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From Investigation to Implementation:

Factors for Successful Commissions on the Elimination of Racial and Ethnic Bias

Elizabeth Neeley

In the 1980s, states began to study racial and ethnic bias in their judicial systems. Now that more than 25 states,[1] along with scores of academics,[2] have examined issues of racial fairness in the courts, models and strategies exist for effectively conducting these investigations. The National Center for State Courts, in conjunction with the National Consortium on Racial and Ethnic Bias in the Courts, developed a best practices model for establishing and operating a task force or commission on racial and ethnic bias in the courts.[3] The publication provides guidance on: creating the necessary momentum for establishing a task force or commission on racial and ethnic bias in the courts, fashioning the mandate or charge to the task force, outlining the roles and responsibilities of those involved, financing the initiative, managing the task-force process, establishing and implementing the research agenda, and disseminating the results. All of these components comprise what this author describes as the *investigation phase* of the process.

In the concluding chapter of *Establishing and Operating a Task Force or Commission on Racial and Ethnic Bias in the Courts*, the authors suggest that a task force should develop an interim strategy for implementing its recommendations and monitoring court progress. The advantages of extending into a long-term *implementation phase* are that it: "maintains the momentum for making relevant changes and reforms, ensures the continuity of the task force, maintains a cadre of committed persons who have a history of working together, and sustains the expression of the strength of the court's commitment to the elimination of bias."[4]

While much is known about how to effectively investigate racial and ethnic bias in state court systems, less is known about the factors and strategies that make for a successful implementation phase; there is little empirical research or best-practices commentary that can guide a state's work to effectively implement policies to reduce racial and ethnic bias in the courts. This article offers guidance to other jurisdictions establishing policy reform initiatives relating to racial and ethnic fairness in the courts by (1) discussing the structure and activities of one successful state initiative, and (2) discussing the factors and strategies that have contributed to a state's success during the implementation phase.

I. THE NEBRASKA MODEL

THE INVESTIGATION PHASE: NEBRASKA'S MINORITY JUSTICE TASK FORCE

In 2001, the Nebraska State Bar Association, representing the private sector, the Nebraska Supreme Court, representing the governmental sector, and the University of Nebraska Public Policy Center, representing higher education, established a joint task force, which was charged to examine issues of racial and ethnic bias in the court system and legal profession. The task force's 18-month investigation examined numerous topics relating to four major areas: access to the justice system, diversity in the court workforce, diversity in the legal profession, and disparities in the juvenile and adult justice systems.[5]

The research design incorporated both quantitative and qualitative data.[6] Quantitative data included surveys of judges, attorneys, jurors, court personnel, and the public; data on arrests, sentencing, and incarceration rates; and demographic data on the court workforce, law-school students, legal professionals, and the judiciary. Qualitative data was primarily gathered from public hearings held in minority communities across the state of Nebraska, during which testimony was solicited regarding minority groups' experiences with the justice system and perceptions of it.[7] Written testimony was received from

Footnotes

1. States that have undertaken a study of racial and ethnic bias in their court systems include: Alaska (1997), Arizona (1989), California (1997), Colorado (1998), Connecticut (1996), Delaware (1996), Florida (1991), Georgia (1995), Hawaii (2003), Iowa (1993), Idaho (1992), Indiana (2002), Kentucky (1997), Louisiana (1996), Massachusetts (1994), Michigan (1989), Minnesota (1993), Nebraska (2003), New Jersey (1992), New Mexico (1999), Nevada (1997), New York (1991), Ohio (1999), Oregon (1994), Pennsylvania (2003), South Dakota (2006), Tennessee (1997), Utah (2000), Washington (1990), and the District of Columbia (1992).
2. For an overview of academic research, *see* Katheryn Russell, Heather Pfeifer & Judith Jones, Race and Crime: An Annotated Bibliography (2000).
3. *See* Edna Handy, Desiree Leigh, Yolande Marlow & Lorraine Weber, Establishing and Operating a Task Force or Commission on Racial and Ethnic Bias in the Courts (1995).
4. Handy, et al., *supra* note 3, at 56.
5. The topics explored by states vary. The National Center for State Courts provides a database of findings from state studies on racial and ethnic bias in the courts. The database is searchable by state and topic: http://www.ncsconline.org/Projects_Initiatives/REFI/reb.htm.
6. *See* Nebraska Minority and Justice Task Force, Final Report (2003), *available at* http://ppc.unl.edu/userfiles/file/Documents/projects/MinorityandJusticeTaskForce/mjtf_final_report.ppd.
7. *See* Elizabeth Neeley, *Racial and Ethnic Bias in the Courts: Impressions from Public Hearings*, Court Rev., Winter 2004, at 26.

prison inmates on their experiences and perceptions of bias, and focus groups were conducted with attorneys and law students of color on the perceived barriers to employment in the legal profession.

The investigation concluded in January of 2003 with the public release of the task force's *Final Report*.[8] Findings were made in regard to the four focus areas, briefly summarized below.[9]

Access to Justice

The court system was unprepared for the influx of non-English speakers that Nebraska has experienced over the past several decades. There is a shortage of qualified language interpreters in the state. At the time of the study, there were only 6 individuals qualified to interpret in Nebraska's court system (which includes 93 county courts, 93 district courts, and 3 separate juvenile courts). There is a lack of translated court documents, and many of the available translated documents are of poor quality.

Legal Profession

Minorities are drastically underrepresented among Nebraska attorneys. There are fewer than 150 minorities among the state's 5,000 attorneys. Minority attorneys 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. Minority attorneys also believe there are fewer opportunities for mentoring, networking, and other opportunities for professional advancement.

Court Workforce

In regards to the court workforce, only one of Nebraska's 93 counties had a court staff that was at least equal to the diversity of the county population. Many district courts do not have discrimination complaint procedures or equal-employment-opportunity policies in place. Court personnel and bar members report having witnessed inappropriate comments, racial or ethnic slurs, and disrespectful and discourteous treatment of minority defendants, litigants, and attorneys.

Racial Disparities

Similar to national trends, racial and ethnic minorities are disproportionately charged, convicted, sentenced to longer terms, and incarcerated in Nebraska in comparison to their white counterparts. Nebraska's jury pools are not representative of the diversity of their communities.

THE IMPLEMENTATION PHASE: NEBRASKA'S MINORITY JUSTICE COMMITTEE

The primary recommendation of the task force's *Final Report* was to establish a standing committee to implement recommendations aimed at reducing racial and ethnic bias in the justice system. In May of 2003, the Nebraska Supreme Court appointed a diverse group of judges, attorneys, and state and community leaders to the Minority Justice Committee to achieve three primary aims: (1) address racial disparities in both the juvenile and adult justice systems; (2) ensure equal access to the justice system; and (3) increase the diversity of Nebraska's judicial workforce and legal profession.

The task force's research revealed that there was no statutory requirement for counties to periodically update their jury pool lists.

One of the primary functions of the Nebraska Minority Justice Committee is to engage in policy analysis to determine if the documented racial disparities throughout the justice system result from the fair application of neutral policies or the uneven or prejudicial application of the law. Policy reform in Nebraska has been accomplished through three primary mechanisms: legislative reforms, changes to court rules, and programmatic initiatives.

Legislative Reforms

The task force's research revealed that there was no statutory requirement for counties to periodically update their jury pool lists.[10] Because of this, there were counties in Nebraska that had not updated their jury pool lists anywhere from 5-20 years. The significant demographic change in Nebraska over the past two decades coupled with the counties' decision not to refresh their jury pool lists created a situation in which there was a significant difference between the racial/ethnic composition of the county and the composition of the jury pool. To remedy this, a bill was passed by the Nebraska Legislature that requires all counties in Nebraska to refresh their jury pool lists annually.[11]

This legislative change has had a substantial impact in the 44 counties that were not regularly refreshing their jury pools.[12] More specifically, researchers concluded that more than 25% of counties reported noticing either *great* or *some* change in the racial or ethnic composition of the jury pool following annual updates. Of the 10 counties with the highest minority populations in the state, half (50%) reported noticing either *great* or *some* change in the composition of the jury pool following the annual updates. These statistics suggest that the legislative change has had its intended effect in a number of counties.

Court Rule Changes

In addition to legislative changes, reforms have been implemented through changes to Nebraska's court rules. The inves-

8. FINAL REPORT, *supra* note 6.
9. For those interested in reviewing the specific findings and recommendations, please *see* Final Report, *supra* note 6. For a review of other states' findings and recommendations, *see* the National Center for State Court's Research Initiative database online at http://www.ncsconline.org/Projects_Initiatives/REFI/SearchState.asp.
10. *See* FINAL REPORT, *supra* note 6, at 21.
11. See Neb. Rev. Stat. §25-1628.
12. *See* Carly Duvall & Elizabeth Neeley, *Recent Efforts to Make Nebraska Juries More Representative of Their Communities*, NEB. LAW., May 2006, at 8, *available at* http://ppc.unl.edu/userfiles/file/Documents/projects/MinorityandJusticeTaskForce/mjtf_final_report.pdf.

Reforms with fiscal implications may need to go through the legislature so that they may be adequately funded . . . .

tigation phase revealed numerous problems regarding the availability and quality of language interpreters.[13] At the request of the Committee, the Nebraska Supreme Court adopted new rules regarding court interpreters.[14] Rules are now in place to differentiate between the different levels of court interpreters, and standards are in place, which require the appointment of interpreters who have been certified by the National Consortium of Court Interpreters. Additionally, interpreters must be at least 18 years of age, have read the Code of Professional Responsibility for Interpreters, and taken the Interpreter Oath. There is also a rebuttable presumption that an interpreter must be appointed if an interpreter is requested or it is shown that the party is having difficulty communicating.

The decision to attempt reform through legislation or revisions to existing court rules is primarily jurisdictional (*i.e.*, which entity has the authority to make the needed change). There may be reforms that involve groups who are not under the auspices of the Supreme Court (*e.g.,* law enforcement, elected officials, etc.) in which case legislation is more appropriate. When jurisdiction is not at issue, other considerations come into play. Court rule changes initiated by the Supreme Court can occur year-round and are not limited to times when the legislature is in session. Court rule changes can also be effective immediately as opposed to the designated date that legislation becomes effective. Reforms with fiscal implications may need to go through the legislature so that they may be adequately funded and so that the Supreme Court is not put into the position of handing down unfunded mandates.

Another effective initiative realized by a change to court rules is in regard to the system of bail bond.[15] In smaller counties where judges and interpreters are not available on a daily basis, non-English-speaking misdemeanor defendants were sometimes detained until arraignment without being advised of the bond schedule. The disparity of the situation escalated when prosecutors then encouraged these defendants to plead guilty for time served, thereby negatively impacting the defendant's criminal history, which can negatively impact future sentencing decisions.

In an effort to ensure equal access to bonds, the Minority Justice Committee developed a translated packet of information to be shared with defendants.[16] The packet informs defendants of their rights as a defendant in-custody, the right to post bond, and a bilingual financial affidavit so that they can apply for a bond hearing. This packet is intended to serve an informative purpose; non-English-speaking detainees are advised of the bond schedule and can post bond or contact someone to post bond for them. If defendants are not able to post bond, they can use the financial affidavit to request a personal-recognizance bond. This procedure has the potential to reduce disparities in jail populations and to relieve jail overcrowding. The documents are also available on video and cassette to address any issues of illiteracy.

Programmatic Initiatives

In addition to policy reform, it is hoped that change will be sustained through education initiatives and by creating opportunities for a change in culture. To date, the Minority Justice Committee's programmatic and educational initiatives have targeted three groups: the legal profession, the public, and students.

Legal Profession

The Minority Justice Committee is working to create a legal culture that is cognizant of the unique issues faced by racial and ethnic minorities and the systems of inequality within the legal profession and the justice system. Efforts have included education on: how to effectively use language interpreters in the courts,[17] the unique legal issues faced by Native Americans and immigrants in Nebraska,[18] and seminars for minority attorneys on how to apply for judicial vacancies.[19] Arming legal professionals with this knowledge can improve the representation that they provide their clients and can assist minority attorneys with successfully navigating their own legal careers.

Public

Attitudes toward the courts can affect the way individuals perceive their role in the justice system. When people believe that the justice system is fair, it increases their willingness to comply with laws, report crimes, file suits, and otherwise act within the constraints of the legal system, rather than resorting to extralegal means.[20] Educating the public about the court system not only can improve perceptions but also can help improve the public's experience with the legal system.

13. *See* Final Report, *supra* note 6, at 10-17.
14. *See* Nebraska Supreme Court Rules Relating to Court Interpreters, *available at* http://www.supremecourt.ne.gov/rules/pdf/Ch6 Art7.pdf.
15. *See Equal Access to Bail Bond*, Neb. Law., Jan. 2006, at 41.
16. *See* Nebraska Supreme Court Forms Used in Bond Advisement, *available at* http://www.supremecourt.ne.gov/forms/index.shtml. Forms available are Notice of Rights of an In Custody Defendant; Notice of Right to Post Bond; Affidavit in Support of Personal Recognizance Bond; Memo & Court Order to Sheriff, Jailer & Others; and Guidelines for Implementing Bilingual Bail/Bond Documents.
17. *See* Neb. State Bar Ass'n, Using Interpreter's in Nebraska's Courtrooms (2004); Natalie Malmberg, *How to Get the Most from Working with a Court Interpreter*, Neb. Law, May 2006, at 20, *available at* http://www.nebar.com/associations/8143/files/TNL-0506g.pdf.
18. *See Special Issue on Native American Law*, Neb. Law., Aug. 2005, *available at* http://www.nebar.com/associations/8143/files/TNL-Aug05Mag.pdf; Milo Mumgaard, *Immigration Detainees in Nebraska: An Opportunity to Welcome Our Newest Neighbors*, Neb. Law., June 2004, at 14, *available at* http://www.nebar.com/ associations/8143/files/TNL-0604d.pdf; and Amy Erlbacher-Anderson, *Immigration 101*, Neb. Law., May 2006, at 5, *available at* http://www.nebar.com/associations/8143/files/TNL-0506b.pdf.
19. *See* Access to the Bench: How to Apply for a Judgeship (2005).
20. Tom Tyler, Why People Obey the Law (1990).

For example, unlike voting, jury service is a mandatory duty for U.S. citizens. Because jury service is not covered in the curriculum for becoming a U.S. citizen, many new Americans, some of whom are likely to already be distrustful of the justice system,[21] may not respond to their juror summons. Failure to comply with a juror summons can result in the juror summons being issued by law enforcement, a fine, or the potential juror being held in contempt of court. The absence of new Americans from juries also impacts the extent to which juries are representative of their communities.

In response, the Minority Justice Committee undertook a statewide campaign in 2006 that was designed to educate minority communities about the importance of jury service and is working to have jury service become a component of the curriculum for citizenship.[22] As part of this project, the Minority Justice Committee also hosted "law day" events at local minority community centers in order to help answer legal questions and provide communities with a resource for the law and positive experience with it.

Students

Nebraska's Minority Justice Committee is working to expand employment opportunities for minorities interested in pursuing a legal career in the state of Nebraska. Their annual legal diversity summit is a regional event for Nebraska legal employers and regional law students of color.[23] The intent of the summit is to create awareness in Nebraska's legal profession about the value of diversity, educate legal employers on how to increase their efforts to recruit and retain attorneys of color, and provide minority law students from Nebraska and surrounding states with the opportunity to interview with employers and learn more about legal-employment opportunities in Nebraska. In a related action, a Nebraska Legal Diversity Website was created by the Minority Justice Committee to promote diversity in the legal profession by providing online mentoring, job postings, and scholarship information.[24]

II. NEBRASKA'S LESSONS FOR OTHER STATES: FACTORS FOR SUCCESS

While numerous models, strategies, and resources exist for states undertaking investigations of racial and ethnic bias in the courts,[25] much less is known about the factors that make for a successful implementation phase. Here, the leadership of Nebraska's Minority Justice Committee reflects on the procedural and organizational factors that have contributed to its success during the implementation phase.[26] The term Racial Justice Commission will be used when referring to implementation initiatives in general, the term Minority Justice Committee will be used to denote experiences specific to Nebraska.

When people believe that the justice system is fair, it increases their willingness to comply with laws, report crimes, file suits, and otherwise act within the . . . legal system . . . .

BUILDING CREDIBILITY

Credibility for the implementation phase begins with the credibility built by the investigation phase via a task force or commission's *Final Report*. One way to enhance credibility is to partner with academic researchers. Many states have outsourced the development and implementation of their research agenda both for the sake of objectivity and for the expertise that a university or private-sector firm can provide. Nebraska's Minority Justice Committee partnered with the University of Nebraska Public Policy Center to provide objectivity and expertise in the planning and execution of their research agenda. The Public Policy Center organized a thorough review of other states' research, methodologies, and recommendations and brought together university faculty to help inform the initial development of the study; it provided staff with the skills and expertise necessary to conduct the research and used their existing networks to link with minority communities across Nebraska. During the implementation phase, the partnership with the University of Nebraska Public Policy Center increases the Minority Justice Committee's competitiveness for grant funding, provides the skills and expertise necessary to conduct smaller-scale research projects, and links the initiative with faculty research/expertise both locally and nationally.

Additional steps can be taken to enhance the credibility of a task force's *Final Report*; Nebraska's Minority Justice Task Force, for example, submitted its research to a rigorous review process conducted by academic scholars in law and the social sciences (*e.g.*, political science, psychology, sociology, and criminal justice), throughout the University of Nebraska system. University faculty were contacted and asked to provide an assessment of data collection, data quality, data analysis,

21. An excellent overview of the differing views of whites, African-Americans, and Hispanics about the court system, based on a 1999 survey of 1,826 U.S. residents, is found in David B. Rottman & Alan J. Tomkins, *Public Trust & Confidence in the Courts: What Public Opinion Surveys Mean to Judges*, COURT REV., Fall 1999, at 24.
22. *See* Lorraine Boyd, *"Year of the Juror" Aims to Foster Understanding and Participation*, DAILY REC. (Omaha, Neb.), Jan. 6, 2006, *available at* http://www.nebar.com/associations/8143/files/TNL-0506b.pdf; Nebraska Judicial News (Oct. 2006); *Jurors Thanked for Contribution to Justice System*, NORFOLK (NEB.) DAILY NEWS, March 4, 2006; Elizabeth Neeley, *Year of Juror Campaign Comes to a Close*, NEB. LAW., Nov./Dec. 2006, at 20, *available at* http://www.nebar.com/associations/8143/files/TNL-0506b.pdf.
23. *See* Julien Fielding, *Legal Diversity Summit Deemed Huge Success by Organizers, Participants*, DAILY REC. (Omaha, Neb.), April 19, 2005, at 3, *available at:* http://ppc.nebraska.edu/program_areas/documents/mjtf/DailyRecArticleApril19-05.pdf; Lorraine Boyd, *Harvard Law Professor to Participate in Legal Diversity Summit, and Visit Nebraska and Creighton Law Schools*, DAILY REC. (Omaha, Neb.), Oct. 3, 2006, *available at* http://ppc.nebraska.edu/userfiles/file/Documents/projects/MinorityandJusticeTaskForce/mjtf/Ogletree.pdf.
24. See http://www.nelegaldiversity.org/
25. *See supra* notes 2 and 3.
26. Content based on interviews with Nebraska Minority Justice Committee Co-Chairs, Linda R. Crump and the Honorable John Gerrard.

Credibility during the implementation phase means following the discourse with action.

data interpretation, and the empirical soundness of those findings and recommendations. These reviews were helpful in identifying instances in which claims were being made by the task force that went beyond the data (*e.g.*, the values of the task-force members were the basis of pinpointing a potential problem but the empirical information that had been collected might not sufficiently prove its existence), informing of similar findings from other studies that gave greater confidence to the validity of the task force's investigation, and so on. All in all, the peer-review process gave task-force members an external, independent sense of where to be cautious and where to be firm in identifying problems of bias in the system.

The support of a state's major legal institutions is also fundamental to credibility. Endorsements of the *Final Report*, therefore, enhance the credibility of the recommendations and actions that follow. These entities will vary by state and may include law schools, legislatures, governors, bar associations and state supreme courts. In Nebraska, the task force's *Final Report* was submitted to and adopted by Nebraska's Supreme Court and was unanimously approved by the Nebraska State Bar Association's House of Delegates. Their endorsements of the *Final Report* were made public through press conferences and the print media surrounding the release of the *Final Report*.[27] Just as the support of a state's Chief Justice is institutionally and symbolically important in establishing a task force or commission to investigate racial and ethnic bias in the courts,[28] the Chief Justice's endorsement of the *Final Report* is also important. Nebraska's Chief Justice John Hendry publicly endorsed the *Final Report*: "The judges, lawyers and court employees of the state should accept this report as a call to action. If there is one institution in this society that should be completely free of bias it is the courts."[29] Statements such as these confirm the courts' commitment to action and engender cooperation from all court personnel in obtaining that action.

Credibility during the implementation phase means following the discourse with action. Effective action breeds institutional and community support and builds momentum within the Racial Justice Commission itself. Following the release of its *Final Report*, the Nebraska Minority Justice Committee returned to the communities that the task force has solicited public hearing testimony from. These town hall meetings gave the Minority Justice Committee a chance to report back to each community on the findings of the study and the recommendations for change. The fact that the Minority Justice Committee took the time to report back directly to the minority constituencies involved in the study built credibility in the eyes of the public.

Many states choose to release annual reports on the efforts of their implementation phase.[30] Nebraska has also adopted a dissemination strategy for their annual progress report that allows them to build political capital by informing policy makers of their work, to keep racial justice issues on the radar of the public and the justice system,[31] and to pique the interest of possible funding entities. For example, state senators have contacted the Minority Justice Committee leadership and offered their services in advancing legislative initiatives proposed by the Minority Justice Committee. Additionally, disseminating the annual progress reports, which tout the accomplishments of the Minority Justice Committee, has assisted with starting dialogues with both local and national funding agencies.

A SEAMLESS TRANSITION

According to the National Center for State Courts, states that have transitioned from the investigation to the implementation phase may experience between a six-to-eighteen-month lag between the final report and a fully staffed implementation commission.[32] In order to capitalize on the momentum generated from the investigation, it is important to take the steps necessary for as seamless a transition as possible. Common barriers to a seamless transition include staffing and funding.

27. *See Heed the Call to Action on Courts' Behalf*, LINCOLN (NEB.) JOURNAL STAR, Feb. 11, 2003, *available at* http://ppc.nebraska.edu/whats_new/in_the_news/MJ-Journal-Star2-11-03.pdf; Margaret Reist, *Minority Report: Justice Task Force Confirms Disparities*, LINCOLN (NEB.) JOURNAL STAR, Feb. 1, 2003, *available at* http://ppc.nebraska.edu/whats_new/in_the_news/MJ-Journal-Star-2-1-03.pdf; and Joseph Morton, *Minorities More Likely to Be Prosecuted in Nebraska, Report Says*, OMAHA (NEB.) WORLD HERALD, Feb. 13, 2003, *available at* http://ppc.nebraska.edu/ whats_new/in_the_news/MJ-Omaha-WH2-1-03.pdf.
28. *See supra* note 3 at 15.
29. *SEE* JOSEPH MORTON, *JUSTICE SYSTEM DISPARITIES FOUND*, OMAHA (NEB.) WORLD HERALD, Feb. 13, 2003, *available at* http://ppc.nebraska.edu/whats_new/in_the_news/MJ-Omaha-WH2-1-03.pdf.
30. Progress reports issued in Nebraska for the years 2004 through 2009 are found online at http://www.nebar.com/display common.cfm?an=1&subarticlenbr=73. Other states' progress reports, including Arizona (1996), Florida (2000), Nevada (1999), Ohio (2002), and Tennessee (2000), are available at the National Center for State Courts' Racial and Ethnic Fairness Initiative Database: http://www.ncsconline.org/Projects_Initiatives/REFI/ SearchState.asp.
31. *SEE, E.G., REFORM WORK BEGINS ON LEGAL SYSTEM*, LINCOLN (Neb.) Journal Star, Sept. 7, 2004, *available at* http://ppc.nebraska.edu/whats_new/in_the_news/Documents/GI_JusticeReform9-04.pdf; Butch Mabin, *Task Force: Changes Are Ongoing*, LINCOLN (NEB.) JOURNAL STAR, Sept. 7, 2004, *available at* http://ppc.nebraska.edu/whats_new/in_the_news/Documents/JS-9-04Task_Force.pdf; Butch Mabin, *Changes Reported in Minority Justice*, LINCOLN (NEB.) JOURNAL STAR, Feb. 2, 2006), *available at* http://ppc.nebraska.edu/whats_new/in_the_news/Documents/JS-9-04Task_Force.pdf; and Diane Wetzel, *Minority Advocate Group Succeeds*, NORTH PLATTE (NEB.) TELEGRAPH, March 5, 2005, *available at* http://ppc.nebraska.edu/userfiles/file/Documents/projects/MinorityandJusticeTaskForce/mjtf/MJICNortMJICNor3-5-05.pdf.
32. Supra note 3, at 54.

Retention of key leadership and staff can ensure institutional memory between the investigation and implementation phases, reducing the time lost on the "learning curve" that would be needed by new staff or leadership.[33]

Funding can also impact the transition time. Some states have been fortunate to have a steady funding stream across phases. Others may have to search for different sources of funding from the investigation to the implementation phase. Nebraska's investigation phase was primarily funded by two grants from the State Justice Institute and some additional funding and in-kind support was provided by the Nebraska State Bar Association. As the initiative transitioned from the investigation to the implementation phase, the Nebraska State Bar Association took on the responsibility of fully funding the Minority Justice Committee with the understanding that other permanent sources of funding would be secured in the future (funding is discussed in more detail under "Sustainability" later in this article).

ORGANIZATION, LEADERSHIP, AND COMPOSITION

Organization

The organization and composition of states' Racial Justice Commissions varies considerably. Most state initiatives are led by the court. Nebraska's partnership between the State Supreme Court *and* the State Bar Association has provided it considerable leverage in making sustainable policy reforms. In addition to political leverage, this relationship is beneficial for the additional resources and funding available to the project. Nebraska also boasts a university partnership, which is able to provide the Minority Justice Committee with research resources and academic expertise. Although the court and the bar had previously had a cordial relationship, the joint task force was the first formal and large-scale joint initiative between these entities.

Leadership

Strong leadership is vital in the implementation phase of the initiative. Many Racial Justice Commissions are chaired by members of the judiciary. In contrast, the leadership of Nebraska's initiative illustrates the close partnership between the court and the bar association. The Minority Justice Committee is co-chaired by a justice of the state supreme court and a past president of the state bar association. The co-chairs provide leadership, motivation, and direction for the Minority Justice Committee as well as serve as liaisons to the supreme court and bar leadership, act as spokespersons for public relations, and make determinations regarding the composition of the Minority Justice Committee.

Leadership is also important at the subcommittee level. Each of Nebraska's subcommittees is co-chaired by members of the Minority Justice Committee. Subcommittee chairs provide leadership and direction for the subcommittee, make determinations regarding the use of ad-hoc members to provide the subcommittee with additional expertise, facilitate discussion, and in some instances may manage conflict within the subcommittees. Minority Justice committee and subcommittee chairs deal with conflict in a variety of ways depending on the issue (*i.e.*, an ideological conflict, procedural conflict, personality conflict, or power conflicts). While some debate can aid in understanding the complexity of issues, fractures within a subcommittee can create a stalemate and stall the Minority Justice Committee's progress.

Retention of key leadership and staff can ensure institutional memory between the investigation and implementation phases . . . .

Committee Composition

While there is no formal recommendation regarding the size of a Racial Justice Commission, ideally the commission will balance the need to contain membership size with maximum representation. The initiative (in both phases) should have members from each of the racial and ethnic minority groups represented within the state.[34] This factor not only contributes to the credibility of the initiative but may assist the Racial Justice Commission with generating community support. Representation on the Racial Justice Commission should also be statewide and represent both urban and rural interests.

The composition of the Racial Justice Commission is a strategic decision. While it is not necessary to use the exact same members for the investigation and implementation phase, it is recommended that there be some congruity to promote institutional memory.[35] Some members may intentionally not be retained across phases, and some may elect not to continue their service. The transition from the investigation to the implementation phase can be an ideal time to appoint new members to the Racial Justice Commission. New members can provide new perspectives and enthusiasm to the project. New members will also be appointed as veteran members retire, move, change jobs, and so forth. Based on Nebraska's experience, incorporating new members is more effective when the staff and/or leadership make a formal effort to (1) orient the new members on the history, operation, and direction of the committee; (2) provide new members with an opportunity to ask questions; and (3) discuss the expectations associated with service.

Members of the Racial Justice Commission should be the decision makers for the institutions they represent, and members should ideally represent a diversity of interests. Members should strategically be chosen to foster investment in the cause and to avoid duplication of existing efforts. Nebraska's membership includes representation from the courts, including: trial and appellate judges, court clerks, and administrators. State agencies are also represented including: the Nebraska Attorney General's Office, Nebraska Equal Opportunity Commission,

33. Supra note 3, at 55.
34. Supra note 3.
35. Supra note 3, at 56.

There are numerous factors that can be considered when determining how recommendations will be prioritized, including importance, cost, and time.

Nebraska Indian Commission, Nebraska Mexican American Commission, and Nebraska State Patrol. Non-governmental organizations, such as the Nebraska Appleseed, and law-related associations, such as the Nebraska Association of Translators and Interpreters, are also represented, as well as legal education, including the deans and faculty members of both of the law schools in the state: the University of Nebraska College of Law and Creighton University School of Law.[36] Through these alliances, the Minority Justice Committee is often able to gain the enthusiastic backing of the public and the major institutions needed to promote change in the court system and legal profession.

PRIORITIZATION

When faced with an overwhelming list of recommendations, the Nebraska Minority Justice Committee's first step was to prioritize the recommendations and develop concrete action steps to accomplish their goals. There are numerous factors that can be considered when determining how recommendations will be prioritized, including importance, cost, and time. Nebraska's Minority Justice Committee decided, as a matter of priority, to first address the issues that affected due process. The Minority Justice Committee quickly acted on these recommendations, worked to advance legislation for jury pool refreshment,[37] and helped to develop new supreme court rules regarding language interpreters.[38] The action-oriented beginning developed credibility for the implementation phase (following discourse with action) and built a sense of momentum for the Minority Justice Committee.

EFFECTIVE PARTNERSHIPS

Involving various institutional decision makers can lead to synergistic action among partners. For example, based on the task force's research regarding minority law-school admissions, the University of Nebraska College of Law began to undertake its own efforts to promote diversity. In 2003, they established a Pre-Law Institute,[39] a summer program developed to prepare students for both the law-school-application process and law school itself, expose them to a broad cross-section of the legal community, and establish individualized mentoring relationships. This initiative was funded through the Law School Admissions Council and is now in its fifth year of operation.

Partnerships outside of Minority Justice Committee membership can also be effective. One of the goals of Nebraska's Minority Justice Committee is to "expand the pipeline" of racial and ethnically diverse students applying to and enrolling in Nebraska law schools. The Minority Justice Committee itself does not have the time, resources, or expertise to establish an effective youth-mentoring program. Instead, the Minority Justice Committee partners with existing effective mentoring programs within communities to bring together attorney mentors and minority youth.

STRATEGIC PLANNING

Many models exist for strategic planning.[40] Based on Nebraska's experience, it is important to choose a model that is appropriate for the Racial Justice Commission's mission, culture, complexity and size. Nebraska's Minority Justice Committee initiated a strategic-planning process after three years of implementing reforms. It was at this point that some of the Minority Justice Committee's subcommittees had accomplished their primary goals and requested guidance for future direction. In addition to assisting the Minority Justice Committee with prioritizing their goals, developing action steps, and addressing new policy issues, the strategic-planning retreat facilitated a way for members to consider why racial justice issues were important to them and to reconnect with that passion.

SUSTAINABILITY

An important question that any Racial Justice Commission must answer is: Is this a temporary or permanent initiative? If it is decided that the initiative is permanent, the Minority Justice Committee will need to take steps to "institutionalize" their efforts and secure a long-term funding mechanism.

The success of a Racial Justice Commission is largely attributed to the work of its membership. But the risk of relying heavily on members is the possible loss the commission would experience if a key member left the Racial Justice Commission. To the extent possible, commitments need to be developed with institutions, not just the individuals representing those institutions. Nebraska learned this lesson the hard way when one of its primary research partners left for a position in another state. This time, as Nebraska works to rebuild its research base, it strives for institutional commitment in addition to an individual commitment.

There are numerous mechanisms for funding. In hindsight, the Nebraska Minority Justice Committee wishes it had insisted on state funding from the beginning. Nebraska's initiative is primarily funded by the Nebraska State Bar Association. Funding has also been sought via the courts' bud-

36. A full list of Nebraska's Minority Justice Committee members is available online at: http://www.supremecourt.ne.gov/commissions/mji.shtml
37. Supra note 11.
38. Supra note 14.
39. *See* Kelly Bartling, *College Hosts First Pre-Law Institute*, THE SCARLET (Univ. Nebraska-Lincoln), Aug. 28, 2003, *available at* http://www.unl.edu/scarlet/v13n20/v13n20features.html#anchor355891.
40. *See* JOHN BRYSON, STRATEGIC PLANNING FOR PUBLIC AND NONPROFIT ORGANIZATIONS: A GUIDE TO STRENGTHENING AND SUSTAINING ORGANIZATIONAL ACHIEVEMENT (1996); CARTER MCNAMARA, FIELD GUIDE TO NONPROFIT STRATEGIC PLANNING AND FACILITATION (2006).

get (subject to approval by the Nebraska legislature) every year since 2005. It has been difficult to convince the legislature that they should fund a program that has been operating under private funding, even though the work directly benefits the court system and court users. In the mean time, the Minority Justice Committee has attempted to relieve the financial burden on the bar association by obtaining grants from local, state, and national funding agencies. Additionally, through the Nebraska State Bar Association's Foundation, the Minority Justice Committee has acquired 501(c)(3) status and obtains additional funds through charitable contributions and corporate donations.[41]

RESOURCES

National Consortium for Racial and Ethnic Fairness in the Courts

States that are considering undertaking a statewide examination of racial justice issues can consult with the National Consortium on Racial and Ethnic Fairness in the Courts ("National Consortium").[42] The National Consortium is committed (1) to encouraging states to examine the treatment accorded minorities in their courts; (2) to sharing the collective knowledge of task forces and commissions with courts, law enforcement, and the community; and (3) to providing technical assistance and expertise to commissions, task forces, and other interested organizations and individuals on the subject of racial and ethnic fairness.

National Center for State Courts

At the request of the National Consortium, the National Center for State Courts established a clearinghouse for the main findings and recommendations of state commissions that were established to investigate and improve racial and ethnic fairness in the courts.[43] The website allows viewers to search by state and/or topic.

Additionally, the National Center for State Courts has compiled information on promising practices relating to five areas: (1) diverse and representative state judicial workforces; (2) fair and unbiased behaviors on the part of judges, court staff, attorneys, and others subject to court authority in the courthouse; (3) comprehensive, system-wide improvements to reduce racial and ethnic disparities in criminal, domestic violence, juvenile, and abuse and neglect cases; (4) the availability of timely and high-quality services to improve access to the courts for people with limited English proficiency; and (5) diverse and representative juries. A website has been created for this campaign that includes a searchable database, and an e-newsletter has been prepared to spotlight program across the country that address racial and ethnic fairness.[44]

III. SUMMARY

Ideally, states that undertake investigations to document and begin to understand racial disparities within state court systems will also establish an implementation phase to execute evidence-based policy reforms. This article highlights some of the ways (legislative reform, supreme court rule changes, and programmatic initiatives) that Nebraska has made reforms for a more equitable system. This article also reflects on the factors that have made this initiative successful, including: building credibility; a seamless transition between phases; organization, leadership, and composition; effective partnerships; strategic planning; sustainability; and utilizing existing national resources.

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41. *See* the Nebraska Lawyers Foundation's website at http://www.nebar.com/displaycommon.cfm?an=4.
42. See the National Consortium's website online at: http://www.consortiumonline.net/
43. See the National Center for State Court's Racial Fairness Initiative Database online at: http://www.ncsconline.org/Projects_ Initiatives/REFI/reb.htm
44. See http://www.ncsconline.org/ref/.