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# The Nebraska Minority and Justice Implementation Committee Progress Report

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# The Nebraska Minority and Justice Implementation Committee



Progress Report  
February 2004

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# The Nebraska Minority and Justice Implementation Committee

## Implementation Committee Chairs

(listed alphabetically)

**Linda R. Crump, J.D.**, is the Assistant to the Chancellor for Equity, Access, and Diversity Programs of the University of Nebraska-Lincoln. She has served on the Nebraska State Bar Association House of Delegates for three terms and as chair in 2000. She is currently serving as the chair of the Nebraska State Bar Association Standing Committee on Professionalism.

**John M. Gerrard, J.D.**, is a judge on the Nebraska Supreme Court. He was appointed by Gov. Ben Nelson in April 1995. Judge Gerrard has served as chair of the Supreme Court's Gender Fairness Implementation Committee since 1996 and is the court's representative on the state's Judicial Branch Education Advisory Committee. Prior to his appointment, Judge Gerrard was a partner in Gerrard, Stratton & Ptak, P.C., in Norfolk, where he was in private practice for 14 years.

## Implementation Committee Members

(listed alphabetically)

**Edna R. Atkins, J.D.**, is a Douglas County Court judge. She serves on the Judiciary Committee of the NSBA. She is co-chair of the Public Trust and Confidence Subcommittee of the NSBA Judiciary Committee.

**Valorie Bendixen** was elected as the Hall County Clerk of the District Court in November 2002. After graduating from the University of Nebraska-Lincoln her professional career has included 11 years with the Nebraska Supreme Court as a probation officer, four years with the Nebraska Department of Correctional Services and several years of employment as a certified drug and alcohol counselor.

**Judy Beutler, M.P.A.**, is an associate administrator in the Administrative Office of the Courts. She served on the Nebraska Supreme Court Task Force on Gender Fairness and is a current member of the Nebraska Supreme Court Gender Fairness Implementation Committee and the Nebraska Legal Services State Planning Group "Equal Access to Justice." She is a Fellow of the National Center for State Courts' Institute for Court Management.

**Edward C. Birkel, M.S.**, was appointed the Probation Administrator for the Nebraska Supreme Court in 1998. Prior to that, he had served both as a probation officer and chief probation officer in the Nebraska probation system since 1978.

**Riko E. Bishop, J.D.**, is a partner with Perry, Guthery, Haase & Gessford, P.C., L.L.O. She serves on the Nebraska Supreme Court Committee on Practice and Procedure and is presently on the Board of Trustees of the Lincoln Bar Association. She was appointed to

the Nebraska Affirmative Action Committee and presently serves as chairperson; she is a member of the Nebraska Association of Trial Attorneys; and she is vice president of the Nebraska Council of School Attorneys.

**Patrick J. Borchers, J.D.**, is the Dean of Creighton University School of Law. He serves on the Law School Admission Council's Test, Development, and Research Committee. He is the author or co-author of four books and approximately 35 professional journal articles in several fields, including the most widely cited empirical study on the conflict of laws.

**Vernon Daniels, J.D.**, is a judge of the Separate Juvenile Court of Douglas County. Previously, he served as supervisor of the juvenile division of the Douglas County Attorney's Office. He was with that office from December 1993 to September 2002.

**Judi M. gaiashkibos**, an enrolled member of the Ponca Tribe of Nebraska, is the Executive Director of the Nebraska Commission on Indian Affairs. She serves on the U.S. Civil Rights State Advisory Committee. She is a board member of the Governor's Interstate Indian Council and was an American Indian Law Resource Center NGO attending the 2001 World Conference on Racism in Durban, South Africa.

**Frank E. Goodroe** was appointed State Court Administrator by the Nebraska Supreme Court on January 1, 2004. He previously served as District Court Administrator for the Douglas County District Court. Goodroe has extensive experience working in federal court administration, having served as the Clerk of Court for the U.S. Bankruptcy Courts in St. Louis and Los Angeles, and as the Court Executive Officer of the U.S. District Court, Central District of California.

**John P. Grant, J.D.**, is the president of the Nebraska State Bar Association. He serves on the NSBA's Executive Council and has been a member of the House of Delegates since 1990, serving as chair in 1999. He is a former General Counsel for the Nebraska Department of Insurance and has served as special prosecutor for Douglas County District Court grand juries. He is a general practice attorney in Omaha.

**Robin W. Hadfield, M.A., J.D.**, is a career law clerk for Judge John F. Wright of the Nebraska Supreme Court. She is a member of the Nebraska State Bar Association's Access to the Profession Committee and was previously chair of the NSBA Human Rights Committee. She has also worked as an administrative attorney and appellate attorney for the Nebraska Commission on Public Advocacy.

**Cecilia Olivarez-Huerta** is the Executive Director of the Nebraska Mexican American Commission. She is an advocate for Hispanics and serves on many task forces and committees dealing with Hispanic issues.

**John F. Irwin, J.D.**, has served as the Chief Judge of the Nebraska Court of Appeals since 1998 and has been on the Court of Appeals since its inception in 1991. He is an officer of the Council of Chief Judges. He also chairs the Nebraska Supreme Court Judicial Education Advisory Committee and serves as vice-chair of the Judicial Ethics Committee.

**Dennis R. Keefe, J.D.**, is the elected Public Defender for Lancaster County, Nebraska. He is a member of the Bar Information Program of the ABA Standing Committee on Legal Aid and Indigent Defense, and a member of the National Legal Aid and Defender

Association, the National Association of Criminal Defense Lawyers, and the Nebraska Criminal Defense Attorneys Association.

**Richard G. Kopf, J.D.**, has been Chief United States District Court Judge for the District of Nebraska since November 1999. He was appointed a United States District Judge by President Bush in May 1992. From February 1987 through May 1992, he served as a United States magistrate judge.

**Catherine M. Mahern, J.D.**, is a professor of law and director of the Milton R. Abrahams Legal Clinic at Creighton University School of Law. She also is holder of the Connie Kearney Chair in Clinical Legal Education and has acted as a legal education consultant in Bosnia and Croatia with the Central and Eastern Europe Law Initiative of the American Bar Association. In 2002, she was awarded the Omaha Bar Association Bob Spire Award for outstanding community service.

**Natalie A. Malmberg**, originally from Venezuela, has lived in Nebraska for the past 16 years. She has been interpreting in state courts for the past 11 years and was among the first to become certified as a court interpreter in Nebraska in 2000. She is a member of the National Association of Judiciary Interpreters and Translators and the Nebraska Association for Translators and Interpreters.

**Carlos Monzón, J.D.**, is an Assistant Federal Public Defender. He received his J.D. from the University of Nebraska College of Law in 1994. He is a member of the Nebraska Criminal Defense Attorneys Association and the National Criminal Defense Attorneys Association.

**D. Milo Mumgaard, J.D.**, is the Executive Director of the Nebraska Appleseed Center for Law in the Public Interest. He is a past chair of the Poverty Law Section of the Nebraska State Bar Association, and has served on several legislative and Governor-appointed task forces addressing the civil, immigration, employment, and other legal rights of Nebraska's newcomer populations. He received his J.D. from the New York University School of Law in 1988, where he was Editor-in-Chief of the NYU Review of Law and Social Change.

**Nicole Neesen, J.D.**, is a Staff Attorney for the Milton R. Abrahams Legal Clinic at the Creighton University School of Law. Prior to joining Creighton she served as a Douglas County Public Defender from 1993-2001. She is a member of the Board of Directors of the Concord Mediation Center and the Federation of Catholic School Board Parents.

**James E. Rembolt, J.D., M.A.**, is former president of the Nebraska State Bar Association. He serves on the Association's Executive Council and House of Delegates. He is a former president of NCLE, Inc., the association's continuing legal education organization, as well as Executive Council liaison to the association's Budget and Audit; Ethics; Ways, Means and Planning Committees, and the Women and the Law Section.

**Harold L. Rock, J.D.**, is a founding partner of Kutak Rock, L.L.P. He is a member of the American Bar Association President's Advisory Council on Diversity; former chair of the Nebraska Bar Commission; member of the ABA Legal Education Law School Accreditation Committee; past member of the American Bar Association Immigration Pro Bono Projects Committee and the National Equal Justice Library Board of Directors; chair, Nebraska Indigent Defense Task Force; and president, Omaha Legal Aid Society.

**Mohammed Sadden, J.D.**, has been in private practice as a solo practitioner in South Sioux City, Nebraska, for 34 years. He is a past member of the Educational Equity Committee for the Sioux City public school system which monitors compliance with civil rights legislation. He is a member of various organizations advocating rights for minorities combined with a law practice predominately representing minorities.

**Jane L. Schoenike, J.D.**, is the Executive Director of the Nebraska State Bar Association. She serves on the Supreme Court Gender Fairness Implementation Committee and provides staff support to the NSBA Access to the Profession Committee. She is a member of the National Association of Bar Executives Diversity Committee, ABA, and Minnesota State Bar Association.

**Anna Williams Shavers, J.D.**, has been a law professor at the University of Nebraska College of Law in Lincoln, Nebraska, for 15 years where she serves as co-adviser to the Black Law Students Association and the Multicultural Legal Society. After graduation from the University of Minnesota Law School, she practiced with the law firm of Faegre and Benson in Minneapolis before joining the faculty of the University of Minnesota.

**Jose J. Soto, J.D.**, is Vice President for AA/Equity/Diversity for Southeast Community College. He is a 1984 graduate of the University of Nebraska College of Law. Over the past 25 years, he has served Nebraska's judicial, legal, and law enforcement communities as a Spanish language interpreter/translator, diversity/cultural competence trainer, and consultant on working with Hispanic populations.

**Cassia Spohn, Ph.D.**, is professor of criminal justice at the University of Nebraska at Omaha. She is the author of *How Do Judges Decide? The Search for Fairness and Justice in Sentencing* and *The Color of Justice: Race, Ethnicity and Crime in America* (with Samuel Walker and Miriam DeLone). Her research interests include the effect of race and gender on court processing decisions, the effect of victim characteristics on sexual assault case outcomes, and charging and sentencing decisions under the federal sentencing guidelines.

**Robert R. Steinke, J.D.**, is a Nebraska district court judge for the Fifth Judicial District in Columbus. He chairs the governmental and public relations committee of the Nebraska District Judges Association and is a member of the Nebraska Supreme Court Committee on Practice and Procedure. He also is a former board member of the Legal Aid Society.

**David R. Stickman, J.D.**, is Federal Public Defender for the District of Nebraska. He is president of the Nebraska Criminal Defense Attorneys Association and immediate past president of the National Association of Federal Defenders. He is an adjunct professor of law at Creighton University School of Law and a member of the Nebraska, Maryland and District of Columbia bars.

**Robert Thorson** is the Lieutenant Colonel of the Nebraska State Patrol. He has been a member of the Nebraska State Patrol for the past 27 years and was recently named assistant superintendent. Prior to this position he headed up the investigative services divisions within the patrol as Major. He is a licensed polygraph examiner and former statewide polygraph coordinator. He chairs the Citizens Advisory Committee for the patrol and is involved in various other committees and organizations.



**Alan J. Tomkins, J.D., Ph.D.**, is the Director of the University of Nebraska Public Policy Center and is a professor in the UNL Law/Psychology Program. He consulted with the National Center for State Courts on the Hearst Corporation's national study in 1999 of public trust and confidence, "How the Public Views the State Courts." He is the author of several articles on public opinion of the courts and co-edited a special issue of *Behavioral Sciences & the Law* on "Public Trust and Confidence in the Courts" published in 2001.

**Susan M. Ugai, J.D.**, is in private practice as a solo practitioner in Lincoln, Nebraska. She currently serves on the boards of Friendship Home, Goodwill Industries, Nebraska Community Foundation, Nebraska Lawyers Trust Account Foundation, and the Woods Charitable Fund.

**Ken Vampola, J.D.**, is Chairman of the Nebraska Board of Parole and formerly the presiding judge of the Winnebago Tribal Court. He is a member of the Nebraska Community Corrections Council and the Governor's Substance Abuse Work Team. He was a member of the Governor's Task Force on Whiteclay and continues to consult at the state and federal levels concerning Native American issues.

**Terrance O. Waite, J.D.**, is a partner with Waite, McWha and Harvat, a five-lawyer firm in North Platte, Nebraska. He is a Fellow of the Nebraska State Bar Foundation and the Legacy of Liberty Project and a member of the Defense Research Institute and the Trial Lawyers Association.

**Alfonza Whitaker, J.D.**, is the Executive Director of the Nebraska Equal Opportunity Commission. He received his J.D. in 1982 from Creighton University School of Law. After graduation from law school he was engaged in private practice where he focused on civil rights litigation. From May 1989 to December 1996, he was employed as an assistant attorney general with the State of Nebraska Department of Justice.

**Eric L. Whitner, J.D.**, is owner of Whitner Law Firm, P.C., L.L.O. He is past president of the Midlands Bar Association and was elected to serve three terms on the Board of Governors of the National Bar Association, the largest organization of African-American judges and lawyers in the world, with over 17,000 members.

**Linda L. Willard, J.D.**, is an Assistant Attorney General for the State of Nebraska and is chief of the Inmate Litigation Section. She received her J.D. from the University of Nebraska College of Law. She has served as a Commissioner on the Lincoln Human Rights Commission since 1999. She served on the Supreme Court Pro Se Litigation Committee and is a past president of the Lincoln Bar Association.

**Steven L. Willborn, J.D.**, is Dean of the University of Nebraska College of Law. He is a member of the NCAA's Data Analysis Research Committee, a member of the Law School Admission Council's Test, Development and Research Committee, and a member of the ABA Committee on Bar Admissions.

**Mark J. Young, J.D.**, is the Chief Deputy Hall County Attorney. Prior to his appointment as chief deputy, Young practiced in the firm of Anderson, Vipperman, Kovanda, Wetzel, and Young. In addition, Young has served on the Nebraska Legal Services merger board.

## Project Staff

**Elizabeth M. Neeley, M.A.**, is the interim project director for the Minority and Justice Implementation Committee. As a doctoral student at the University of Nebraska-Lincoln she worked as the Research Coordinator for the Minority and Justice Task Force. Her efforts with the Task Force earned her the University of Nebraska- Lincoln Graduate Research Assistant of the Year Award, as well as the UNL College of Arts and Sciences Graduate Research Assistant of the Year award in 2002.

**Tarik Abdel Monem, J.D.**, joined the Public Policy Center as a Research Specialist in January 2003. In addition to coordinating the Minority and Justice Implementation Committee's Town Hall Meetings, he coordinates the [Thomas C. Sorensen Policy Seminar Series](#), and is currently working with the MacNeil/Lehrer News Hour on its "By the People" project. He has an article forthcoming in the *Vermont Law Review* in 2004 on the applicability of ECHR rulings against Turkey to recent suits alleging human rights violations by the Russian military in the Republic of Chechnya.

# Chapter 1: Introduction

By Hon. John Gerrard and Linda Crump



The Nebraska Minority and Justice Task Force was formed in 1999 by the Nebraska Supreme Court and the Nebraska State Bar Association (NSBA) to examine issues of racial and ethnic fairness within the Nebraska court and legal systems. Through two substantial grants from the State Justice Institute (SJI), administered through the University of Nebraska Public Policy Center, the Minority and Justice Task Force undertook a two-year research project, which culminated in a 200-page final report (the *Final Report* is available on-line at [www.nebar.com](http://www.nebar.com) and [www.unl.edu/ppc](http://www.unl.edu/ppc)). The report investigated topics as diverse as potential bias in criminal prosecution, sentencing, jury composition, court personnel hiring, law school admissions, and any number of other related issues over four comprehensive areas of the system of justice: access to the courts, personnel and employment practices in the courts, the legal profession in the state of Nebraska, and criminal and juvenile court processes. Approximately a dozen U.S. state Supreme Courts have undertaken similar projects approaching this scale, but no other project has been as comprehensive.

The major recommendation of the *Final Report* was to establish a standing committee to implement the Task Force recommendations. The Minority and Justice Implementation Committee, consisting of a racially and ethnically diverse group of judges, lawyers and community leaders, has been formed and is currently working to implement the Task Force recommendations.

In addition to summarizing the major findings made in the *Final Report*, this Report discusses the progress made by the Implementation Committee and other justice agencies and organizations since the release of the *Final Report*. The Implementation Committee is at the beginning stages of a long-term effort. While it may take years to fully implement many of the recommendations, the Implementation Committee is developing long-term plans to promote change. To provide feedback or suggestions to the Implementation Committee please use the form provided in Appendix C and return it to the NSBA. Or click on the feedback link provided on the NSBA's website at [www.nebar.com](http://www.nebar.com)

Interest in the Minority and Justice Implementation Committee's mission and activities is appreciated and encouraged. To receive continual information on the Implementation Committee's efforts and events, please print your contact information on the form provided in Appendix D and return it to the NSBA.

## Chapter 2: Access to Justice

The recommendations made in the *Final Report* by the Access to Justice Subcommittee were revised and reorganized into two primary areas: juries and interpreter services. Action on the recommendations on public perception will be addressed secondarily to action on juries and interpreter services because it is the Subcommittee's position that focusing on improvements in jury selection and interpreter services is a stepping stone to improving public perceptions. The Subcommittee will review whether any specific action steps on public perception should be taken at a later time. A brief summary of the findings relating to the two primary areas is provided below.

### Summary of Findings for Juries

The jury system is a fundamental element of the justice system. The assurance that a defendant will receive a trial by a representative group of his or her peers is essential to maintain confidence in the court system. Perceptual data gathered by the Task Force indicate that the majority of Nebraskans believe that it is important that juries reflect the racial and ethnic makeup of the community. However, many respondents, especially minority respondents, believe that juries in general are not representative of their communities. Data support this perception; although minorities in Nebraska are slightly more likely than whites to have been in a Nebraska court of law as a defendant or witness, whites are substantially more likely to have been called for and served on Nebraska juries.

In its *Final Report*, the Task Force identified several structural factors which may inhibit racial and ethnic minorities' participation on juries: how jury pool lists are compiled; juror qualification guidelines; counties that have not periodically updated their jury pool lists; and payment for jury service.

### Progress Report

- LB 19: Major progress was made toward making jury pools more representative of their communities when an amendment to LB19 (the Civil Procedure Bill) was passed on May 19, 2003. Amendment 1527 requires that jury pool lists be updated on an annual basis. The Implementation Committee has received anecdotal evidence that this legislative change has already made a significant impact on diversifying Nebraska's juries; however, there have been complaints about the increased cost to local governments. The Subcommittee is evaluating whether a uniform system or software might be available to help minimize the cost of refreshing jury pool lists.

### Future Efforts

- Expanding Jury Source Lists: One way the state can ensure that all racial and ethnic groups have an equal chance of being called to participate on juries is to expand the source lists from which juries are compiled. Currently, NEB. REV. STAT. §25-1628 (Reissue 1995) requires Nebraska counties to combine both voter registration lists and driver's license registration lists to create the master list from which prospective jury pools are made. Several other states' research efforts have concluded that various groups within the population are not equally likely to be registered to vote or drive, thereby

systematically excluding minorities from the opportunity to serve on juries. In the future, the subcommittee will investigate the utility of including additional source lists to compile the prospective jury pool. However, it is the Subcommittee's position at this time that the impact of Amendment 1527 should be evaluated after a reasonable period of time to determine whether the required annual refreshing of jury pool lists has sufficiently accomplished the goal of creating jury pools representative of the community.

- Uniform Jury Questionnaire: To investigate the extent to which juries are representative of their community and whether the current system of jury compilation systematically excludes racial and ethnic minorities, data need to be collected at each stage of the jury selection process. The Subcommittee is exploring several options including the development of a uniform jury questionnaire, which would collect race and ethnicity data on a detachable portion for research purposes. Pursuant to Neb. Rev. Stat. § 25-1629, the jury commissioner shall mail a juror qualification form to each proposed juror. The Subcommittee would like to make this questionnaire uniform across the state so that race and ethnicity information could be collected.
- Research Exemption: In order to investigate the extent to which juries are representative of their community and whether the current system of jury compilation systematically excludes racial and ethnic minorities, the Implementation Committee or other designated agent will need access to demographic data collected about jury pools, venires and impaneled juries for the purposes of research. This would require a statutory change to Neb. Rev. Stat. § 25-1629 and § 25-1635 to authorize access to information for research purposes as authorized by the Nebraska Supreme Court or its agent.
- Juror Hardships: The subcommittee is also investigating several options to reduce the burden of jury service on low income jurors for childcare or elder care expenses.

#### Summary of Findings for Interpreter Services

Through surveys of Nebraska's court personnel and the NSBA's membership, and through testimony obtained through public hearings across the state, the Task Force assessed the current state of interpreter services in Nebraska's court system. Nebraska's demographics are quickly changing, causing an increase in the demand for interpreter services in the courts. At the time of the Task Force's investigation, Nebraska had only six certified court interpreters for 93 county and district courts. The demand is heightened by the need for interpreter services throughout the legal process including probation and diversion services. Among others, additional testimony revealed concerns with: the quality of interpreting and translated documents; interpreters not being required to take an oath; and whether interpreter services should be paid for by the state or county.

#### Progress Report

- Translated Documents: The Administrative Office of the Courts (AOC) has translated protection order forms into Spanish and is in the process of developing a version in Vietnamese.
- Court Interpreter Training Programs: In order to provide qualified interpreters, the AOC has taken steps to establish an interpreter certification program in conjunction

with Southeast Community College and has provided workshops and training programs for current court interpreters. Additionally, the Nebraska Association of Translators and Interpreters conducts an annual training session.

- Increased Number of Certified Interpreters: To date, Nebraska has 11 certified court interpreters. (At this time last year there were only 6).
- Age limit: *The Nebraska Supreme Court Rules Relating to Court Interpreters* was amended in September 2003 to discourage individuals under the age of 19 from serving as court interpreters.
- Interpreter Oath: *The Nebraska Supreme Court Rules Relating to Court Interpreters* was amended in September 2003 to require interpreters to have read the Code of Professional Responsibility for Interpreters, and to take the Interpreter Oath prior to interpreting in the Nebraska courts or the Nebraska State Probation System.
- Updated Registry: The AOC is in the process of updating the Interpreter Registry.

#### Future Efforts

- Legal Interpretation Services via Technology (LIST): The Implementation Committee is developing a proposal to establish a Nebraska-based legal telephone interpreting service. By establishing a Nebraska-based legal telephone interpretation service, Nebraska can not only overcome the geographic challenges of providing interpreter services but it can also ensure free access to qualified court interpreters in many languages. While there are legal obstacles which must be overcome before Nebraska could benefit from telephonic interpreting in the courtroom, the Implementation Committee hopes that by providing this service to court personnel and attorneys, it can increase non-English speakers' access to and confidence in the justice system.
- Translation of Court Documents: The AOC will continue to assess the accuracy of its translated documents and compile a list of standardized forms that need to be translated. Newly translated documents will be disseminated to the courts.
- Community Education: A working group has been established to address issues of community education. The group will develop initiatives to inform the public about court systems and processes.
- Data Collection: To better assess the need for interpreter services, the AOC will keep necessary records to determine the number of requests for interpreter services by district and by language.

### Summary of Immigration Issue

At the request of Hon. John Gerrard, this Subcommittee will work toward the passage of LB 315 with respect to statutory changes affecting Notary Publics and their ability to hold themselves out as immigration experts. There has been a problem with the unauthorized practice of law by “Notarios” – individuals who hold themselves out as Notary Publics and specifically advertise that they provide immigration services. Notarios have helped immigrants complete applications for a green card or work permit, even though that individual may not be qualified, and fees are taken regardless of the likelihood of success on the application.

### Progress Report

- The Attorney General’s office is currently gathering information on the issue.

### Future Efforts

- The Subcommittee will work with the Secretary of State’s office to determine whether there are remedies already available to address this issue.
- The Subcommittee will offer to testify at future hearing dates on this bill.
- The Subcommittee will also publish an article in the Nebraska State Bar Association magazine, *The Nebraska Lawyer*, regarding a study that revealed that disproportionate numbers of immigrants are being detained in Nebraska county jails. The article will include a sidebar that provides information about volunteer services around the state available to immigrants in need of legal assistance.

## Chapter 3: Criminal and Juvenile Justice

The Criminal and Juvenile Justice section of the *Final Report* was the most expansive. The recommendations made in the *Final Report* were revised and reorganized into six general categories: Bail/Bond Reform; Disproportionate Minority Confinement; Diversion; Indigent Defense; Information and Data Systems; and Multicultural Education. In order to accomplish its goals, the six areas are being addressed by separate working groups. Each working group consists of at least two members of the Criminal/Juvenile Justice Subcommittee, and are augmented by other individuals who have expertise in a given area. A brief summary of the findings relating to each working group, the progress made to this point, and the future efforts of each working group is provided below.

### **Bail/Bond Reform**

#### Summary of Findings

The bond system currently used by the state of Nebraska depends on the ability to pay. In the state of Nebraska, 1 out of every 19 whites earns below the poverty rate. By contrast, 1 in 5 blacks, 1 in 5 Native Americans, and 1 in 10 Asians earn below the poverty rate. Hence, in general, racial and ethnic minorities are less likely to have the resources to pay bond amounts or post the bond set by the court.

One of the recommendations of the *Final Report* was that Nebraska investigate the advisability of fully implementing a system based not on monetary bond but on conditions of pretrial release that would reasonably assure the appearance of the defendant and the safety of the community. A working group has been established to develop the concept of a pilot pretrial program which is not based on monetary bond.

#### Progress Report

- The pilot project is still in the developmental stages. Prosecutors, law enforcement officials and judges have been meeting with and advising the working group in this endeavor.
- In its investigation of the current bail/bond system, the working group identified an additional equal access issue. Namely, non-English speaking individuals may not be able to understand the bail/bond process. To address this the working group is developing a brief packet of information which will be translated into several languages, explaining: the individual's status and what will happen next in the court process; a questionnaire to be filed out by the individual, relaying information to the judge for consideration of a personal recognizance bond; a bond schedule; and advisement of penalties if the individual fails to appear.

#### Future Efforts

- Development of the pilot project will continue while the working group seeks funding for the project.



## **Disproportionate Minority Confinement**

### Summary of Findings

Through a careful examination of arrest and incarceration data from both state and federal agencies, the Task Force concluded that members of racial and ethnic minorities are disproportionately charged, convicted, and incarcerated in Nebraska compared to their white counterparts. A working group has been established to identify and reduce the causes that lead to disproportionately high minority incarceration.

### Progress Report

- The working group has gathered and reviewed prior research on disproportionate minority confinement as well as information on programs designed to reduce the disproportionate confinement of minorities.

### Future Efforts

- Racial Justice Institute: The working group is investigating the feasibility of establishing a Racial Justice Institute, similar to the Juvenile Justice Institute. The Racial Justice Institute would be responsible for the continued scientific investigation of race in the justice system and for providing technical assistance to the Legislature and the administrative agencies in the State of Nebraska.
- Research Study on Prosecutorial Discretion: The working group is developing a proposal for a research study examining the impact of race on charging decisions in felony cases.

## **Diversion**

### Summary of Findings

In the *Final Report*, there were three major findings regarding diversion services in the state of Nebraska. First, the study found that not all Nebraska counties offer diversion and, among those that do provide diversion, these services vary. Second, few diversion programs keep records of race and ethnicity. Finally, there is inconsistent and inadequate recordkeeping of diversion programs and no centralized database to collect information on those offered diversion.

### Progress Report

- LB43: All of the Task Force's findings were addressed to some extent in 2003 with the passage of Legislative Bill 43. LB 43 provides standards for the establishment of juvenile pretrial diversion programs and requires every juvenile pretrial diversion program to report information to the Nebraska Crime Commission. Among other things, programs are required to report in a uniform fashion: the race and ethnicity of those referred and those enrolled in juvenile pretrial diversion programs; reasons why referred youths did not enroll; the offense for which a juvenile was referred; and when and how the case was closed.

- Revised Letter: Data from Lancaster County's juvenile justice system show that minority juveniles are less likely to enroll in pretrial juvenile diversion programs. Although there are many potential reasons for not enrolling in diversion programs, one reason may be that the process of enrolling is unclear. Lancaster County has revised the letter it sends to juveniles who are referred to pretrial diversion in easy to understand language. The working group hopes that similar efforts can be made across the state.
- Statement of Interpreter Services: In an effort to ensure that non-English speaking juveniles are not discouraged from enrolling in juvenile pretrial diversion programs, a postcard providing a phone number to call if the juvenile needs interpreter services will be included with the letter sent to all juveniles referred to diversion in Lancaster County. The statement will be translated into 4-5 languages. The working group hopes that similar efforts can be made across the state.

### Future Efforts

A working group has been established to continue to improve equal access to diversion programs. The working group is hopeful that LB 43 has addressed many of the concerns with juvenile pretrial diversion programs. The working group's future efforts will therefore focus on pretrial diversion programs for adults. Future efforts include:

- Data Collection: The working group will work with the Nebraska County Attorneys Association to obtain data on adult diversion programs across the state including: screening criteria; the demographic profiles of those being referred to adult diversion programs; the demographic profiles of those enrolling in adult diversion programs; whether and how often language interpreters are needed/used; the costs of diversion and whether or not payment plans are available for low income referrals, etc.
- Program Standards: Pending the results of data collection efforts, the working group will investigate the utility of working with the Nebraska County Attorneys Association to develop standards for adult diversion programs.

### **Indigent Defense**

#### Summary of Findings

Public defenders and assigned counsel hold a unique position in the state's criminal justice system. They serve as lawyers for defendants unable to afford a private lawyer. Because a higher percentage of minorities than whites are poor and thus unable to afford a private attorney, minorities are more likely than whites to need the services of a public defender or assigned counsel. The quality of the legal services provided by public defenders or assigned counsel will affect how minorities are treated in the criminal justice system.

In a 1993 study of Nebraska's indigent defense system there were three major findings regarding the quality of indigent defense services in the state of Nebraska. First, the study found a lack of uniformity and consistency in the delivery of indigent defense services. Second, funding primarily at the county level was inadequate to meet indigent defense needs. Finally, there was a lack of written standards and guidelines for the operation of indigent defense

programs. Since 1993, there have been no further inquiries to determine whether these findings remain true.

The American Bar Association has enumerated 10 principles for a public defense system. In short, the ABA finds that public defenders should be well-educated, be independent, have access to adequate resources, have reasonable caseloads, and have the time to effectively defend those without means to fund their own defense. In 2001, the Nebraska legislature created a mechanism and provided funding for the development and implementation of standards for county indigent defense systems. The standards were developed for felony cases, but no other standards were agreed to before the Nebraska Legislature defunded the project in 2002.

### Progress Report

- Updated Report: The Implementation Committee has partnered with the Nebraska Commission on Public Advocacy to test the efficacy of the 2001 standards through a pilot project. Although only at the beginning stages, the Commission on Public Advocacy is in the process of updating the 1993 assessment of indigent defense systems by developing a report on the current status of indigent defense systems in Nebraska.

### Future Efforts

- Pilot Project: In order to prove the efficacy of the developed standards for indigent defense systems, the working group has partnered with the Commission on Public Advocacy to develop a 2-3 year pilot project. The project will compensate counties 40% for fully implementing the developed standards for indigent defense systems. The working group is currently seeking grant money to fund the pilot project.
- Standards for Juvenile Representation: Although standards for felonies have already been established, the working group would like to bring a group of juvenile justice experts and practitioners together to develop standards for juvenile representation.

## **Information and Data Systems**

### Summary of Findings

One of the difficulties encountered by the Task Force in its two-year investigation was the lack of and incompatibility of data across the justice system (law enforcement, the courts, and corrections). For instance, some agencies collect race and ethnicity data separately, others collect only race data, and still others collect a combination. It is, therefore, difficult to use available data sets in tandem to illustrate the likelihood that an arrest will end in incarceration as a function of race and ethnicity. A working group has been established to address the complete and consistent collection of data on race/ethnicity in the justice system:

### Progress Report

- In January 2004, Senator Ernie Chambers introduced LB 1068 on behalf of the Minority and Justice Implementation Committee. The bill authorizes the Nebraska Supreme Court or its agent, to have access to presentence reports for the purpose of research. Access to presentence reports will allow the Supreme Court to periodically direct an analysis of the service provided by the courts of this state and by probation (such as setting of bond,

sentencing, probation revocations, etc.) to see if there are any effects on the delivery of those services caused by race or ethnicity.

### Future Efforts

- Uniform Definition of Race and Ethnicity: To address the incompatibility of data, the working group will be pressing for the adoption of a uniform definition of race and ethnicity across justice institutions. Adopting a similar definition will not only allow Nebraska to obtain more accurate data on race and ethnicity but will enable the state to make accurate regional and national comparisons.
- Criminal Cover Sheets: To address the lack of data on race and ethnicity gathered by the court system the working group is developing “criminal cover sheets” to be filled out by prosecutors in all county and district court cases. Cover sheets will be standardized to include the demographic profile of the defendant as well as information useful to the prosecutors and clerks such as: the case number; the original charge or charges; whether charges were filed in county or district court; etc.
- Information Sharing: The working group will continue to analyze the current systems of data collection across justice agencies to determine if changes can be made to provide for complete and consistent collection of data with respect to race, ethnicity, gender, age and other demographic data. Formal recommendations will be made to Nebraska’s Criminal Justice Information Systems (NCJIS) Advisory Committee, which coordinates data sharing and use of information technology among criminal justice agencies.

## **Multicultural Education**

### Summary of Findings

Data collected through public hearing testimony and through surveys of Nebraska court personnel and NSBA members report instances of inappropriate conduct by judges, lawyers, court personnel and probation employees. Furthermore, survey data indicate that minority court personnel and Bar members have markedly different perceptions of bias in the Nebraska justice system. These findings indicate a need for multicultural education throughout the court and legal system. A working group has been established to develop and administer training to improve multicultural competence.

### Progress Report

- Awareness: One of the primary goals of the working group is to raise awareness of the *Final Report* and its findings. In addition to the 2003 town hall meetings (see Chapter 6), the Task Force and Implementation Committee have received substantial media coverage (see Appendix C). The working group has also been working to raise awareness among court personnel and the legal profession. For instance, the Implementation Committee has several articles forthcoming in legal professional magazines/newsletters discussing the importance of the findings made in the *Final Report*.

- Training: The second major goal of the working group is to develop and administer training to improve multicultural competence. Although the working group is still in the design stage of this initiative, the Nebraska Crime Commission's Disproportionate Minority Confinement subcommittee recently conducted multicultural training across the state for Nebraska's Juvenile Justice System. Their curriculum, designed by JAG Consulting, Inc., demonstrates how public and private entities working with juveniles can integrate cultural competence tenets immediately within their organizations and transform those fundamental principles into behaviors, practices and policies that are implemented in a pragmatic, consistent manner. Since September 2002, over 300 people across the state participated in the 8 hour training session. The Nebraska Crime Commission's DMC subcommittee will be offering a shorter, more directed training program in 2004.

#### Future Efforts

- Awareness: Efforts to educate the public, the court system and the legal profession about the *Final Report* and its findings will continue. This will involve presentations to various groups such as: district and county judges associations, juvenile judges, local/district bar associations and specialty bar associations such as NCDAA, and the Nebraska County Attorneys Association, court personnel, and communities across the state.
- Education: The working group will develop targeted diversity education programs directed toward the judiciary, court personnel and attorneys.
- 2004 Diversity Summit: In collaboration with other Implementation Committee subcommittees, the working group will help to coordinate the 2004 Diversity Summit (as explained on page 13). Among other programs, diversity training will be offered as a program for Bar members attending the Diversity Summit.

## Chapter 4: Court Personnel

### Summary of Findings

In an effort to determine to what extent court staffs reflect the racial and ethnic diversity of the communities which they serve, the Task Force examined the demographic profile of the Nebraska state court system. Additionally, the Task Force explored the hiring, retention and promotion patterns for minorities in the state as well as instances of inappropriate conduct by judges, lawyers, court personnel and probation employees. Data revealed that across virtually every level of employment, minorities are underrepresented in Nebraska's courts. Minorities are also more concentrated in support staff positions with little autonomy, less compensation, and are more likely to hold part-time positions than their white counterparts. Finally, court personnel and Bar members report having witnessed or being aware of inappropriate comments or jokes of a racial or ethnic nature, racial or ethnic slurs, and disrespectful and discourteous treatment of minorities.

### Progress Report

- The Implementation Committee critically reviewed and revised the recommendations made in the *Final Report* and presented its formal recommendations to the AOC in February 2004 (see Appendix B for Revised Recommendations).
- A copy of the *Final Report* was sent to every judge in the state of Nebraska.
- The AOC's Equal Opportunity Employment policies and procedures as well as the formal discrimination complaint procedure were reviewed by the Nebraska Equal Opportunity Commission.
- The AOC has expanded its efforts to publicize open court positions to Nebraska's Hispanic/Latino population.

### Future Efforts

- Assist the Administrative Office of the Courts: The Subcommittee has pledged its support to the AOC in implementing the formal recommendations it made in February 2004.
- Outreach to District Courts: Since the clerks of the Nebraska district courts are elected by their respective counties, the personnel of district courts are not subject to supervision by the AOC. The Subcommittee may consider the feasibility of extending its recommendations to the Nebraska district courts.

## Chapter 5: Legal Profession

### Summary of Findings

The Task Force examined opportunities for minorities in Nebraska's legal profession by collecting data from Nebraska's law schools, administering a survey of NSBA members, and conducting focus groups with affected parties.

Results show that Nebraska's legal profession is not reflective of the state's racial and ethnic diversity. Additionally, minority and white members of the NSBA have noticeably different perceptions of career opportunities in the state, including those related to mentoring, retention and promotion. More specifically minority Bar members believe that there are fewer opportunities in private firms for minority law school graduates, and that there are fewer mentoring, networking and professional advancement opportunities for minority legal professionals. Finally, data indicate that racial and ethnic minorities are underrepresented in Nebraska's judicial system and that Nebraska's judicial nominating commissions are not reflective of the diversity of the legal community.

The *Final Report* concludes that Nebraska is facing a "pipeline" issue. In short, the law schools' ability to recruit, admit, and graduate minority students directly affects the likelihood that Nebraska's legal community will be reflective of the growing diversity in the state. By extension, the success of the law schools to diversify likely will lead to more minority lawyers and ultimately more minority judges in the state.

### Progress Report

- The University of Nebraska College of Law Pre-Law Institute: Through a grant from the Law School Admissions Council, the University of Nebraska College of Law developed a summer Pre-Law Institute in 2003. The Institute targets students who are traditionally underrepresented at the University of Nebraska College of Law and within the legal profession in Nebraska. A total of 29 diverse students attended the four-week summer program in 2003. The Pre-Law Institute provided students with an introduction to legal study and its analytical and writing demands; exposure to the many roles of the law and lawyers in society; and instruction on the process of applying to law school and obtaining financial aid. The general goal of the program is to orient students to the special nature of legal study and to excite them both about law school itself and about life in the law beyond law school. In addition, the program established two mentoring relationships for each student, one with a lawyer involved in academics and one from outside academics. Students' evaluations showed general satisfaction with the program. Moreover, pre- and post-session evaluations showed improvements (although not statistically significant) in students' LSAT and writing scores. In addition to nurturing and developing interest in the law among a broadly diverse group of students, the Pre-Law Institute was also developed in hopes of increasing the diversity of the University of Nebraska College of Law and ultimately the legal profession in Nebraska. Although it may take some time to adequately assess to what extent the program is successful in increasing diversity, the program shows promise in accomplishing this goal. In fact, the Law School Admissions Council has extended funding for the Pre-Law Institute for four additional years.

## Future Efforts

- Continuum Plan: There are currently several programs designed to attract minority youth to pursue a career in the legal profession in Nebraska. The Subcommittee would like to build a continuum among the various programs (those sponsored by the NSBA, the Bar Foundation, Upward Bound programs, the law colleges' "Law Day" events, etc.) which would track minority involvement in these programs from middle school through law school. The purpose of tracking is 1) to evaluate how programs are working and 2) to nurture the interest minority youth have expressed in pursuing a career in the law. The idea is that students involved in middle school programs can later be invited to junior high and high school events and programs, while maintaining contact through periodic newsletters.
- Diversity Summit: In conjunction with the NSBA, the Implementation Committee will coordinate a Diversity Summit for legal employers (law firms, general counsel, government organizations, etc.). Among other things, the Summit will bring legal employers together to discuss diversity issues and best practices in hiring and retention.
- Minority Clerkship Program: The Subcommittee will develop a program to provide judicial clerkship opportunities to first-year minority law students at the two Nebraska law schools. Many other states have developed similar programs. The Subcommittee believes that by providing these types of opportunities, minority law students may be more likely to view Nebraska as a viable place to practice after graduation, and would illustrate that the Nebraska Bar appreciates the value of diversity and is willing to take measures to ensure diversity in the profession.



## Chapter 6: 2003 Town Hall Meetings

As part of its three-year investigation of Nebraska's justice system, the Task Force traveled to communities across Nebraska, soliciting testimony from the public on issues relevant to race and ethnicity in the courts. The testimony gathered at these public hearings played a critical role in illustrating minority's perceptions of the justice system. Among others, public testimony identified problems such as: a lack of quality interpreter services, court systems that are not representative of the communities they serve, and perceived sentencing disparities.

As a follow-up to the 2002 public hearings, the Implementation Committee returned to many of the communities from which the Task Force solicited information (see table 1). The Implementation Committee used these town hall meetings as an opportunity to: share the findings of the *Final Report*; discuss the future plans of the Implementation Committee; and to solicit feedback from the public.

**Table 1: Town Hall Meeting Schedule and Locations**

<u>City</u>	<u>Date</u>	<u>Location</u>
Omaha	October 7, 2003	Teacher Administrative Center
Lincoln	October 16, 2003	The Malone Center
Grand Island	November 2, 2003	Walnut Middle School Auditorium
Lexington	November 10, 2003	St. Ann's Parish Center
North Platte	November 12, 2003	Mid-Plains Community College
Omaha	November 17, 2003	Guadalupe Center
Norfolk	December 1, 2003	Norfolk High School Little Theater
South Sioux City	December 4, 2003	St. Michael's Church

The town hall meetings were very informative. Among other things, the Implementation Committee received comments and suggestions on: how to improve interpreter services; how to educate the public about the court system and the legal profession in terms of diversity training; concerns with police discretion; and the need to increase diversion opportunities and prevention programs. Additionally, the Implementation Committee also received several requests that communities continue to be involved in the reform process and that the Implementation Committee itself diversify and have better representation from the western half of the state.

The Implementation Committee will visit several additional communities in 2004 including the western half of the state (Scottsbluff and Chadron) and will continue its community outreach efforts through presentations to various groups.

## **Appendix A: Minority and Justice Task Force Findings**

## **Minority and Justice Task Force Findings**

### **I. Access to Justice**

#### Public Perception

1. Minority group members tend to believe relatively uniformly that members of other minority groups receive unfair treatment. This is especially the case among black respondents, who are more negative about court fairness toward any minority group. Generally speaking, Native American and Hispanic perceptions closely parallel one another, with Hispanic respondents being somewhat more positive.
2. Nebraska respondents tend to have different views than the national sample. Specifically, white respondents in the Nebraska sample are less likely to believe that minorities receive unfair treatment than are whites in the national pool. Conversely, a substantially higher percentage of blacks in the Nebraska pool believe they and members of other racial and ethnic groups are treated unfairly.

#### Interpreter Services

1. Data indicate that Nebraska's demographics are quickly changing, causing an increase in the demand for interpreter services in the courts.
2. There is a shortage of qualified interpreters in the state. Since Nebraska joined the Consortium for State Court Interpreter Certification in 1999, six individuals have passed the certification test. There is also a need to increase and improve interpreter training courses in preparation for the certification tests.
3. Nebraska courts do not always make an attempt to first appoint a court-certified interpreter as is required by rule of the Nebraska Supreme Court.
4. Some confusion exists as to when interpreter services should be paid for by the state or county.
5. Nebraska does not pay for interpreter services for diversion. Some individuals may not have the means to pay for such services.
6. Translation of documents are not consistent across the state.

#### Nebraska Juries

1. The majority of Nebraskans believe that it is important that juries reflect the racial and ethnic makeup of the community. However, many respondents, especially minority respondents, believe that juries in general are not representative of their communities.
2. The majority of Nebraska court personnel believe that jury pools represent the community at large. Minority court personnel were less likely to agree that jury pools

represent the community at large and much less likely to believe that racial and ethnic minorities are adequately represented on jury panels.

3. Minority lawyers and lawyers from diverse counties (Lancaster County, Douglas County, Sarpy County, etc.) of the state are substantially more likely to believe Nebraska's jury pools underrepresent racial and ethnic minorities.
4. Although minorities in Nebraska are slightly more likely than whites to have been in a Nebraska court of law as a defendant or witness, whites are substantially more likely to have been called for and served on Nebraska juries.
5. Nebraska's current method for compiling jury lists may have an adverse effect on minority participation.
6. Nebraska state statutes do not require periodic refreshing of jury lists.
7. Although Nebraska state statutes ensure that employees' wages are protected, there are currently no efforts to reimburse low-income jurors for child care or elderly care expenses incurred because of jury service.
8. Minorities in Lancaster County were underrepresented in the venires and on impaneled juries for both civil and criminal trials in the summer of 2002.
9. A majority of jurors from Douglas, Lancaster, and Hall Counties feel that juries should be reflective of the community.

## **II. Criminal and Juvenile Justice**

### Criminal

1. In Nebraska and elsewhere, minorities are disproportionately arrested in relationship to their percentage in the general population and compared to their white counterparts.
2. In Nebraska and elsewhere, minorities are disproportionately incarcerated in relationship to their percentage in the general population and compared to their white counterparts.
3. In Nebraska, the disparity between minority and white narrows from arrests to incarceration so that Nebraska incarcerates adult minorities at about the same rate as surrounding states.
4. Nebraska law enforcement agencies arrest blacks at a disproportionately higher rate than is found nationally or in any of the states in Nebraska's region.
5. Nebraska's county and district courts do not collect and maintain sufficient computerized demographic data to allow for statistical analysis of racial and ethnic minorities in the court system.
6. Nebraska does not maintain a database to study the discretion of Nebraska's prosecutors as it relates to race and ethnicity.

7. Over half of Nebraska's counties have no public defender.
8. Nebraska's minorities are substantially more likely than whites to use a public defender or assigned counsel.
9. Not all Nebraska counties offer diversion and, among those that do provide diversion, these services vary.
10. Few diversion programs keep records of race and ethnicity.
11. There exists inconsistent and inadequate recordkeeping of diversion programs and no centralized database to collect information on those offered diversion.
12. Nebraska's law enforcement agencies have no established policy for recording race and ethnicity.

### Juvenile

1. Minority youth are disproportionately detained in the state of Nebraska, regionally, and nationally in relationship to their percentage in the general population and compared to their white counterparts.
2. Minority youth are disproportionately placed in out-of-home placement in the state of Nebraska in relationship to their percentage in the general population and compared to the white counterparts.
3. Due to a number of factors, including those related to language and resource barriers, minority youth are less likely to participate in juvenile diversion services.
4. Not all Nebraska counties offer diversion and, among those that do provide juvenile diversion, these services vary.
5. Few juvenile diversion programs keep records of race and ethnicity.

### Perceptions

1. There exists a perception that juvenile diversion programs are not as available for minority youth as they are for white youth.
2. Minority and white Nebraska State Bar Association members and court personnel have markedly different perceptions regarding the treatment of racial and ethnic minorities by prosecutors and judges and in the overall court environment.
3. A substantial number of Nebraska State Bar Association members and court personnel believe that minority defendants are more likely to be charged, convicted, and sentenced to longer terms than white defendants.

4. Minority Nebraska State Bar Association members are more likely than their white counterparts to believe that judges are more abrupt with minority counsel than with white counsel.
5. A substantial number of Nebraska State Bar Association members are more likely to believe that whites receive better treatment from the courts than do minorities.
6. Minority Nebraska State Bar Association members and court personnel are more likely than their white counterparts to believe that bias in the Nebraska justice system has remained the same or gotten worse over the past five years.
7. A substantial number of both white and minority court personnel and Nebraska State Bar Association members agreed that minorities receive different, potentially discriminatory, treatment in Nebraska's courts; however, most Bar members and court personnel believe that Nebraska's justice system treats minorities fairly.

### **III. Court Personnel**

1. In obtaining data, the decentralized nature of the Nebraska district courts made it difficult to collect data regarding the number of minority employees employed by the district courts, the grievance procedures, the number of complaints filed in the past year, and the hiring policies and procedures for each district court.
2. In obtaining data, the centralized nature of the Nebraska county courts allowed for the thorough and timely collection of data regarding the number of minority employees employed by the county courts across the state, the grievance procedures in place, the number of complaints filed in the past year, and the hiring policies and procedures for each county court.
3. Nebraska's racial and ethnic minorities are either absent or substantially underrepresented as employees at every level of the state's court system.
4. Minority candidates are more likely to seek and learn of job opportunities through friends, networking and multiple means than through advertising or other traditional means.
5. There is no regular review to evaluate the diversity of the state's court employees.
6. There is no uniform method in the Nebraska district courts for the processing of discrimination complaints and there exists no uniform affirmative action or equal employment opportunity policies.
7. Significant differences in perception exist between white and minority court personnel concerning the nature of the hiring process and the likelihood of minorities receiving preferential or discriminatory treatment, both in hiring and while on the job.
8. Court personnel and Bar members report having witnessed or that they were aware of inappropriate comments or jokes of a racial or ethnic nature, racial or ethnic slurs, and disrespectful and discourteous treatment of minorities.

## **IV. Legal Profession**

### Law Schools

1. Too few Nebraskans who are members of minority groups take the LSAT.
2. Too few members of minority groups apply to Nebraska's law schools.
3. Too few Nebraskans who are members of minority groups matriculate at law schools in Nebraska.
4. Too few members of minority groups matriculate at Nebraska's law schools.
5. Any effort to diversify Nebraska's legal community must be a long-term effort that begins with enlarging the minority applicant and matriculate pools at Nebraska's law schools.
6. Minority and white members of the Nebraska State Bar Association have noticeably different perceptions of the law schools' efforts to diversify their student bodies.
7. There is a perceived and actual need for more diversity in the profession and the law schools. The law schools are a prerequisite for that diversification.
8. It would be beneficial to recruitment and education if the law schools hired more minorities as faculty and administration.

### Hiring, Retention, and Promotion

1. Minority and white members of the Nebraska State Bar Association have noticeably different perceptions of career opportunities in the state, including those related to mentoring, retention, and promotion.
2. Nebraska's legal profession is not reflective of the state's racial and ethnic diversity.
3. White and minority members of the Nebraska State Bar Association have differing experiences in finding and retaining employment, which could be reflective of racial and ethnic hiring bias.
4. Minority Bar members believe that there are fewer opportunities in private firms for minority law school graduates and that little effort is made to recruit and retain those minority Bar members who are hired.
5. Minority Bar members believe they have fewer opportunities for mentoring than their white counterparts.
6. Minority Bar members are less satisfied with networking opportunities than their white counterparts.
7. Minority Bar members are less likely to be satisfied with their professional advancement

opportunities. Minority lawyers are also far less likely to believe that equal opportunities exist for advancement within the Nebraska legal profession.

#### Judicial Selection Process

1. Racial and ethnic minorities are underrepresented in Nebraska's judicial system.
2. There is no regular review to evaluate the diversity of the state's judicial nominating commissions.
3. Nebraska's judicial nominating commissions are not reflective of the diversity of the legal community.
4. There exists no data to assess the diversity of the governor's judicial nominating commission appointments.



## **Appendix B: Revised Recommendations**

## Revised Recommendations

The Implementation Committee's first task was to critically review, revise and prioritize the recommendations made in the *Final Report*. The revised recommendations for each subcommittee are provided below.

### I. Access to Justice: Revised Recommendations

#### Juries

Recommendation 1: Juries should be more reflective of the diversity of the community, and source lists for juries should be expanded to ensure such diversity.

Recommendation 2: Reimbursements should be made to low-income jurors for childcare or elder care expenses incurred because of jury service.

Recommendation 3: The Nebraska Secretary of State should require that all persons registering to vote identify their race and ethnicity so that proper records can be kept of jury pool composition.

Recommendation 4: Jury commissioners should be required to collect and preserve racial and ethnic information on all persons selected for jury duty. This data should be reported yearly to the Administrative Office of the Courts.

Recommendation 5: Jury commissioners should be required to collect and preserve racial and ethnic information on all persons granted excuses and deferrals, reporting for jury duty, selected for voir dire panels, and seated on juries at both the county and district level. This data should be reported yearly to the Administrative Office of the Courts.

Recommendation 6: County and district court clerks should be required to collect and preserve racial and ethnic information on all impaneled jurors. This data should be reported yearly to the Administrative Office of the Courts.

Recommendation 7: Nebraska statute should require that jury pool lists be refreshed annually on a set date determined by the Administrative Office of the Courts.

#### Interpreters

##### *Education and Training*

Recommendation 1: The AOC should collaborate with schools of higher education to design a curriculum appropriate for pre- and post-certification education for interpreters.

Recommendation 2: The AOC should seek additional funds for training through Federal and nonprofit granting institutions.

Recommendation 3: Interpreters should be encouraged to acquire an understanding of cultural variations that accompany language differences, so as to better assist non-English-speaking clients.

Recommendation 4: The AOC should provide training and educational materials to judges, court staff, attorneys, and other entities on how, when and how many qualified interpreters should be used.

### *Interpreter Testing*

Recommendation 1: The AOC should create a “screening phase” for certification applicants, so as to increase the likelihood of passage before extensive funds are spent on testing.

Recommendation 2: The AOC should actively encourage those desiring to take certification tests in languages not currently offered in Nebraska, to take those tests in other National Consortium states that offer those particular tests so as to reduce costs in Nebraska

Recommendation 3: The AOC should create a review system to rate frequently used uncertified interpreters and periodically make unannounced reviews of uncertified interpreters in the courtroom setting.

### *Administration of Interpreters*

Recommendation 1: The AOC should require records to be kept and summarized as to the number of requests made for interpreter services in each Nebraska County along with a breakdown of the number of times each language is requested.

Recommendation 2: A policy should be adopted requiring that forms and documents frequently used by the public be drafted in English and translated into such additional languages and the AOC approves. All such translations shall be made by qualified translators and approved by the AOC.

Recommendation 3: The Nebraska Supreme Court and the AOC should consider hiring interpreters on a full time basis, where appropriate, in order to attract more and better interpreters.

Recommendation 4: The AOC should actively seek to partner with other governmental agencies to hire full time or to “share” language interpreters, where a need justifies such a partnership.

Recommendation 5: The AOC should continue to actively recruit bilingual staff and compensate them accordingly.

Recommendation 6: A simple explanation of both civil and criminal court processes should be prepared in Spanish and other appropriate languages. This could be in written or video form.

Recommendation 7: The AOC should develop a process for use by the courts to determine the qualifications of an uncertified interpreter prior that person’s entrance into the court system, and an oath that should be administered at trial.

Recommendation 8: Establish a mechanism that discourages individuals under the age of 19 from serving as court interpreters.

Recommendation 9: Update the list of court interpreters.

Recommendation 10: Adopt a rule of reciprocity with other consortium states.

*Courtroom Interpreting*

Recommendation 1: Judges should be required to ask non-certified interpreters if they have read and agree to adhere to the Code of Professional Responsibility for Interpreters.

Recommendation 2: The Nebraska Supreme Court should require that county and district courts provide interpreter services to indigents outside the court in order to facilitate communication with lawyers.

Recommendation 3: A study should be commissioned to investigate the feasibility of using audio recordings to determine if errors or omissions are occurring in interpretation within the court system.

Recommendation 4: Establish a tier system to ensure that the most qualified interpreters are being utilized and that less qualified interpreters can receive training experience (also provides incentives to become certified).

## **II. Criminal and Juvenile Justice: Revised Recommendations**

### Bail/Bond Reform

Recommendation 1: Nebraska should investigate the advisability of fully implementing a system based not on monetary bond but on conditions of pretrial release that would reasonably assure the safety of the community and the appearance of the defendant.

### Disparate Minority Confinement

Recommendation 1: The Nebraska Supreme Court and other courts should periodically direct an analysis of the decisions, disposition, and delivery of services provided by the criminal and juvenile courts of this state and by probation (such as setting of bond, sentencing, probation revocations, etc.) to determine if there are any effects on the decisions, disposition, or delivery of those services associated with treatment of race, ethnicity, gender, age or other demographic characteristics.

Recommendation 2: Nebraska should continue efforts to identify and eliminate the causes that lead to disproportionately high minority arrests and incarceration relative to their percentage in the population and compared to their white counterparts.

### Diversion

Recommendation 1: The Nebraska Legislature should establish guidelines to ensure equal access to adult and juvenile diversion programs and to assure the confidentiality of information concerning participants in diversion programs.

### Information and Data

Recommendation 1: The Nebraska Supreme Court and other applicable courts should adopt policies that maximize the use of age, race, ethnicity, gender and other demographic data in criminal and juvenile court and probation records systems so that decisions, disposition, and the delivery of services provided by the courts and probation can be analyzed to determine whether there are any effects on the delivery of those services associated with treatment of race, ethnicity, gender, age, or other demographic characteristics.

Recommendation 2: To the maximum extent possible, automated systems operating in law enforcement, prosecution, courts, probation, corrections, and throughout the juvenile justice system, should be designed so that data can be shared with other systems. In places where that integration of automated systems is not yet possible, the prosecutor should be required to prepare a “criminal cover sheet” for all county and district court criminal cases. A similar cover sheet should be used for juvenile cases. These cover sheets should be standardized to include such information as the race, ethnicity, gender, age, and other demographic data of the defendant, and the original charge or charges.

Recommendation 3: The Administrative Office of the Courts should coordinate the collection of data, educate court participants, and continue to research areas of potential bias in the courts, in order to create continuous oversight of the Nebraska criminal and juvenile court system.

### Indigent Defense Standards

Recommendation 1: Nebraska should adopt and enforce mandatory standards for the operation of county indigent defense systems that comply with the American Bar Association's "Ten Principles of a Public Defense Delivery System."

### Multicultural Competence and Training

Recommendation 1: The Nebraska Supreme Court and the Nebraska State Bar Association should develop and administer training to improve multicultural competence and recognition of differences for judges and all other court personnel. In addition, other agencies not under the management or control of the Nebraska Supreme Court should develop and conduct similar training. These agencies would include, but not be limited to, public defenders, prosecutors, and law enforcement agencies.

### **III. Personnel: Revised Recommendations**

Recommendation 1: The court systems and all individuals hiring court personnel should adopt aspirational goals to have a workforce that is reflective of a diverse community. Responsibility for attaining such objectives should be delegated to appropriate administrators and job performance evaluations should include a review of individual performance in attaining such goals.

Recommendation 2: The court systems should adopt, publish and enforce comprehensive policies for assuring equal opportunity and recruitment of minority employees. Monitoring systems should be established at all levels and administered to assure adherence to such policies to ensure that diversity commensurate with that of the community is being achieved.

Recommendation 3: A formal discrimination complaint procedure should be developed by all court systems and communicated to all employees of the court systems in personnel manuals given to all employees and on announcements posted in court offices.

Recommendation 4: A formal education process should be designed, developed, and repeated periodically by the Nebraska Supreme Court to address differences in perception between white and minority employees, and additional educational opportunities to promote diversity training and other educational opportunities as developed by the Judicial Education Committee.

Recommendation 5: All Nebraska court employment specifications and policies should be reviewed and updated to encourage bilingual skills and multicultural knowledge where such capabilities would better serve the public, and such skills should be appropriately compensated.

Recommendation 6: The Nebraska court systems should have, as a performance goal, an ongoing effort to recruit qualified minority applicants for managerial and supervisory positions.

Recommendation 7: A variety of means should be used to inform minority candidates of employment opportunities. These means should include, but not be limited to, multilingual advertisements placed in ethnic centers, churches, and other locations where minorities will be reached. All advertisements should emphasize that the court systems are equal opportunity employers.

#### **IV. Legal Profession: Revised Recommendations**

##### Law Schools

Recommendation 1: While the pool of potential minority law school students for Nebraska's law schools is relatively small, the law schools should continue and increase efforts to attract minority applicants.

Recommendation 2: The Nebraska State Bar Association and the two law schools in Nebraska should make every effort to identify high school and college students from Nebraska's minority population or those graduating from a Nebraska higher education institution, to inform them about the opportunities available with legal training, and to encourage them to apply to one of the state's law schools.

Recommendation 3: The Nebraska State Bar Association should work with the law schools, Creighton and UNL alumni, minority practitioners, and other appropriate groups to attract more minority students.

Recommendation 4: The Nebraska State Bar Association, the Bar Foundation, Nebraska's two law schools, and the region's ethnic bar associations should work together to provide a coordinated and targeted campaign to minority students of various ages to encourage pursuit of a career in the legal profession.

Recommendation 5: The Nebraska State Bar Association, the Nebraska State Bar Foundation, and the law schools in Nebraska should make an effort to identify minorities who have been out of college for a period of time and may be interested in a legal career, to inform them about legal education and the legal profession, and to encourage them to apply to one of the state's law schools.

Recommendation 6: The Nebraska State Bar Foundation should consider assisting in efforts to supplement scholarships and assistance already provided by the law schools to minority students.

Recommendation 7: Among other factors, each Nebraska law school should consider applicants with diverse backgrounds and life experiences that could contribute to a multicultural student body.

Recommendation 8: The Nebraska State Bar Association and Nebraska Supreme Court should continue to work with the law schools to provide effective orientation, mentoring, and academic support programs.

Recommendation 9: The Nebraska State Bar Association and Nebraska Supreme Court should work more closely with the law schools to promote adequate clerking opportunities for minority law students.

Recommendation 10: Law school classes should cover racial and ethnic bias and discrimination as they affect law practice, treatment of fellow professionals, and treatment of court participants.



Recommendation 11: The law schools, the Nebraska State Bar Association, the Bar Foundation, and the Nebraska Supreme Court should include a fair representation of minority participants in law school, Bar and court activities, events and programs.

Recommendation 12: Law schools in Nebraska should annually evaluate the graduation and retention rates following matriculation among minority law students in determining the scope and effectiveness of the school's academic support programs.

Recommendation 13: Entities that affect access to the profession, such as the law schools, Nebraska State Bar Association, and Nebraska State Bar Commission, should collect and maintain appropriate statistics delineated by race and ethnicity (i.e. placement and employment data).

Recommendation 14: Nebraska's law schools should continue efforts to increase the diversity of their teaching faculty and administration.

#### Hiring, Retention & Promotion

Recommendation 1: Law firms and other employers of lawyers should broaden their recruiting and hiring criteria to weigh measures of a candidate's ability in an attempt to increase the likelihood of hiring minority candidates.

Recommendation 2: Law firms and other employers of lawyers should strive to eliminate behaviors that might be perceived as discriminatory or otherwise offensive to minority persons.

Recommendation 3: When possible, law firms and other employers of lawyers should include minority lawyers on interview, selection, and hiring teams.

Recommendation 4: Law firms and other employers of lawyers should participate in clerkship programs that seek to place minority law students as summer associates, with the goal of expanding the range of criteria upon which the law firm may judge the likelihood of the student's ultimate success with the firm.

Recommendation 5: The Nebraska State Bar Association should create a section to address race and ethnicity in the law. Among other activities, this section should develop, maintain, and disseminate a voluntary directory of practicing minority lawyers.

Recommendation 6: The Nebraska State Bar Association should encourage the further development of mentoring programs for lawyers.

Recommendation 7: The Nebraska State Bar Association should consider recommending equal employment opportunity policies for all lawyers in Nebraska.

Recommendation 8: Nebraska court clerks or court administrators should collect and maintain court appointment records delineated by the type of appointment, race and ethnicity of the lawyer or appointed party, and the judge who made the appointment. This data should be reported to the Supreme Court on a periodic basis.

### Judicial Selection Process

Recommendation 1: Judicial nominating commissions and the governor should take proactive steps to ensure a state judiciary that is reflective of the communities it serves.

Recommendation 2: The Nebraska Supreme Court and the Nebraska State Bar Association should encourage diversity on the judicial nominating commissions and require that records be kept of the race and ethnicity of commission members.

Recommendation 3: The Supreme Court and the Nebraska State Bar Association should develop and administer training to improve multicultural competence and recognition of differences for those lawyers and laypersons who serve on judicial nominating commissions.

Recommendation 4: The governor should consider factors such as race and ethnicity when making appointments to the judicial nominating commissions.

Recommendation 5: The Nebraska State Bar Association, the judicial nominating commissioners, and community legal organizations and leaders should strive to identify, encourage and support qualified minority judicial applicants.

## **Appendix C: Feedback Form**

**Minority and Justice Implementation Committee  
The Nebraska State Bar Association  
635 South 14<sup>th</sup> Street  
P.O. Box 81809  
Lincoln, NE 68501-1809  
(402) 475-7091  
(800) 927-0117**

**FEEDBACK FORM**

**Please use this form to provide us with any written feedback and suggestions for the  
Minority Justice Implementation Committee.**

## **Appendix D: Contact Sheet**

**Minority and Justice Implementation Committee  
The Nebraska State Bar Association  
635 South 14<sup>th</sup> Street  
P.O. Box 81809  
Lincoln, NE 68501-1809  
(402) 475-7091  
(800) 927-0117**

To receive continual information on the Implementation Committee's activities and events please print your contact information below:

Name and Mailing Address:

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Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Please briefly describe any occupational affiliation you might have: (i.e. student, teacher, attorney, retired, etc.):

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## **Appendix E: Media Coverage**

