FINAL REPORT

TO THE CHIEF JUSTICE

COLORADO SUPREME COURT

MULTICULTURAL COMMISSION

JUNE 1998

"Injustice anywhere is a threat to Justice everywhere."

Rev. Martin Luther King, Jr.

TABLE OF CONTENTS

COMMISSION MEMBERS

James Benway - Director of Human Resources, Colorado Judicial Department.

Leo Cardenas - Mediator, facilitator, and trainer in conflict resolution. Retired Regional Director of the Denver Regional Office of Community Relations Service.

Paul Chan - University Counsel, University of Denver. Former Managing Attorney, Office of the Attorney General, State of Colorado.

Jay Choi - Private law practice, Cohen, Brame & Smith, emphasizing domestic and international commercial law and U.S. immigration.

James Colvin - Retired City Attorney for the City of Colorado Springs.

Richard Doby - General manager and owner, Doby Financial Group, Denver, Colorado.

Yoko Felter - Licensed clinical social worker employed as Director of the Dry Creek Treatment Center.

William J. Fortune - President, Norwest Goldenbank Group. Involved in banking industry in the Denver area for over twenty years.

The Honorable James Franklin - Judge, Fourth Judicial District, El Paso County District Court.

Kerry F. Hada - Private law practice, Law Offices of Kerry F. Hada, emphasizing criminal defense, plaintiff's personal injury, and family law.

Royal Hurst - Supervisor of the Specialized Drug Offender Program, Tenth Judicial District Probation Department.

Gary Jackson - Private law practice, DiManna & Jackson, Denver, Colorado, since 1976. Former prosecutor, Denver District Attorney and the Office of the U.S. Attorney.

Tanya Lyons - Social Services Program Coordinator, Division of Youth Corrections at the Gilliam Youth Services Center in Denver.

The Honorable Dennis Maes - Chief Judge, Tenth Judicial District, Pueblo County District Court.

Senator Richard F. Mutzebaugh - Member of Colorado State Senate since 1990. Private law practice emphasizing business, banking, and real estate law.

Alan W. Ogden - Executive Director, Multicultural Commission.

Ben Reiff - Member of the Second Judicial District Nominating Commission. Consultant to Coors Brewing Company and Community Bank.

Carolyn Rice - Deputy Clerk, Colorado Supreme Court.

The Honorable Gregory Kellam Scott - Justice, Colorado Supreme Court.

Joyce Sterling - Professor of Law, University of Denver College of Law.

Jacqueline St. Joan - Clinical Professor of Law, University of Denver College of Law. Former Denver County Court Judge, 1987-1994.

Lari Trogani - Private practice El Paso County, emphasizing criminal law.

Lorenzo Trujillo - Director of Human Resources, Adams County School District 14.

Frederick Y. Yu - Private practice of law, Yu Stromberg & Cleveland, Denver, Colorado, emphasizing health care matters since 1976.

ACKNOWLEDGMENTS

The Commission would like to thank a number of individuals who volunteered their time and efforts to assist the Commission in its work. It would have been impossible to conduct the hearings in the four locations across the state without volunteer interpreters and reporters. The Commission thanks: Tony Romero, interpreter, and Karen Voepel, court reporter, Lamar; Ann Hepp, interpreter, Dana Stephens and Diane Murphy, court reporters, Montrose; Henry Reyes, interpreter, and Rebecca Lucas, court reporter, Pueblo; Rebecca Sloan, court reporter, Denver.[1]

The Commission also received the cooperation of the various district administrators of the four judicial districts where the hearings took place. The district administrators were very helpful in securing the facilities for the hearings and enlisting voluntary assistance of court reporters and interpreters. The district administrators also provided assistance in distributing public notices of the hearings. Those persons are: Janet Adams, Second Judicial District; Jim Clayton, Seventh Judicial District; Mike McClure, Tenth Judicial District; and Richard Weber, Fifteenth Judicial District.

The Commission also expresses its appreciation of the work and cooperative spirit shown by the State Court Administrator's Office.

A special thanks goes to Reggie Morton and Community Research Associates, for securing the funding and resources to complete the surveys upon which the Commission relied in reaching its conclusions and recommendations.

Finally, the Commission hereby expresses its gratitude to and acknowledges the work and effort of Ms. Christine Ramos, secretary to Justice Scott, and Alan Ogden, its Executive Director.

[1] The Commission also expresses its gratitude to the interpreter in Denver, whose name could not be located at the time of this report.

INTRODUCTION

The Colorado Constitution guarantees that "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character . . . ." Colo. Const. art. II, sec. 6 (emphasis added). Our state constitution also promises that "right and justice should be administered without sale, denial or delay." Id. Despite these guarantees, members of the Colorado Bar Association (CBA) informed the Colorado Judicial Advisory Council (JAC) that they were concerned that access to our state courts is denied to many citizens based on race or national origin. Following a preliminary study, the JAC recommended that the Supreme Court establish a commission to address racial or ethnic bias in our courts.

On September 5, 1995, with the unanimous concurrence of the justices of the Supreme Court, Chief Justice Anthony F. Vollack issued an order establishing the Colorado Supreme Court Multicultural Commission (the "Multicultural Commission" or "Commission").

By his Order, Chief Justice Vollack directed the Multicultural Commission to "consider whether racial and ethnic bias does exist in the judicial system in Colorado." The Order stated that "if the Commission determines that such racial and ethnic bias exists in any aspect of the judicial system in Colorado, [it] . . . should suggest . . . standards designed to eliminate bias; educational programs calculated to increase the

sensitivity of judges, judicial employees, the legal profession; . . . and appropriate procedures . . . designed to eliminate or reduce bias."

To those ends, the Commission met, conducted public hearings, and developed and administered a survey. This report is based on the Commission's work over a two-year period and includes recommendations resulting from that work.

HISTORY

The need for a statewide study regarding race, ethnicity, and access to our courts was addressed by the final report of the Task Force on Judicial Responses to Social Issues, Vision 2020. That report, issued March 25, 1992, entitled "Colorado Courts in the Twenty-First Century" (Vision 2020 Report), recommended the creation of a Multicultural Commission. The Vision 2020 Report recognized the need for such a commission due, in part, to recent population growth, which has diversified our state's population. Indeed, census trends indicate that the population of Colorado will become more diverse in terms of race, gender, and national origin with each passing decade.[1] As a consequence, encounters, amicable as well as hostile, among citizens from different backgrounds will also be more frequent.[2] Accordingly, our state courts and agencies devoted to dispute resolution will be called upon more frequently to intervene in disputes, address family relationships and related juvenile matters, resolve civil disputes, and handle matters involving the relationship between individuals and government in both civil and criminal cases.

In 1993, the CBA implemented the recommendations of the Vision 2020 report. As one of its initial efforts, the CBA sent representatives to the annual meeting of the National Consortium of Task Forces and

[1] Colorado County and State Population Projections and the 1990 Census of Population by Race & Hispanic Origin are attached to this report as Exhibit A.

[2] Judicial Advisory Council Recommendation for Establishment of a Multicultural Commission.

Commissions on Racial and Ethnic Bias in the Courts. The CBA representatives returned from the conference with a number of studies and related materials which were presented to the JAC. After reviewing these materials and the efforts made in other jurisdictions, the JAC issued a report dated June 16, 1994, recommending the creation of a Colorado Multicultural Commission.

In response to the JAC recommendation, on September 5, 1995, Chief Justice Vollack issued his Order establishing the Multicultural Commission and granted the Commission the authority to

> examine any aspect of the judicial system in carrying out its charge, but particular emphasis should be directed to the following areas of concern, especially as related to the judicial process and court procedures, judicial administration, and substantive and procedural law: Access to our courts . . .; Courtroom Environment, particularly as related to treatment of litigants, witnesses, jurors, and attorneys; Juvenile and Adult Sentencing, and Treatment of Victims of Crimes.

In addition, the Multicultural Commission was to examine "Access to Judgeships and Other Positions in the Judicial system [and] Court Administration, particularly as regards the treatment of judicial employees and the opportunities for advancement . . . ."

The Order appointed Justice Gregory Kellam Scott as chair of the Multicultural Commission and Alan Ogden as executive director. Shortly after establishing the Multicultural Commission, the Chief Justice

appointed citizens from throughout the state as members and asked the leadership of the General Assembly to appoint two additional members.[3] The September 1995 Order is included as Exhibit B to this report.

[3] The two members appointed by the leadership of the General Assembly were Senator Richard Mutzebaugh and Representative William Kauffman.

THE WORK OF THE COMMISSION

Organization and Initial Efforts

The first meeting of the Commission was held December 13, 1995. At that meeting, Commission members concluded that the Commission's primary responsibility was to determine whether there was evidence of racial or ethnic bias in the Colorado Judicial System and, if such evidence was found, to make recommendations to the Chief Justice.

To accomplish this task, the Commission created five committees from among its members. Each committee addressed one of five broad areas of concern outlined in the Chief Justice's Order creating the Commission: (1) access to the courts; (2) courtroom environment; (3) sentencing and treatment of victims; (4) court administration; and (5) legislation and court rules. Each committee met and identified concerns and several proposed activities which were presented to the Commission. The Commission then met as a whole to discuss the various recommendations. After several meetings, the Commission determined that the various recommendations would require significant funding, which the Commission did not have. Unable to carry out the various activities suggested by the five committees, the Commission appointed a Finance Committee to investigate potential sources of funding. Over the next several months, however, attempts to secure funding were unsuccessful. While seeking other sources of funding, the Commission

decided to proceed and to formulate tasks that could be accomplished despite limited resources.

Defining Racial and Ethnic Bias

Early in its deliberations, the Commission determined it would first define bias, and adopted the following definition:

> Racial and ethnic bias means conscious or unconscious intentional behavior toward individuals effected on the basis of an individual's race or ethnic characteristics.
>
> Ethnic and racial bias exists when people are denied rights or burdened with responsibilities solely on the basis of their ethnicity or race; when people of certain ethnic groups or races are treated differently in situations solely because of their race or ethnicity; and, when stereotypes about the proper behavior of members of a certain ethnic group or race are applied to people regardless of their individual situations.

Using its working definition, the Commission pursued a new approach to its tasks.

Development of a Survey and Public Hearings

In the fall of 1996, recognizing its limited resources,[4] the Commission reorganized around two tasks that it could complete: (1) conduct a survey; and (2) hold public hearings. Instead of the five committees initially formed, the Commission split its membership between two task-oriented committees: a Hearings Committee and a Survey Committee.

The Hearings Committee was organized to hold public hearings. The public hearings were designed to give every citizen and, in particular, users of our courts, an opportunity to express perceptions as to the existence and extent, if any, of racial and ethnic bias in our state courts and within the Colorado Judicial Department.

A Survey Committee was formed to conduct two surveys. One survey was directed towards attorneys, probation officers, and court staff, including judges and magistrates. The second survey, with specialized questions directed towards court interpretive services, was developed to address language limitations upon access and court response. Both surveys are included as Exhibit C to this report.

---

[4] While the Commission was not provided a budget, it received the full support of the Supreme Court, including the in-kind contribution of staff support and, when necessary, certain funds. These funds were used to support continued and active

(continued . . .)

Findings of the Commission

Based upon the information obtained in the course of its public hearings and surveys, the Commission finds that there is significant evidence that full and fair access to our state courts is impermissibly denied to some citizens based on race, ethnicity, or national origin. Moreover, individual perceptions and experiences indicate that barriers to full and fair access to Colorado courts prevent many citizens from obtaining their full rights and privileges of citizenship. The commission further concludes that such barriers, whether caused by inappropriate or illegal conduct, language, or economic limitations are unacceptable and must be removed. Therefore, in accordance with the Chief Justice's Order, the Commission makes the following recommendations suggesting programs and mechanisms for the reduction and elimination of racial and ethnic bias in Colorado courts.

(. . . continued)

participation by representatives of the Commission in the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts.

RECOMMENDATIONS

The Commission notes that although the Court may not adopt each and every recommendation set out below, at the very least, a permanent agency of the court should be created to address and to carry out those recommendations adopted by the court.

1. A Supreme Court standing committee comprised of no more than nine members should be appointed to aid in implementing the recommendations made by the Multicultural Commission and to make additional recommendations as appropriate. The members of that committee should include judicial, bar, and lay citizen leaders. One of the nine members should be the Director of Human Resources of the Judicial Department. It is also recommended that in addition to the nine members, three members of the Colorado Supreme Court be appointed to the committee, including a liaison justice to the Gender and Justice Commission. The suggested name for this committee is "The Supreme Court Multicultural Executive Committee" (Executive Committee).

2. The Executive Committee should meet and interact with, as appropriate, the Gender and Justice Commission, recognizing that the problems facing women of color or diverse ethnic backgrounds should be addressed by both organizations as a priority matter. The Executive Committee should be funded in a manner similar to that of the Gender and Justice Commission and should receive staff support to ensure that it is able to carry out its responsibilities.

3. The Judicial Department should develop mandatory educational programs which will increase awareness of ethnic and cultural differences for judicial officers at all levels.

4. The Judicial Department should include in the educational programs for judicial officers training that addresses racial and ethnic bias and its effect on attorneys, parties, witnesses, and juries. Such programs should provide judicial officers with methods to address and control

inappropriate conduct in Colorado courts of law. Where possible, this training should be provided in a form that involves judges and magistrates as active participants, not merely as an audience.

5. The Supreme Court should encourage the development of Continuing Legal Education (CLE) courses that deal with racial and ethnic bias; the Supreme Court should assure that such courses are accredited and qualify for CLE ethics credit.

6. The Supreme Court attorney disciplinary process and the Colorado Rules of Judicial Discipline should include remedial measures that require offending lawyers and judges to be educated about racial and ethnic bias.

7. The Chief Justice should take steps to assure that appointments to judicial performance and nominating commissions reflect the state's diverse population.

8. Increased efforts should be undertaken to recruit, nominate, and appoint a diverse body of judicial officers, including magistrates. In addition, chief judges and other judicial officers should be made aware of available minority attorneys in the appointment of masters, guardians ad litem, mediators, and membership on court committees, etc., through informational articles, direct contact by chief judges with various bar officers, and other appropriate means. (As one of many activities, a meeting of chief judges and specialty bar leaders may prove helpful.)

9. The Executive Committee shall review hiring, recruiting, and promotion practices, and data relating to those activities of the Judicial Department on an annual basis and identify areas of concern, which shall be reported to the Chief Justice.

10. The Executive Committee shall review and suggest modifications to Judicial Department standards to ensure that Judicial Department applicants for employment and employees have equal access to all

levels of employment and promotions, especially supervisory and director positions.

11. The Judicial Department should create a certification program to assure quality translator / interpreter services.

12. The Judicial Department shall increase the availability and access to qualified multilingual court personnel, including all languages and dialects spoken by a significant number of citizens in each judicial district, through expanded training, employment, and technologies.

13. The Judicial Department should assure that each court and clerk's office provides instructional forms and documents in languages appropriate to the local population, including English, to assist pro se litigants.

14. The Judicial Department should maintain and share with the Executive Committee records of bail and sentencing outcomes. The Executive Committee shall review a representative statistical sample of bail and sentence outcomes and examine the recommendations made by probation officers after arrest and through sentencing.

15. The Supreme Court should take steps to effect the establishment of a prosecution review committee, including among its members peace officers, prosecutors, probation officers, and judicial officers. The prosecution review committee should develop and promulgate criteria to ensure fair and equitable treatment of all individuals charged with and sentenced for any violation of Colorado juvenile or criminal statutes.

16. The prosecution review committee should monitor plea offers and plea dispositions for all criminal defendants and juveniles. Such information should be maintained by racial and ethnic category, identifying defendants as Anglo, African-American, Asian, Hispanic, Native-American, and immigrant status.

17. The Judicial Department should develop programs to educate court personnel and Judicial Department employees on the importance of fair treatment of all members of the public.

18. The Judicial Department should identify and make readily available through public information the procedures for making citizen complaints concerning discriminatory treatment of parties, witnesses, and attorneys, within the Colorado judicial system.

19. The Executive Committee should monitor and participate, as appropriate, in jury reform as contemplated by the Report of the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries, dated February 1997, to assure equal access to jury panels for all citizens, regardless of race or ethnicity.

20. The Judicial Department should require all courts, through their court administrators and court clerks, to provide basic information regarding the judicial process to all pro se litigants upon their filing a complaint or answer.

21. The Executive Committee shall meet with the Alternate Defense Counsel and the Alternate Defense Counsel Commission (ADC Commission), as provided for in section 21-2-101, 6 C.R.S. (1997), to address the inclusion of minority attorneys in the legal representation obtained by contract for those individuals represented through the office of the Alternate Defense Counsel in circumstances in which the state public defender has a conflict of interest. The Executive Committee may make recommendations to the Supreme Court regarding the operation of the ADC Commission, including matters concerning the development and maintenance of competent and cost-effective representation that includes minority attorneys as attorneys under contract with the office of Alternate Defense Counsel.

THE HEARINGS COMMITTEE

In addition to Justice Scott and Executive Director Ogden, the following members of the Commission served on the Hearings Committee: Leo Cardenas, Paul Chan, Jay Choi, Richard Doby, Yoko Felter, Hon. James Franklin, Gary Jackson, Tanya Lyons, Hon. Dennis Maes, Sen. Richard Mutzebaugh, Jacqueline St. Joan, and Lorenzo Trujillo.

The Hearings Committee determined that it would hold four public hearings at four locations throughout the state. The Hearings Committee selected Denver, Lamar, Montrose, and Pueblo as locations for the hearings. The locations were selected based upon geography and demographics: Denver, the state's population center, which includes a substantial minority population; Lamar, to provide perspectives from citizens of the state's eastern plains region; Montrose, a "western slope" city; and Pueblo, representing the southern part of the state and, like Denver, having a significant minority population.

The Committee scheduled the hearings during February 1997. The first hearing was held February 5, at Pueblo Community College. Thereafter, hearings were held February 10, at the Colorado History Museum in Denver, February 11, at the Montrose Pavilion, and February 13, at the Lamar Community Center. Notices of the hearings, in both Spanish and English, were sent to all newspapers and media sources in each location.

The Hearings Committee adopted a public hearings procedure that was followed at each hearing. A chairperson announced the purpose of the hearing and introduced the Commission members present. Persons wishing to speak were asked to sign in and were informed they would be called to give statements in the order in which they signed the attendance roster. At all locations, Spanish interpreters volunteered their time and made themselves available when needed. In addition, at the Denver public hearing, a Vietnamese interpreter volunteered and was available. Efforts were made to provide other interpreters. While the Commission was unable to obtain interpreters for other languages, we are not aware of any needs of those who appeared that were not met. Citizens were permitted to make statements and/or submit written statements or documents for the record. All of the hearings were recorded.[5] While Commission members in attendance were allowed to ask questions after a speaker completed his or her comments, Commissioners attended the public hearings to listen to the comments of citizens regarding access to our courts and racial or ethnic bias in the Colorado judicial system.

[5] Transcripts of individual hearings are available for examination at the office of the Commission's Executive Director.

Pueblo Hearing

The Pueblo hearing was held at 7:00 p.m. on February 5, 1997, at Pueblo Community College. Attending from the Commission were Justice Scott, Commissioners Yoko Felter, Gary Jackson, Lorenzo Trujillo, and Executive Director Alan Ogden.

Several citizens stated that they believed they or their family members have been treated unfairly by members of the Pueblo Police Department. Obviously, there is a perception among many that the police department is an appendage of the judicial system.

Another person described her perception of the ethnic bias of a judge who presided over a dissolution of marriage case in which one party to the marriage was Hispanic and the other was Anglo. The citizen claimed that the judge treated the parties differently, favoring the Anglo spouse over the Hispanic spouse. The citizen also claimed that the judge made statements in open court that were offensive and unprofessional.

A third person stated that judges are biased against pro se litigants. As an example of the unfair treatment of pro se litigants, the citizen stated that during such a trial the judge ordered his court reporter to stop reporting before the end of a hearing, resulting in an incomplete record.

Denver Hearing

The Denver public hearing was held on February 10, 1997, at the Colorado History Museum. Justice Scott, Commissioners Paul Chan, Yoko Felter, Senator Richard Mutzebaugh, Lorenzo Trujillo, and Executive Director Alan Ogden attended the hearing. Commissioner Mutzebaugh chaired the hearing, which began at approximately 7:00 p.m. and continued for over two hours. Although not all persons present elected to give statements, the Commission heard from twelve individuals, most of whom were attorneys.

The statements offered related to the disparate treatment of clients and attorneys of color by court personnel. The witnesses attributed that disparity to racial or ethnic bias. The citizens giving statements addressed criminal proceedings in general, as well as plea bargaining, sentencing, and probation. In particular, six attorneys stated that minority defendants often receive less favorable plea bargains than do Anglo defendants. As an example, one attorney stated that she experienced a situation in which a white male defendant, charged with a fourth felony and represented by a white male attorney, received a plea offer of probation while her client, an African-American male, charged with a second felony and appearing in the same courtroom was asked to plead guilty and receive a six-year prison sentence.

Another person in attendance discussed the unfairness of the plea bargain process, noting that the resultant disparate treatment was caused by practices and policies of the various district attorneys' offices. One person suggested that a random sampling of plea arrangements should be reviewed to determine whether the episodic instances of bias and disparate treatment against minorities is broader and is indicative of general practices.

Several attorneys raised concerns about the disparate treatment of minorities in sentencing, including imposed surcharges, claiming that African-American and Hispanic defendants generally receive harsher sentences for similar crimes than Anglos in both Adams and Jefferson counties. One witness stated that in Jefferson and Arapahoe counties, minority defendants regularly receive consecutive sentences for multiple counts on felony convictions, whereas other defendants usually receive concurrent sentences for similar offenses.

Another witness reported that in Adams and Jefferson counties minority defendants convicted in drug cases are routinely ordered to pay a surcharge while Anglo defendants are typically excused from paying such surcharges. Several defense attorneys stated that bias exists in the manner by which district attorneys charge defendants. The attorneys expressed the view that minority defendants are often charged with more serious crimes than Anglo defendants engaged in similar conduct.

Nine of the twelve individuals who testified identified themselves as attorneys. Of those, six stated that either they personally were treated differently or they observed other minority attorneys treated differently in the courtroom based on their race, ethnicity, or gender. Particular examples were offered regarding the treatment of attorneys in open court reflecting hostility and mistreatment by court personnel. Attorneys stated that, on occasion, this type of disparate treatment affected the outcome of the case.

Montrose Hearing

In Montrose, the hearing was held at 7:00 p.m. on February 11, 1997, at the Montrose Pavilion. Commissioners Richard Doby and Leo Cardenas were accompanied by Executive Director Alan Ogden. The public hearing in Montrose was not well-attended. In fact, there were claims that many citizens did not attend because of a distrust of the judicial system and a fear of retaliation. Those who volunteered statements described events and incidents that were perceived to be rooted in ethnic or racial bias which included allegations of poor law enforcement services and discrimination in employment within the court system.

A former chief probation officer, now on disability retirement, addressed the Commission, stating that there were too few minorities employed in positions of authority within the judicial system in Montrose.

He testified that he could "count on one hand" the number of minorities, all Hispanic, employed at the Montrose courthouse. Yet, he noted, the entire janitorial staff at the courthouse is Hispanic. He claimed that While Hispanics make up approximately 18% of the area population, there are few minorities in top level positions in the Montrose court system. The former probation officer stated his concern that the percentage of persons employed by the local court system did not reflect the ethnic and racial makeup of the community. To remedy this deficiency, he suggested a stronger minority recruitment effort by the Judicial Department Human Resources Office.

Another person, a long-time employee of the local public defender's office, described his belief that the Colorado court system is one in which persons of color have to prove their innocence rather than the prosecution proving their guilt. According to that person, "the system" does not work for the average citizen—particularly minority individuals.

Lamar Hearing

Members of the Commission in attendance at the public hearing on February 13, 1997, in Lamar included the Honorable Dennis Maes and Jacqueline St. Joan. The hearing began at 7:15 p.m. in the Multipurpose Room of the Lamar Community Building. Eight citizens attended the hearing, including a local newspaper reporter, an administrative specialist for the judicial district, an attorney, two "litigants," an assistant principal

from the public school, and two other citizens. The hearing concluded at 7:45 p.m. Only one person in attendance, a lawyer, spoke. His principal concern was the lack of judicial resources for Spanish-speaking clients. He stated there is a need in the community for well-qualified court interpreters, alcohol education classes, and domestic violence treatment programs.

Two other people in attendance spoke privately with the interpreter and reported that more citizens did not appear due to a fear of the Immigration and Naturalization Service (INS).[6]

[6] Although not part of any statements presented at the hearing, one Commissioner received a phone call from a member of the public who expressed a serious lack of confidence in the judicial system. The caller said that many people in Lamar were too intimidated to attend public hearings because of fear of police reprisals against Hispanics. The expression of fear by the two citizens who declined to make statements indicates the public does not necessarily separate judicial action from police action. This should be explored more thoroughly since police misconduct affects the public's perception of, and confidence in, the judicial system.

THE SURVEY COMMITTEE

The Survey Committee was comprised of the following Commissioners: James Benway, James Colvin, William Fortune, Kerry Hada, Royal Hurst, Ben Reiff, Carolyn Rice, Joyce Sterling, Lari Trogani, and Fred Yu. Two surveys were prepared and distributed by the Committee and attached as Exhibit B. The first survey was specifically addressed to court interpreters and was mailed to each of the state's ninety-two registered interpreters. Of the ninety-two surveys mailed, forty-seven were returned. Very few background characteristics were asked of the interpreters. Instead, the survey focused on descriptive items pertinent to interpreter services.

A second survey was directed to lawyers, judges, magistrates, court personnel, and probation officers. Surveys were sent to members of the Asian-American Bar Association, the Sam Cary Bar Association, the Colorado Hispanic Bar Association, and the Colorado Indian Bar Association. Surveys were also mailed to 1,400 lawyers randomly selected from the rolls of attorney registration. In addition, surveys were mailed to 50% of all judges and magistrates; 50% of court personnel selected from the twenty-two state judicial districts; and 250 probation officers.

In total, 3,242 surveys were mailed. Of those, 1,357 surveys or 42% were returned. That rate of return was excellent for surveys of this nature, especially considering the length of the survey. The return also represents

a statistically valid sampling from which reliable conclusions can be drawn.

Michael Leiber, a professor in the Department of Sociology, Anthropology, and Criminology at the University of Northern Iowa, was contracted to analyze the results of the surveys. The survey instrument, responses, and tabulations are summarized and discussed in the technical report produced by Professor Leiber. Professor Leiber's 150-page report is available at the office of the Executive Director of the Commission. The following information reflects Dr. Leiber's analysis of the survey data.

Section One

Of the five categories of persons surveyed, lawyers are the largest population of respondents (46%), followed by court personnel (31%), and probation officers (9%). The respondents are mostly white (72%), the second largest group of respondents are Hispanic (17%), followed by African-American (5%). The few numbers of respondents from racial/ethnic groups other than White, Hispanic, and African-American prevented meaningful analysis of those groups and resulted in the creation of a category labeled "Other," representing 6% of the respondent population.

Among the respondents, males and persons age 40 through 49 were most widely represented. However, there is some variation by occupation

and gender. Lawyers, judges, and magistrates who responded were largely white and male. Court personnel, probation officers, and the category of other had a larger percentage of female respondents relative to lawyers, judges, and magistrates. There were very few judges who indicated that they were members of a minority group.[7] Judges were also somewhat older (age 50-59) than respondents in the other occupations.

Section Two

This section examines how often individuals have directly worked with minorities in the judicial process. Judges and magistrates indicated greater frequency of contact with minorities than other groups. A greater number of court appearances increases the probability of contact with minority personnel. Overall, however, most respondents reported little contact with minorities. This holds true for all respondents, regardless of racial / ethnic differences.

Section Three

This section summarizes responses regarding opinions about nine statements that focused on the treatment of minority lawyers. The areas focused on such things as: grades, academic qualifications, assignment of complex cases, the availability of mentors, obtaining feedback on work matters, exclusion from social events, the availability of opportunities for

[7] It is worth noting that there are no female African-American judges in the Colorado Judicial system.

advancement, development skills, and hiring preferences of minorities over non-minorities who are academically more qualified.

Responses to the survey show much greater differences based on race than based on occupation. Overall, a significant number of non-minority respondents indicate a perception that race is not the most significant factor or basis for the disparate treatment of minorities. Minority respondents and in particular, African-American respondents, are more likely to report: (1) the need to perform better than non-minorities in law school in order to be hired; (2) the need to have better academic qualifications than non-minorities in order to be hired; (3) the belief that they are assigned easier cases; (4) the belief that they lack mentors; (5) the belief that they are less likely to be included in social events; and (6) the belief that they have fewer opportunities for advancement. Anglo respondents are more likely than minority respondents to believe that minority lawyers are given hiring preference over non-minorities. Minority respondents are less likely than non-minority respondents to believe that minorities are given hiring preference over non-minorities who are academically more qualified.

Section Four

This Section summarizes the responses to nine statements focusing on minority litigants and their: (1) preference to hire a minority lawyer rather than a non-minority lawyer; (2) use of the courts; (3) distrust of the

system; (4) ability to afford the costs associated with trial; (5) ability to be judged by a jury of their peers; (6) likelihood of representation; (7) understanding of the legal system; (8) likelihood of winning a personal injury case; and (9) receiving less compensation from a jury.

Few differences are evident by occupation. Minorities in all occupational categories, however, are more likely than non-minorities to agree that minority litigants use the courts less, distrust the judicial system, lack the ability to afford the costs associated with a trial, are unlikely to be judged by a jury of their peers, and are less likely to receive legal representation or have an adequate understanding of the legal system. Minority respondents are also more likely than non-minority respondents to believe that minority litigants are less likely to win a personal injury case and that they will receive less compensation from a jury than non-minority litigants.

Section Five

In this section, the Commission sought statements focusing on the treatment of minority lawyers. Respondents were asked if they noted whether judges: (1) were discourteous to minority lawyers; (2) paid less attention to minority lawyers; (3) addressed minority lawyers less formally; (4) interrupted the presentations of minority lawyers more often than non-minority lawyers; or (5) were discourteous to clients of minority lawyers. Respondents were also asked if they noted whether: (1) court personnel

were discourteous to minority lawyers or their clients; (2) whether probation officers were discourteous to minority probationers; (3) whether non-minority lawyers were discourteous to minority lawyers; or (4) whether non-minority lawyers objected more often to presentations of minority lawyers. The respondents were asked to rely only on their own court appearance experiences when responding to the statements.

Nonminority respondents, irrespective of occupation, indicated that rarely did they witness any of the conduct listed above. However, minority respondents indicated that race plays a role in the way the judges treat lawyers.

Section Six

In this section, responses were sought to a variety of statements regarding whether minorities were treated differently than non-minorities by judges, lawyers, court personnel, and probation officers. The statements included: (1) whether those persons had difficulty communicating with minority witnesses or litigants due to cultural differences (not language related); (2) whether they made jokes or demeaning remarks about minorities; or (3) whether they were discourteous to or stereotyped minorities. Other questions inquired whether jury awards were less for minority litigants; whether insurers made smaller settlement offers to minorities; whether minorities settled for

less; and whether minorities who spoke with an accent were treated less fairly than a person speaking without an accent.

While a majority of both non-minority and minority respondents indicated that the items listed above occurred never or rarely, a higher percentage of minority respondents reported that such behavior does occur.

Section Seven

In this section, questions focused on the treatment of members of the public and court personnel who belong to minority groups. Regardless of occupation and race, the majority of the respondents indicated few differences in how persons are treated. Minority respondents were more likely than non-minority respondents, however, to reply that court personnel are discourteous to minority and non-minority members of the public; that court personnel fail to communicate effectively with those from different races or ethnic groups; that judges or supervisors give preferential treatment to non-minority court personnel; and that lawyers are discourteous to minority court personnel.

Section Eight

This section is divided into two parts and deals with responses by interpreters to queries relating to interpreter services. In the first part, responses were sought to two questions regarding interpreters that

appeared in the survey sent to judges, magistrates, lawyers, court personnel, and probation officers. The first question was: "Have interpreters appeared to have difficulty in adequately translating questions, answers, and other relevant comments at trials you have observed that involved non-English speaking parties or witnesses?" The second: "In criminal cases, have you observed interpreters favoring the State over non-English speaking defendants?" A majority of respondents indicated that interpreters are effectively communicating and not favoring the prosecution over non-English speaking parties. Again, minority respondents were more likely than non-minority respondents to disagree. This gap is most notable for Hispanic respondents relative to non-minorities and African-Americans. There is, however, an inverse effect between the number of time a respondent has appeared in court and the likelihood that the respondent believes interpreters favor the prosecution over non-English speaking persons.

The second part of this section consists of information gleaned from a survey sent only to interpreters. The more relevant findings from that survey follow.

1. Seventy-two percent of the interpreters report an education level of undergraduate and post graduate work.

2. Interpreters most commonly have been employed by, in order of frequency, district courts, public defenders, private attorneys, and hospital medical care facilities.

3. Forty-seven percent of the respondents learned English as their first language. Thirty-eight percent indicate Spanish as the language first learned.

4. Spanish is the most common language interpreted in court.

5. English is the language primarily spoken in the homes of interpreters (85%), followed by Spanish (9%).

6. Fifty-seven percent of the interpreters work part-time and provide services in areas other than the legal community. Nineteen percent interpret solely for the court.

7. Twenty-eight percent of the interpreters indicate the have had no formal training, and twenty-one percent indicate that they are self-taught.

8. Very few respondents have passed formal examinations to test their proficiency as interpreters.

9. Forty-nine percent of the respondents do not belong to a professional association for court interpreters, although nineteen percent indicate membership in the American Bar Association.

10. Seventy-four percent of the respondents did not have any formal orientation prior to beginning work as a court interpreter.

11. Ninety-three percent of the respondents indicate that judges usually or often strive to ensure that trials in which interpretive services are used are fair.

12. Sixty-six percent indicate that judges usually or often administer an oath to the interpreter as well as to witnesses.

13. Most respondents indicate that judges usually do not ask for the interpreter's qualifications on record before the interpreter is allowed to interpret in court.

14. Forty-seven percent answered "none" when asked what language needs are not being met; thirty-six percent indicated Spanish.

15. Respondents indicated that in-court interpretations should not be done by phone. Comments such as "phone should be used as a last resort," and "interpreting is more than just ideas and words, the interpreter looks at body language and other signals from the person speaking," were typical.

Other pertinent observations expressed by interpreters included: "Judges always believe the police"; "Educational and cultural differences influencing behavioral actions and reactions are never considered in court"; and, "It is difficult to get explanations from judges about questions that are necessary for understanding the court processes and terminology."

Based on work experiences, the main concern of interpreters is to provide effective interpreter services to those people in need. Responses indicated that there must be interpreter certification along with more training and orientation to provide effective interpreter services. Interpreters also believe that, due to the complexity of their jobs, judges and prosecutors need to be more patient when dealing with interpreters. Finally, court interpreters express concern regarding the lack of funds allotted for their services and for items, such as legal dictionaries and audio equipment, that would aid them in their jobs. Interpreters believe that

these improvements would further the quality of services provided to minorities and the deaf, and consequently, result in greater fairness and justice.

Section Nine

In this section, responses were sought to three questions focusing on Native-Americans: “Do state judges fail to accord full faith and credit to decisions rendered by tribal courts when tribal court decisions are in issue?” “Have lawyers in cases involving Native-American legal issues demonstrated inadequate knowledge of Native-American Law?” “Have judges in cases involving Native-American legal issues demonstrated inadequate knowledge of Native-American law?” Unfortunately, the small number of respondents did not allow for any meaningful analysis.

Section Ten

In this section, respondents were asked to reply to nineteen statements that focused on minorities and the court process. The statements were designed to determine whether: minorities are represented in jury pools in proportion to their population in any community; a criminal trial is more “winnable” by the defense if the defendant is a non-minority; and, court interpreters are sensitive to cultural differences. Unfortunately, many respondents expressed no opinion to the statements, leaving too small a number of responses to allow for meaningful comparison among occupations and racial groups. However, for lawyers

there existed some variation in the responses between non-minorities and minorities. Minority lawyers were more likely to believe that there is a lack of minority representation in jury pools. They agree that the shortage of interpreters has a negative effect on minority litigants and that court interpreters often lack the ability to effectively convey the emotion with which the speaker delivered his or her message. Additionally, minority lawyers are concerned that court interpreters do not always advise the court when they are having difficulty understanding the non-English speaking person. They also indicated that court papers are not readily available in other languages. Hispanic respondents, in particular, report problems with the availability of court papers other than in English.

Among racial groups, minority respondents are more likely than non-minority respondents to disagree that: (1) minorities are adequately represented in jury pools; (2) lawyers use peremptory challenges to eliminate non-minority persons from juries; (3) there is no difference in how courts enforce child support awards involving minority children; (4) there is no difference between how courts treat domestic violence involving a non-minority couple and treatment in a similar situation involving a minority couple; (5) the competence of court interpreters is high; (6) court interpreters effectively convey the emotion with which the speaker delivered his or her message; (7) court interpreters readily assert themselves to advise the court when they are having difficulty understanding the non-English speaking person; (8) qualified interpreters

are available for non-English speaking litigants at all phases of trial court proceedings; and, (9) court interpreters are sensitive to cultural differences.

Minority respondents also are more likely than non-minority respondents to agree that: lawyers use peremptory challenges to eliminate minority persons from juries; a criminal trial without a jury is more "winnable" by the defense if the defendant is a non-minority; a criminal jury trial is more "winnable" by prosecutors if the victim is a non-minority; a criminal trial without a jury is more "winnable" by prosecutors if the victim is a non-minority; sensitivity training in minority issues for all legal personnel is needed to help attain fair treatment; a lack of interpreters adversely affects non-English speaking litigants; court interpreters usually summarize testimony rather than translate the testimony verbatim.

Section Eleven

In this section, responses to eleven statements that focused on minority defendants and criminal cases were examined. In general, minority respondents are less apt to believe that minority defendants are more likely to be released on their own recognizance, receive favorable plea bargains, and receive shorter prison sentences. Minority respondents are also more likely than non-minority respondents to agree that minority defendants: receive higher bail, are subjected to physical mistreatment while in custody, receive longer prison sentences, serve a greater portion of the term imposed, are advised to plead guilty more frequently, and are

given less adequate explanations of court proceedings by defense lawyers. There are also some instances where the racial / ethnic differences are evident between African-Americans and Hispanics (e.g., minorities given less adequate explanations during court proceedings).

No statistically significant race effects were found in responses to the statement that minority defendants are more likely to be released without bail and to be offered favorable plea bargains. African-American, Hispanic, and Other minority respondents, however, are more likely than non-minorities to agree that minority criminal defendants: receive prison sentences, receive longer prison sentences, have higher bail set, are subjected to physical mistreatment while in custody if sentenced to prison, are likely to serve a greater portion of the term imposed, are advised by defense lawyers to plead guilty more frequently, and are given less complete explanations of court proceedings by defense lawyers.

Section Twelve

In this section, responses to six statements were sought concerning minority children and juvenile justice issues. Minority respondents are more likely than non-minority respondents to agree that minority children involved in the juvenile justice system are: less likely to be released to a family member; more likely to be removed from the family; more likely to be found within juvenile court jurisdiction; and, generally are treated less fairly. Both non-minority and minority respondents disagree with the

statement that minority children are more likely to receive informal handling and alternative dispositions.

EXHIBITS