, that I'm ignorant, that I don't know the laws, and many times they will not even listen to me. They will listen to the other person. That makes it a bit disturbing. I know I'm not the only one with this experience. I know for a fact that many others share my same experience (St. George Hearing).

These assumptions about Hispanics are based on racial stereotyping and an assumption of illegal status. In many instances, communication problems may exist between local law enforcement and the Hispanic community. Cooperative efforts would go far to heal these problem areas.

### ***Polynesians***

Polynesian participants reported a number of areas specific to their ethnic community. Polynesian participants, like Asian Americans, tended to be hesitant to make critical remarks about the system. Smaller gatherings, such as those held at the Vai-Ko Latai Restaurant & Pool Hall in Salt Lake City and at Taylorsville City Hall brought out more candid comments than multi-ethnic gatherings.

Many comments from Polynesian participants focused around youth. Community members stated that they believe law enforcement profiles Polynesian youth as gang members and are quick to judge the young members of the community. As one woman said:

My concern is for our youth. You can have a whole bunch of them together, mixed [with] Caucasians. Why is it that we stick out like a sore thumb and every time maybe one kid does something wrong? It really destroys the rest of our kids (West Valley City Hearing).

A male counselor stated that he sees the targeting throughout the juvenile system:

I see Polynesian youth getting different sentencing for the same crime. For example, three youth were involved in an incident. One white boy from Park City received 100 hours of community services, while the Tongan youth was asked to serve 18 months in a youth center, as well as to pay \$83,000 in restitution and give 300 hours of community service (Taylorsville Hearing).

Physical size may also be a factor related to treatment of Polynesians by law enforcement. Some stated that because many Polynesians tend to be bigger in stature, police treat them like they are dangerous and may overreact due to this fear factor.

Another factor that may affect Polynesian communities is that many may lack information about how to access the legal system properly. Without knowledge of how the legal system operates, Polynesians may not be aware of how to advocate for their own best interests. Many participants stated the desire to learn more about the legal system, their rights and responsibilities. For some Polynesians, there was a concern about immigration status that made them hesitant to interact with the legal system for fear of deportation. Language barriers too can be an issue, especially with elders in the community.

Finally, cultural practices in the Polynesian community appear to affect interactions with the criminal justice system. Traditional cultural practices of physical discipline clash with Utah laws about child abuse. Traditional practices of community problem solving by interaction with tribal elders are not well known nor understood by the legal system. The traditional tribal system is being forced to change, and the influence of tribal elders on younger Polynesians may be weakening. The increasing shift of responsibility to individuals and their families can create difficulties. Polynesian participants point to these gaps in knowledge and communication as having an adverse impact on their interactions with the legal system.

Not all Polynesian participants agreed with the perception that racial bias occurs. Of all the groups that testified at the hearings, Polynesians participants seemed most likely to state that racism was not a problem. As one woman said:

In my 40 years that I've lived here – I'm a Pacific Islander – I don't think I've run into trouble with the law. And I've been called all sorts of names, but if you take it personally, it's going to cause you problems. My brothers have gotten into trouble and they weren't treated like some of these stories that we're hearing [tonight], they were treated human. I think it's all in the person's attitude . . . how you treat the police officer . . . We as a minority also have to respect the rules and the laws of this land (Logan Hearing).

### ***Rural Racism***

Ethnic minorities living in rural areas and small towns in Utah think they are at a disadvantage in the way they are treated by the rest of the community due to their heightened visibility and smaller population base. Attitudes held by people are often generational and difficult to change. When negative attitudes permeate a family, nuclear and extended, and these family members are in positions of authority, abuse of power is perceived to be rampant.

How can you stop this racism, this prejudice, when there are families involved? You have a county attorney that has the chief of police as a cousin or an in-law, and how can you stop that? How can you solve that problem when they're lying for each other because, 'Oh that's my sister's husband,' or 'That's my nephew.' How can you break that barrier. We are small town. We are small town America. And everybody knows that in the South that is so bad, but it's alive here, it's alive here on the reservation. . . (Fort Duchesne Hearing).

The comments by American Indians refer to areas where their Indian rights clash with the majority system, and they are more candid in their remarks. Their perception is that the discrimination in this particular area, Roosevelt, has become worse over the years. Similar comments have been made by other minorities who have encountered similar deep rooted attitudes in other rural small towns.

### ***Recommendations & Conclusions***

The Committee's recommendations to address the issues raised in this chapter are addressed in other segments of the report. Please see the final chapter for relevant recommendations. The primary purpose of this chapter is to draw attention to the diversity of experiences of different groups in Utah. Recognizing this diversity is critical to achieving the Task Force's mission.

## ***CONCLUSIONS & RECOMMENDATIONS***

The process of holding public hearings was designed to forge partnerships with community groups and learn about client experiences with the legal system. This chapter attempts to describe the lessons learned from the effort, the conclusions of the Client Committee, its follow-up efforts, and its recommendations for the full Task Force.

### ***Lessons Learned***

The public hearing process was as much a learning experience as it was an effort to collect information from the public. The Committee strove to set up hearings in the least intimidating environments possible and continually refined the hearing process. Recognizing the potential suspicion with which hearings could be regarded, the Committee worked to establish the trust necessary to hold these hearings. However, in some cases people still did not have sufficient trust to come forward publicly, establishing the need for alternative methods of collecting information.

An experience with a hearing in Wendover, Utah was particularly instructive. The Committee scheduled this hearing because several individuals suggested that law enforcement abuse was affecting Hispanic immigrants. The hearing was scheduled at a local Catholic church where many of the immigrants worshiped and, therefore, was perceived as a safe, comfortable place. Initially, Task Force and Committee members found the doors locked and no one in attendance. Although a local organizer opened the doors, the lack of community attendance suggested an atmosphere of fear and oppression. A report of two local police cars parked at the bottom of the hill leading to the church may have been a deterrent to participation. One of the hosts mentioned that community members feared having their statements and identity reported to local authorities by a member of their own ethnic group. During the hour that organizers allowed before canceling the meeting, the group

appeared to be under constant surveillance by people living near the church. Numerous cars that drove by the church also seemed to be observing the activity.

In comparison to this meeting, other meetings such as the ones at a Park City church, in Logan, and in St. George, had much better participation. However, many of the participants were immigrants, documented and undocumented, and/or were reluctant to speak in public, perceiving a potential for retaliation. An American Indian participant conveyed:

Unfortunately, I don't feel comfortable standing here explaining my experiences both directly and indirectly, with the different systems here, whether it's with Chief . . . whether it's Judge . . . I really wish I could, but for fear of repercussions, I can't and I won't. They have access to my telephone number, to where I live, my driver's license, and any other information that they can get through the system. . . it's unfortunate that as an indigenous American that I can't feel comfortable in my own country (Logan Hearing).

Many participants at the various meetings chose confidential methods of providing information.

Perceptions about the legal system within certain geographic areas seemed to affect hearing participation. Committee members believe that the types of statements received at hearings also was influenced by the perception of client control of the hearing environment. Some hearings were attended by representatives of the local legal system both in rural and suburban areas. This fact also seemed to influence the kind and amount of testimony given. For example, in Logan, local judges and law enforcement officials attended and spoke at the hearings. Hearings that were targeted for specific audiences, such as the Fort Duchesne hearing hosted by the Ute Tribe on tribal land, had strong attendance and a detailed reporting of experiences. Individuals giving testimony at these locations were more candid in their remarks and gave specific information.

**Conclusions**

Many minorities believe they are treated unfairly by the entire legal system. When their experiences involved people of the majority culture, the overall perception is of unequal treatment. For instance, minorities stated that they were often penalized either directly by being arrested for a perceived infraction or indirectly because of the consequences of the incident. Participants stated that in accidents either the minority driver was determined to be in the wrong, or if the white driver was at fault, the penalty was lighter or dismissed. In cases of vehicular manslaughter, when the victims were minorities, testing for DUI and investigation into causes was perceived to be less thorough than when the situation was reversed. Further, when minority youth were involved with White youth, the treatment is not perceived as equal. Minority youth felt blamed for situations for which they may not have been responsible.

[A] Hispanic boy went to [*names a Utah city*] to visit family. He went for a ride and was surrounded by 15 Anglo males. Somebody called the police. When they arrived they arrested the Hispanic boy for disturbing the peace. None of the Anglo males were arrested. A court date has been set . . . (Confidential Statement).

In other instances minorities think they are discriminated against by attorneys and the courts. The attorneys were perceived to be taking advantage of and not serving their clients. The courts were perceived to summarily dismiss minority cases without giving a full hearing to issues. Necessary, timely communication with clients did not occur.

A couple of years ago, my son got in a accident out here in front of the school. The cops came and did a vague report. I got myself a lawyer because the person who ran over my son didn't have insurance on his van and at the time was an FBI. Nothing came of that, and I have forty-thousand dollar medical bill to this day, plus my son is [in pain still]. That's not fair. At the same time, my other son got put into detention. We went to Judge . . . , and he told us he doesn't really have anything to do. We should have spoken up. We didn't know when to speak up, because of the terminology. We went and found ourselves another lawyer and filed an appeal. We didn't hear a response for a long time. When it finally came, were told, it was

too late . . . Judges and lawyers know how it is. They make all the rules and laws up there, and they don't come down here (Blanding Hearing).

### *Law Enforcement Abuse*

The predominant perception from the public hearings was one of abuse by law enforcement. This abuse is demonstrated through state-wide statements of profiling, harassment, verbal and physical abuse, and abuse of power. Minority groups perceive that they are targeted, seen as being guilty until proven innocent, and denied due process.

The perception exists that racial and ethnic minorities are targeted because they are perceived to fit criminal profiles. Minorities reported being stopped routinely by police without reason.

As I drive to school every morning . . . I make the trip down 900 East, and I drive right by a golf course, which is probably about 2500 South . . . the cops are there on a daily basis behind the bushes, just waiting to get people. So I'm aware of that and I've gotten pulled over twice. The second time, there was a van in front of me, another car on the side of me, a car in front. It was a prime time where the traffic is going that way so I know I wasn't driving any faster or slower than anybody else . . . I got pulled over and I asked the officer for an explanation. He couldn't give me a decent explanation (University of Utah Hearing).

My experience with the cops is that they've pulled me over for nothing just because I'm driving in an upscale neighborhood (West Valley City Hearing).

Examples of harassment and abuse from repeated traffic stops to physical contact were discussed. Some encounters would not appear on official records as the incidents did not proceed beyond a traffic check. However, participants perceived the interaction as based on racial profiling. When the process continued to an arrest, other abuses of power were reported.

. . . a person who lives in this county here who is a police officer, born from a staunch Mormon family. He went chasing after a Navajo person who had been drinking. He caught him, grabbed him from the shoulder just threw him down on the cement and kicked him. This is how people are being treated (Blanding Hearing).

The perceptions of individuals about law enforcement treatment of minorities represent broadly held opinions of groups -- American Indian, African American, Asian American, Hispanic, Polynesian, and White -- in all areas of the state where hearings were held.

### *Limited Services*

Part of the perception of unequal justice emerges from a perception of a limited availability of services, including few attorneys of color, insufficient numbers of certified court interpreters, and a lack of workforce diversity. Participants perceived that the numbers of minority attorneys in the state are not proportionate to their representation in the general population. This perception included the implication that attorneys of color would likely be more qualified to represent minority clients because of their familiarity with racial or ethnic backgrounds. Difficulty in obtaining adequate representation added to the overall perception of unfair treatment.

In Ogden we have a problem with the legal system. We asked them if they had any Hispanic defenders there. They told us, "No." We also asked them about the receptionists, if they were Hispanic. They said, "No." So we asked them, "Well how do you handle all these court cases if you don't have any Hispanics in the system?" They never gave us an answer. All they told us is, ". . . you send us a list of Hispanic lawyers and we will put them into the system." They also told us they would hire a Spanish receptionist. We have not heard nothing from them (Sorenson Center Hearing).

The reference to the need for Hispanic representation in Ogden, an urban area, is perceived to exist for other groups, particularly in rural areas where there may be few if any attorneys from minority backgrounds. Defendants expressed being represented by attorneys who were not culturally sensitive and who stereotyped their clients using racial or ethnic profiles.

Participants commented on inadequate numbers of culturally knowledgeable, certified court interpreters, especially outside of the Salt Lake area. In addition, several comments on the lack of a certification process for interpreters in languages other than Spanish.

The lack of personnel of color within the legal system, especially at the early stages of the process, creates the perception that clients are not treated equally as they enter the system. Participants suggested that a diverse workforce can lead to greater interaction and understanding between ethnic and racial groups within the workforce, and thus better serve the population.

### *Cultural Awareness, Language and Communication*

The hearings have produced increased awareness of the differences in cultural approaches to legal system issues. The lack of cultural awareness, insensitivity to cultural needs, language barriers, and need for better communication between the legal system and minority ethnic groups are issues that underscore the need to integrate diversity training into every aspect of legal system training. Supplemental, on-the-job training is insufficient.

In the public hearings, each racial and ethnic group demonstrated different patterns of language and communication in different situations. When these customs were not observed, minority participants expressed that their needs were overlooked or ignored. An American Indian in Blanding commented on an experience when asked to serve on a jury.

I received a letter in the mail, and a questionnaire to fill out. I decided I was not going to respond. I have no wish to serve on the jury duty. The next letter I got said, "If you don't answer these questions, you're in contempt of the court." Do I have any right? I finally wrote back to the judge that I had no intention to serve. My sister received the same letter. "If you don't respond, you are in contempt of court." Speaking of understanding the language, this is what we deal with. I wish the judge could ask, "Does your health permit you to serve on any jury duty? Do you have reliable transportation? Does your income permit you to serve on this jury?" Even the distance we have to travel [is too long]. My sister was in shock. I want these judges to know it. She didn't know what to do. Where should I go? Who should I talk to? I told her, "Just write back to them asking you to be excused from jury duty because of your asthma problem and arthritis." Why isn't there a kinder letter that states, "By the way, we sent you a letter. We would like you to respond." . . . Some of us don't understand the terminology that is used in the legal [system]. That's what I call double twist or triple twist English language to us. We don't understand what you're saying (Blanding Hearing).

Frustration with the system is common among racial and ethnic groups, as many do not understand a system that has different approaches to legal issues than one with which they are familiar. The system is perceived as unfriendly and unapproachable.

### *Complaint Processes*

Numerous participants stated that the processes for filing complaints or grievances against criminal justice system officers or agencies are inadequate and intimidating. They reported a reluctance to file complaints due to fear of harassment and retaliation by law enforcement, attorneys, judges, prison staff, and others in the criminal justice system. Lack of uniformity between agencies in the filing and processing of complaints also leads to confusion and misunderstandings. Participants noted a lack of timeliness in hearing the outcomes of complaints. They judged complaint processes throughout the criminal justice system as ineffective means to remedy injustices.

### ***Follow-Up Efforts***

#### *What is “the System?”*

Comments made by participants at hearings indicated a lack of knowledge about the legal system. Despite introductory statements at each public hearing that outlined the parameters of the criminal justice system, many participants did not separate the judicial system from other public sector systems, such as education. While there are situations where issues may interconnect, most participants implied that they see the separate systems as one system. This perception creates difficulties when participants have to deal with the legal system. Many were not familiar with the procedures, with their own rights, nor with their options for additional information and assistance.

I just want to know, if ever this situation should occur, where do I go, who do I talk to, where do I get advice, who will stand with me and give me legal advice. On the reservation its much easier, because you have all your family there and the language and people understand you.

But in the big cities, we don't know where to go, and a lot of things just seem to bypass us, you know. We get ourselves in deeper and deeper into problems just because we don't know what our rights [are] and we don't know where to turn or who to talk to (Indian Walk-In Center Hearing).

The public hearings point to a need for education of the public about the structure of American government and the separations that exist between governmental entities. There is also a need for governmental entities to work more closely with one another and with community groups to solve problems. In particular, at the points of connection between the criminal justice system and the health care system, between the juvenile justice system and the public schools, and between social services and youth corrections, government groups need to pay particular attention to the transitions and the blurring of the lines between the entities. Government entities should be aware of this perception, how poor service by one sector tarnishes the reputation of the entire system.

#### *Forwarding of Participant Comments*

As mentioned, many comments collected at public hearings concerned subjects that fall outside of the Task Force's mission. Regardless of its mandate, Committee members were concerned by many of these comments. Therefore, they did a number of things to facilitate forwarding this information to appropriate entities. For example, comments received at the Blanding hearing about the public education system were shared with the Task Force's Juvenile Committee, the State Office of Education, and the Utah Division of Indian Affairs. In addition, comments about particular segments of the system were shared with Task Force members and other criminal justice system leaders. For example, after it became clear that many comments centered on law enforcement, Task Force leadership attended a meeting of Law Enforcement Administrators and Directors (LEADS) to discuss the hearings with local law enforcement leaders. In another instance, comments regarding

American Indian religious practices in the prison were sent to the Utah Department of Corrections and the Utah Division of Indian Affairs. Policies for the Native American Religious Program, prepared by the Native American Spiritual Practices Task Force (established in June 1997), serve as guidelines for the provision of ceremonial practices in correctional institutions. The Division of Indian Affairs facilitated the process for developing the policies, including participation of tribal entities and state government.

Following a hearing held at the Utah State Prison, the Task Force received numerous letters from prison inmates. These letters discussed the handling of inmate cases and their treatment in prison. While the Task Force cannot intervene in individual situations, the Committee appreciated the input and information provided by inmates and others who have written to the Task Force. Each inmate who wrote received a response, and all letters have been forwarded to the Task Force's research consultant for qualitative analysis and appropriate follow-up.

### *Where Do We Go From Here?*

While the Committee conducted the 27 public hearings and reviewed the information received from participants, there is still work to be done to make appropriate use of the information it received during the hearings. The Committee recommends that this report be utilized not just by the full Task Force but by individual subcommittees. In addition, members urge community based organizations and governmental agencies to learn from this report and to use it to assist in meeting the needs of Utah's minority communities.

Key to the Task Force's efforts will be the partnerships developed through the public hearing process. With partnerships as an explicit part of the Task Force's mission, the Committee was one of the first subcommittees to begin to reach out to the community to learn and to discuss solutions.

The Committee and Task Force staff worked with a number of different community groups, tribes and other partners to host its public hearings. Committee members learned that facilitating communication between ethnic communities can go a long way toward solving the problems faced by racial and ethnic minorities in the criminal justice system in Utah. Hopefully, these efforts will become ongoing partnerships both within and outside of government to conduct the follow-up necessary to solve problems related to racial and ethnic fairness.

At nearly every hearing, participants posed the following question to the Task Force: “Now that you’ve heard our issues, how are you going to correct the problems?” The answers that the Committee suggest are included in its recommendations for system improvement. But even more critical, the actual implementation of those recommendations will be the ultimate test of the system’s willingness to address racial and ethnic bias in a serious, committed manner.

### ***Recommendation Summary***

The willingness of ethnic and racial minority communities to discuss their perceptions of an unfair legal system based on race and ethnicity is evidence of a need to effect changes that would make the system more accessible and able to serve the needs of the population effectively. Recommendations by the Committee can be grouped into several major categories.

#### ***Administration***

The Committee recognizes that certain aspects of racial and ethnic fairness in the criminal justice system are best affected by the decisions, attitudes and examples of leadership. Some recommendations may require funding appropriations. Others simply require the commitment of administration to set the tone of the agency. Administrative bodies affected by these

recommendations include: law enforcement administrators and directors, the Utah Legislature, the Judicial Council, as well as local, county, and state government agency leadership. Included in these recommendations are several recommendations to the Task Force which represents one leadership group within the legal system.

- Law enforcement administrators and directors should demonstrate zero tolerance for racial profiling in officer conduct and decision making.
- Case workers and correctional staff should be screened for negative behaviors resulting from racial bias.
- Better supervision of court clerical staff and support from administrators to front line supervisors in dealing with issues of race are needed.
- Increased funding would allow local governments to lighten the case load of public defenders and prosecutors by hiring more attorneys and staff.
- The budget for appointed attorneys should be separate from the budget for county prosecutors. Since funding a public defender office with funds from the prosecutor office's budget can create the appearance of a conflict of interest, local governments should ensure that the budgets are separate.
- Certified interpreters should be used at all times. Bilingual and bicultural experience is critical to effective interpreting.
- Non-English speaking racial and ethnic minorities should have equal opportunity to attend the rehabilitation programs that are critical for release from incarceration.
- All segments of the criminal justice system should develop ways to effectively address language barriers. Trained interpreters should be utilized. The provision of interpreters should be the responsibility of the service provider. Language barriers should not be allowed to dangerously delay service provision nor sacrifice the quality of those services.
- Juvenile justice system services should be provided to the entire family to insure that family issues are addressed as well as those of the minor. The current lack of services results in juveniles being sent back to a family where problems have not been resolved.
- The Task Force should utilize the knowledge gained by the Client Committee's public hearing efforts in its future work to develop the partnerships necessary to ensure fair treatment of racial and ethnic minorities.

- The Task Force should establish partnerships with and work constructively with other governmental organizations whose service to *their* clients affects the judiciary's reputation.
- The Task Force and others should work with the community, particularly racial and ethnic communities, to create mechanisms to educate minorities about the parameters of the criminal justice system.
- The Task Force and others should work to facilitate communication between the criminal justice system and minority communities in order to build trust and lower the levels of fear that result from cultural differences and lack of knowledge about the system.
- The Task Force and others should work toward the establishment of a single clearinghouse for justice-related complaints that can collaborate with governmental and private organizations for the fair treatment of racial and ethnic minorities in Utah. This organization should be autonomous and have the credibility with governmental agencies necessary to effect positive change in the lives of individuals who are treated unfairly in the system. This organization's role should be both advocacy of individual cases and of system-wide improvements. This organization must also have the credibility with individuals in the racial and ethnic communities.

### *Workforce Diversity and Recruitment*

The Committee recommends that all segments of the criminal justice system reflect the populations that it serves. Recruitment within minority communities is essential to ensure a diverse workforce.

- Criminal justice system agencies should make efforts to have workforces that are reflective of the populations they serve. Recruitment efforts should be made with minority populations for career positions. Affected entities include:
  - Law enforcement, including officers in P.O.S.T. training and police academies, administrators and directors
  - Legal Counsel, including private attorneys, court-appointed attorneys, public defenders, prosecutors, paralegals, and staff
  - Courts, including judges, administrators, clerical staff, court interpreters, juvenile probation officers, and juvenile intake workers
  - Youth Corrections, including administration, line staff, and contract treatment providers
  - Corrections, including administrators, prison staff, Adult Probation & Parole staff, Board of Pardons & Parole, hearing officers

- Criminal justice system agencies should make efforts to hire and compensate those with second language and cross-cultural capabilities. Affected entities include:
  - Law enforcement, including officers in P.O.S.T. training and police academies, administrators and directors
  - Legal Counsel, including private attorneys, court-appointed attorneys, public defenders, prosecutors, paralegals, and staff
  - Courts, including judges, administrators, clerical staff, court interpreters, juvenile probation officers, and juvenile intake workers
  - Youth Corrections, including administration, line staff, and contract treatment providers
  - Corrections, including administrators, prison staff, Adult Probation & Parole staff, Board of Pardons & Parole, hearing officers
- Certification for court interpreters should be available for languages other than Spanish.

### *Training*

The Committee recommends training to address the perception of bias among clients of the criminal justice system. The criminal justice system at all levels, rural and urban, must become more sensitive to the needs of the diverse population it serves. Training should include cultural awareness and diversity components. It should be a significant part of every agency's basic training. Recommendations for training on specific issues such as American Indian religious rights and hate crimes enforcement are included.

- Cultural awareness training required for all levels. Personnel must become aware of individual biases and how these biases are manifested in the daily use of language and in the interactions with ethnic individuals. The training should be a basic component in the training of individuals to effect changes in behavior, and not only as supplemental training. Relevant agencies are listed below:
  - Law enforcement, including officers in P.O.S.T. training and police academies, administrators and directors
  - Legal Counsel, including private attorneys, court-appointed attorneys, public defenders, prosecutors, paralegals, and staff
  - Courts, including judges, administrators, clerical staff, court interpreters, juvenile probation officers, and juvenile intake workers
  - Youth Corrections, including administration, line staff, and contract treatment providers
  - Corrections, including administrators, prison staff, Adult Probation & Parole staff, Board of Pardons & Parole, hearing officers

- Improvement in communication skills through training in communication skills and cultural sensitivity. The availability of personnel with second language ability and cultural diversity is needed to remove barriers encountered by those interacting within the legal system.
- Criminal justice system players, from line staff through administrators must be aware of their individual biases in order to avoid prejudiced treatment of minority victims. The tendency to discount the statements or experiences of people of color may be unconscious for some but is still inexcusable and dangerous behavior. Training to address this type of bias is essential for all those who work within the criminal justice system.
- Correctional staff, inmates and tribal members should receive training on the issues related to Native American religious practices in the prison.
- Local law enforcement, the legal community, and community organizations should be offered training on hate crimes in order to promote consistent recognition and reporting of hate crimes.

### *Outreach*

The Committee recommends a number of efforts that can be categorized generally as outreach. These efforts are needed to provide education to racial and ethnic minority communities about their rights and responsibilities in the legal system. They also strive to increase positive interaction and better communication between the criminal justice system and racial and ethnic minority community members.

- Law enforcement officers should be encouraged to learn at least one additional language so that they can have better communication with the community. Officers with second language skills should receive additional compensation.
- The criminal justice system should attempt to educate minority and non-English speaking communities about its proper role in the community, including:
  - law enforcement,
  - the Utah State Bar,
  - the Courts (district, justice and juvenile),
  - Youth Corrections, and
  - Corrections.
- Criminal justice system information, including the role of law enforcement, court information, and prison procedures, should be translated into Spanish and other languages. This

information should be made available to family members, religious leaders, and community members.

- Courts, state and local governments and legal organizations should offer programs that educate the public about how Utah's criminal and civil legal systems operate. Programs could include civics classes for minority communities, tours of the courts for schools and youth clubs, a *Meet the Judges* night, peer court experiences, town meetings and having a court community outreach administrator to serve as a liaison between the courts and the public. These educational efforts should involve collaboration with Utah schools.
- Legal organizations should also encourage ethnic minority youth to become attorneys.
- Plea agreement forms provided by the courts should include information about the potential effect of pleas on immigration status.
- Ethnic minority advocate positions should be created by the courts, adult and juvenile, as a means of helping families through the court process. The availability of an advocate who is knowledgeable about the system and has a bi/multi-lingual capability would create a perception of a friendlier and more caring system.

### *Complaint & Grievance Processes*

All segments of the criminal justice system should have complaint and grievance procedures that are well-known to the public and are free from intimidation or potential retaliation.

- Procedures for requesting information and filing complaints need to allow individuals a degree of privacy in filling out forms. Clients requesting information do not think adequate feedback is available. Procedures for follow-up should be improved.
- Create an effective process through which discriminatory behavior of law enforcement officers can be identified and necessary procedures taken to reprimand officers for such behavior.
- Complaint processes should be user-friendly, allowing individuals to file complaints in non-intimidating environments.
- Efforts should be made to protect complainants from potential future harassment, retaliation and retribution against family members as a result of filing a complaint.

- Minority communities should receive more information about grievance procedures throughout the criminal justice system, including:
  - law enforcement,
  - the Utah State Bar's consumer complaint process,
  - clerical staff in the various courts throughout the state (district and justice courts),
  - the Judicial Conduct Commission,
  - youth corrections, and
  - Utah prisons and jails.
- The Utah State Bar's consumer complaint form should be translated into Spanish and other languages.
- An accessible, user-friendly mechanism for victims to report dissatisfaction with their treatment by the system should be established. This complaint process should include clear, well-defined follow-up and notification procedures and should be publicized to ethnic communities.
- Functional systems should be in place to inform inmates of policies and procedures regarding the operation of the prison, probation, parole, and of the Board of Pardons and Parole.
- Create a board that is composed of people who would be perceived as fair by both ethnic communities as well as the legal system to which complaints, questions and suggestions may be presented. Both the communities and the legal system need to view the board as vehicle to effect better relationships and better service.

### *Research & Data Collection*

The importance of empirical research to document actual bias is important to the work of the Task Force. The Committee recommends the following items related to research and data collection.

- Law enforcement agencies should keep accurate racial and ethnic data on all stops (traffic and pedestrian), searches, citations, arrests, and citizen complaints. Stops should also include data collection about reason for stops (i.e., gang-related stops, traffic violations).
- The Task Force and the correctional system should review statistical information regarding the demographics of the prison, probation and parole populations to determine the reasons for overrepresentation of minority groups. Attention should be paid to separating out the statistics for Hispanic from White and other specific groups (i.e., not just Asian, but Korean, Vietnamese, etc.) Information regarding non-English speakers is essential.
- The race and ethnicity of crime victims should be maintained electronically in databases so that further studies of minority crime victims are possible in the future.