State Responses to Task Force Reports on Race and Ethnic Bias in the Courts

Suellyn Scarnecchia
University of Michigan Law School, scarnecchia@law.unm.edu

Available at: https://repository.law.umich.edu/articles/1067

Follow this and additional works at: https://repository.law.umich.edu/articles

Part of the Civil Rights and Discrimination Commons, Courts Commons, Law and Race Commons, Law and Society Commons, and the State and Local Government Law Commons

Recommended Citation

This Article is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
STATE RESPONSES TO TASK FORCE REPORTS ON RACE AND ETHNIC BIAS IN THE COURTS

Suellen Scarneccia

While several states have embarked on studies of race and ethnic bias in their courts, Minnesota is only the sixth to publish its report to date. As Minnesota joins the ranks of states with published reports, it is worthwhile to assess the impact of the five earlier published reports from other states. Final reports have been published in Michigan (1989), Washington (1990), New York (1991), Florida (1991) and New Jersey (1992). The published reports make findings


Many thanks to my talented and dedicated research assistant, Jocelyn Tyng Lee, B.A., University of California Los Angeles, J.D. expected 1994, University of Michigan Law School. Also, many thanks to James Green, B.A. University of Illinois, J.D. 1993, University of Michigan Law School, for his last minute edits, adding a true writer's touch to the article.

2. As of December 1992, the following states had convened committees or task forces to study race and ethnic bias in the courts: Arizona, California, Connecticut, Florida, Hawaii, Iowa, Massachusetts, Michigan, Minnesota, North Dakota, New Jersey, New York, Oregon, Washington, and the District of Columbia. States currently considering the formation of a task force are Georgia, Illinois and Colorado. This information was provided by Desiree Leigh, the 1992 Coordinator of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts.

Counties have also embarked on race bias studies. See the Hennepin County Task Force Report published in this issue of Hamline Law Review.

The American Bar Association published a report in July 1992. AMERICAN BAR ASSOCIATION, REPORT OF THE AMERICAN BAR ASSOCIATION TASK FORCE ON MINORITIES AND THE JUSTICE SYSTEM (1992). The Task Force was established after the Los Angeles riots which resulted from the Rodney King verdict. Referring to the various state task force studies, the report states: "Although the Task Force has neither the time nor the resources to verify the data in these reports, the consistency of their major findings is disturbing." Id. at 1.


5. REPORT OF THE NEW YORK STATE JUDICIAL COMMISSION ON MINORITIES, VOLUMES ONE AND TWO (1991) [hereinafter NY Report]. All references to the NY Report herein are to Volume I.

and provide several specific recommendations for change. This article will review the published findings and recommendations of the task forces and will discuss the impact the recommendations have had on state courts to date.

While it is early to predict the long-term effects of the reports on state courts, the reports have clearly been valuable catalysts for change. Through slightly different methodologies, the task forces and commissions came to markedly consistent findings and recommendations. Their success at implementing change has, predictably, been dependent on the availability of funds, whether an implementing body was appointed at the end of the study and the dedication and commitment of the leadership involved. The intractability of racism in our society renders the efforts of these task forces inherently difficult and the prognosis for success inherently guarded. It appears, though, that both the judiciary and the practicing bar in several states are ready and willing to acknowledge, study and battle the very real evidence of race and ethnic bias in state courts. The short term results of the studies look promising and provide some guidance to states just beginning the process. New task forces should work to ensure: adequate funding for the task; a long-term commitment to implementation of recommendations; and, positive relationships with

The source of the title, "Where the Injured Fly for Justice," is a fable which is printed on the front pages of the Florida reports. It bears repeating here for its beauty and aptness: "A swallow had built her nest under the eaves of a Court of Justice. Before her young ones could fly, a serpent gliding out of his hole ate them all up. When the bird returned to her nest and found it empty, she began a pitiable wailing. A neighbor suggested, by way of comfort, that she was not the first bird who had lost her young. "True," she replied, "but it is not only my little ones that I mourn but that I should have been wronged in that very place where the injured fly for justice." FL Report I and FL Report II, supra note 6, at cover (citing AESOP, FABLES) (emphasis in original).

7. THE NEW JERSEY SUPREME COURT TASK FORCE ON MINORITY CONCERNS FINAL REPORT (1992) [hereinafter NJ Report]. The major findings and recommendations of the report were published by the NEW JERSEY LAWYER, 1 NJ LAW 1225 (1992).

8. The National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts (see description infra at section IV.F.) has arranged to have the published reports available through the National Center for State Courts. For information on obtaining the reports and other relevant publications contact:

Information Services Division
National Center for State Courts
300 Newport Ave.
Williamsburg, VA 23187
804/253-2000
the state's executive and legislative branches to make implementation possible.

I. ORIGINS OF THE TASK FORCES

Even the few race and ethnic bias task forces that have issued final reports to date reflect varied origins. Some were judicial responses to the recommendations of groups with different investments in racial and ethnic issues, from minority coalitions within the judiciary itself, or the whole of the legal profession, to representative citizens' panels performing a more general review a states' court system.9 Another task force was a legislative project from its inception.10 Still another was mandated by the Chief Justice of a state supreme court.11

The New Jersey Supreme Court Task Force on Minority Concerns originated in a 1983 meeting between Chief Justice Robert N. Wilentz and representatives of the Coalition of Minorities in the Judiciary, to discuss the concerns of African American and Latino court employees and court users.12 The Justice appointed an ad hoc Committee on Minority Concerns in June 1984, which held a public hearing, gathered information, and reported to the Supreme Court three months later. A fifteen-member task force was appointed in September 1985 and later expanded to 48 members in January 1986.13 The Chief Justice instructed the Task Force "to undertake a critical examination of the concerns of minorities with their treatment in and by the courts" and "to propose solutions to the identified problems that are within the power of the judiciary to implement."14

New York's Commission has a similar story. As a result of conversations between Chief Judge Sol Wachtler and the Coalition of Blacks in the Courts in 1987, the Chief Judge established the New York State Judicial Commission on Minorities.15 The Commission had three mandates: 1) to "ascertain how both the public and court participants perceive treatment of minorities in the courts;" 2) to "review the representation of minorities in nonjudicial positions, e.g.

---

10. Washington. See discussion infra part I.D.
11. Florida. See discussion infra part I.E.
12. NJ Report, supra note 7, at 1.
15. NY Report, supra note 5, at 3.
court clerks, court reporters and court officers;" and, 3) to "review the two selection processes for judges — elective and appointive — to determine which results in greater minority representation" and "examine the representation and treatment of minorities within the legal profession."16

In 1987, in the course of a more general citizens' review of state courts, the Michigan Supreme Court Citizens' Commission to Improve Michigan Courts recommended the creation of gender and race/ethnic bias task forces. The Commission based its call for task forces on the alarming finding that over one-third of Michigan citizens surveyed "believed that individuals were discriminated against in the Michigan court system on the basis of their gender, race or ethnic origin."17 Responding to the Citizens' Commission, the Michigan Supreme Court created, on September 15, 1987, the Task Force on Racial/Ethnic Issues in the Court as well as the Task Force on Gender Issues in the Courts. The Supreme Court provided the following broad mission to the task forces: (a) "Determine whether and to what extent citizens believe that bias exists in the court system;" (b) "Determine where the court system actually operates in a biased manner;" and (c) "Recommend ways to reform the court system to prevent the actual and/or perceived bias."18

The Washington Supreme Court established the Washington State Minority and Justice Task Force pursuant to legislation passed in 1987 by the State's Legislature.19 The legislation called for: "(a) a study of the status of minorities as litigants, lawyers, judges, and court employees; (b) recommendations for implementing reform; and (c) providing attitude awareness training for judges and legal professionals."20

Florida Chief Justice Raymond Erlich created the Racial and Ethnic Bias Study Commission on December 11, 1989. The Court charged the Commission to consider several questions:

(1) Does race or ethnicity affect the dispensation of justice, either through explicit bias or unfairness implicit in the way the civil and criminal justice systems operate?

16. NY Report, supra note 5, at 3.
17. MI Report, supra note 3, at 1.
19. 1987 Wash. Laws 2673 (1st Ex. Session, ch. 7, § 110(3)(a)-(c)).
20. WA Report, supra note 4, at 3.
(2) What are the elements of a coherent, long-term strategy to eradicate the vestiges of any legally prescribed discrimination?
(3) Are there practical measures which can be taken to alleviate any underrepresentation of disadvantaged minorities from positions of responsibility in the justice system, including as judges and court employees?
(4) What, if any, measures should be taken by the Supreme Court, law schools, the Board of Bar Examiners, the profession, and the Legislature to accelerate the rate at which disadvantaged minorities enter the legal profession and ascend through its ranks in the public and private sectors?
(5) What, if any, changes should be made in the manner of selecting judges to increase the racial and ethnic diversity of the bench?

The 27 member Commission issued two reports in two years.\footnote{FL Report I, supra note 6, at 1.}

II. TASK FORCE FINDINGS

The task forces of Michigan, Washington, New York, Florida and New Jersey employed a variety of approaches in studying the problem of race and ethnic bias in the courts. All of the task forces held public hearings, inviting input from everyone associated with the state court systems, legal organizations and the public at large.\footnote{New York held four public hearings to “maximize public involvement and to assist in the identification of issues.” The New York Commission also held public meetings in every county with a minority population of more than 10%, as well as a meeting at a prison and two “electronic town hall meetings” where participants could record their answers immediately by computer. NY Report, supra note 5, at 3. In New Jersey, over two hundred people submitted testimony at thirteen public hearings, held in every region of the state, or in writing. NJ Report, supra note 7, at 5-6. Washington held public forums throughout the state in late 1988 and “heard testimony from legal professionals and members of the community, and welcomed written comments from the public.” WA Report, supra note 4, at 4. The Michigan Task Force held nine hearings in eight Michigan cities. In addition, a special hearing, sponsored by a coalition of African American sororities and the Lewis College of Business in Detroit, provided significant testimony from minority women. MI Report, supra note 3, at 5-6. The Florida public hearings were held in seven cities, covering every region of the State. Hundreds testified and thousands viewed the hearings on live television. FL Report I, supra note 6, at 2.}

Often the task forces conducted empirical studies comparing the
treatment of majority and minority participants in the system.\textsuperscript{23} Surveys of attorneys and judges also proved fruitful.\textsuperscript{24} Academics and other experts offered advice and assistance.\textsuperscript{25} The Michigan Task Force created a bibliography and reviewed the literature to supplement the raw data provided by its own research.\textsuperscript{26}

\begin{itemize}
  \item \textsuperscript{23} The New York Commission studied: Housing Court data; data on the race/ethnic composition of New York State judicial and nonjudicial personnel; data on the race/ethnic composition of judicial screening/nominating committees and of the persons they screened; data concerning bar examination pass rates; and data collected regarding unmet legal needs of the poor. \textit{NY Report}, supra note 5, at 4-5.

  In 1989, the New Jersey Task Force initiated a research project entitled "Differential Court Usage Patterns among Minority and Non-Minority Populations in New Jersey" funded by the State Judicial Institute and New Jersey State funds. \textit{NJ Report}, supra note 7, at 3-4, 6.


  In Michigan, the task force studied court employment practices and developed an innovative study of court-users. \textit{MI Report}, supra note 3, at 6, 13.

  The Florida studies included: "Racial and Ethnic Diversity of the Florida Judicial System;" "A Study of Racial and Ethnic Bias in the Law Enforcement System of the State of Florida;" "Final Report of the Survey on the Extent of Racial and Ethnic Bias in the Criminal Justice System as Perceived by Florida Criminal Defense lawyers;" "A Study of Race and Juvenile Justice Processing in Florida;" "A Study on Race and Ethnicity and Community-Based Juvenile Justice Programs in the State of Florida;" and "The Overrepresentation of Black Youth in the Juvenile Justice System." \textit{FL Report I}, supra note 6, at 82-83. In addition, the Commission conducted studies in the three major areas covered by the second Florida report: the adult criminal justice system; the experiences of minority women in the justice system; and the experience of all minority lawyers in Florida, including an extensive study of the Florida Bar Examination. \textit{FL Report II}, supra note 6, passim.

  \textsuperscript{24} In New York, the following groups were surveyed: litigators, judges, law school administrators and students, and members of judicial screening committees. \textit{NY Report}, supra note 5, at 4.

  In New Jersey a survey of judges and top-level court managers was successful. \textit{NJ Report}, supra note 7, at 4-5.

  Washington's bar survey provided a "profile of minority lawyers in Washington State," a first for Washington and one of the first in the country. Several other surveys followed up on concerns raised in the public forums. \textit{WA Report}, supra note 4, at 5.


  Florida studied various groups including criminal defense attorneys and minority women lawyers. \textit{FL Report I}, supra note 6, at 82 and \textit{FL Report II}, supra note 6, at 51.

  \textsuperscript{25} New Jersey retained research consultants to direct and conduct their research. \textit{NJ Report}, supra note 7, at 3-4. The Michigan Task Force retained Formative Evaluation Research Associates of Ann Arbor to conduct its surveys and received support from the academic community. \textit{MI Report}, supra note 3, at 4, 8.

  In Florida, leading national and state researchers from academia conducted innovative studies. \textit{FL Report I}, supra note 6, at 2.

  \textsuperscript{26} Michigan's bibliography is found in Appendix E of the Michigan Report.
\end{itemize}
and Florida, the task forces' research used "focus groups" in which small groups of "experts" on a subject met to be interviewed collectively.  

After months of work, each task force issued a lengthy report. In these reports, each task force made findings and issued recommendations. The findings of the task forces fell under these general categories:

(1) Courtroom Treatment of Minority Litigants, Witnesses, Jurors, Attorneys and Judges (including language barriers, discriminatory conduct by judges and others, court facilities);  
(2) Professional Development and Opportunities for Minorities in the Legal Profession;  
(3) Impact of Racial/Ethnic Bias on the Criminal Justice Process (including the adult and juvenile justice systems, law enforcement, bail practices, sentencing practices, jury selection, cross-racial eyewitness identification, drug treatment and drug enforcement issues, prosecutorial discretion, prison practices and procedures);  
(4) Impact of Racial/Ethnic Bias on the Civil Justice System;  
(5) Underrepresentation of Minorities in the Judiciary, Legal Profession and Court Staff;  
(6) Lack of Confidence in the Judicial System / Lack of Access to the Judicial System.

Examples of findings under each of these categories are summarized below.
A. Courtroom Treatment of Minorities

Based on survey results, as well as oral and written testimony, the Michigan Task Force concluded that there is a perception of racial and ethnic bias by persons involved in the court system and that there is evidence that the biased behaviors do exist. The Task Force identified a “two worlds system,” in which “the justice system as viewed by women and minorities is a totally different system from that as viewed by non-minority males.”

B. Professional Development and Opportunities

The New York Commission studied New York law schools and made findings about: recruitment, acceptance and enrollment of minority students; retention and support of minority students; curriculum and activities; job placement; and minority representation.

36. While attorneys expressed concern about reprisals from judges and negative impact on case outcomes, many did report specific incidents of racial and ethnic bias in the courts. Judges made on-the-record-comments (a judge to an Hispanic defendant: “What do you think would happen to me if I were in your shoes in Mexico? Do you think I would get a fair trial?”) and off-the-record comments (Judge to attorney: “He doesn’t like the way we have dealt with race . . . we made our first mistake starting with the civil war.”) MI Report, supra note 3, at 24, 26.
Other attorneys and court staff were reported to treat minority attorneys differently, by addressing minority attorneys by their first names in court, by using terms like “honey” or “dearie” when addressing minority female attorneys and by constantly “mistaking” minority attorneys for court reporters, witnesses, etc. MI Report, supra note 3, at 27-30.
37. MI Report, supra note 3, at 36.
39. No school had a full-time minority recruitment director; few schools had minority students participate at all stages of recruitment and admissions. Four schools maintained no data on the number of minority applicants. In addition, the lack of scholarship funds deterred minority enrollment. NY Report, supra note 5, at 69-70.
40. The New York Commission found that: eight schools provided academic orientation programs before the opening of school which were generally open to all students who believed that they needed extra assistance. Most schools provided individual or small group tutorials to minority students; failure of faculty and administration to condemn swiftly and conclusively racist behavior contributed to minority students’ sense of isolation and intimidation; minority student retention rates varied markedly among the schools. NY Report, supra note 5, at 70.
41. For example: many minority students were troubled by the avoidance of any race-specific discussions or by a lack of acknowledgment of the different perspectives and life experiences that minorities bring to the study of law; students and faculty indicated a growing
tation on faculties.\textsuperscript{43} The New York Report includes a "model program" which incorporates the most effective law school programs identified by the Commission.\textsuperscript{44}

\textbf{C. Impact on the Criminal Justice System}

The Florida Commission noted the presumption in Article 1, Section 14 of Florida's Constitution that criminal defendants should be released pending trial on reasonable conditions and that the Florida Rules of Criminal Procedure (Rule 3.131) provided a presumption in favor of non-financial release. The Commission concluded, however, that "the constitutional presumption does not operate in practice for lower income individuals, the majority of whom are individuals of color."\textsuperscript{45} The Florida Report cites evidence supporting this finding\textsuperscript{46} and points out that the inability to obtain pre-trial release negatively impacts on the defendant's entire case.\textsuperscript{47}

\textbf{D. Impact on the Civil Justice System}

In Washington, the Task Force engaged in two studies of the impact of race or ethnic bias on the outcomes of civil matters: asbestos litigation settlements and landlord-tenant cases. The study of asbestos litigation did reveal that minority plaintiffs received lower settlements than non-minority plaintiffs. The study concluded by identifying other factors which would need to be controlled before

\begin{flushleft}
\textsuperscript{42} For example: all schools promulgate an anti-discrimination policy to prospective employers; placement in large firms appears to be related to the particular school and not to the student's race; at all but two schools, placement rates in government jobs are higher for minority students. \textit{NY Report, supra} note 5, at 70.

\textsuperscript{43} "Paralleling law school competition for minority students, competition for faculty is affected by school reputation and environment, financing, a limited candidate pool, and applicant qualification." \textit{NY Report, supra} note 5, at 71.

\textsuperscript{44} \textit{NY Report, supra} note 5, at 71-73.

\textsuperscript{45} \textit{FL Report II, supra} note 6, at 20.

\textsuperscript{46} The Report cites: voluminous testimony from individuals; a study performed by the Florida Legislature's Advisory Council on Intergovernmental Relations; a study by Florida State University criminologists of practices in a Florida County; the New Jersey Task Force Report (\textit{NJ Report, supra} note 7); and the New York Commission Report (\textit{NY Report, supra} note 5). \textit{FL Report II, supra} note 6, at 22-24.

\textsuperscript{47} "... numerous studies and pervasive testimony document the critical link between pretrial detention and case outcome. ... defendants unable to make bail are more likely to be found guilty than those who make bail ..." \textit{FL Report II, supra} note 6, at 24-25.
\end{flushleft}
making clear conclusions that outcomes were affected by race or ethnicity. The landlord-tenant study did not reveal significant differences in case resolutions when comparing minority and non-minority litigants. The study did indicate that "racial and ethnic status appear[ed] to be an important factor in the incidence or occurrence of landlord-tenant disputes."

E. Underrepresentation of Minorities

The Florida report noted the underrepresentation of minorities in the legal profession on both a national and a state level, concluding that the Florida record for the number of minority attorneys in large firms was even worse than the national statistics.

F. Lack of Access to the Judicial System

The Committee on Minority Access to Justice of the New Jersey Task Force reported: "Many minorities have experiences that result in a lack of confidence and make them reluctant to bring cases to or otherwise participate in the judicial system." The Committee identified barriers to court access, such as perceptions of unfairness due to race, ethnicity and poverty, lack of financial resources to fund litigation, underrepresentation of minorities on juries, and unfamiliarity with the court system.

The combined impact of the five states' findings is overwhelming. The findings of bias and underrepresentation point inexorably to the

48. Through attorney interviews, the researchers identified factors such as consideration of special damages, the plaintiff's communication skills and community standing that would need to be controlled in future studies. WA Report, supra note 4, at 118-131.

49. WA Report, supra note 4, at 132-142.

50. WA Report, supra note 4, at 142.

51. According to 1990 Census data, African Americans comprised 12.1% of the population of the U.S. and Hispanics comprised 9%. U.S. Bureau of Labor and Statistics data for 1990 indicated that only 3.2% of U.S. attorneys are African American and only 2.7% are Hispanic. FL Report II, supra note 6, at 72.

52. FL Report II, supra note 6, at 74-75.

53. NJ Report, supra note 7, at 202. Focus group members estimated that 80% of Whites, 15% of Blacks, 5% of English-speaking Hispanics and 1% or less of linguistic minorities would be likely to use the courts to settle disputes. NJ Report, supra note 7, at 202.

54. NJ Report, supra note 7, at 202-209.

55. NJ Report, supra note 7, at 209.

56. NJ Report, supra note 7, at 219.

57. NJ Report, supra note 7, at 236-238.
conclusion that there is a pressing need for judicial reform to make state courts more accessible, responsive, fair and diverse. The state reports go on to make recommendations for extensive reform.

III. TASK FORCE RECOMMENDATIONS

The recommendations of the five task forces respond to all of the findings described above. They are all made in the hope that their work will continue in some form even after the task forces themselves disband. The recommendations call on the supreme courts, judicial training programs, law schools, legislatures and bar associations of each state to take action to remedy the bias documented by the reports. The discussion which follows outlines the general concerns for which recommendations were made and provides specific examples from the various state reports.

A. Establish Permanent Commissions

All of the task forces, except Florida, called for the establishment of a permanent body to continue the work of the task forces. The Michigan Task Force recommended the creation of a Standing Committee on Racial/Ethnic and Gender Issues in the Courts by the Supreme Court. The Task Force hoped that the Standing Committee would: (a) implement the recommendations and monitor implementation efforts on an ongoing basis; (b) work with existing judicial and attorney training providers to develop recommended training; (c) work with the State Court Administrator’s Office to establish a statistical database to monitor areas of concern and to further future studies; (d) monitor the impact of proposed professional and judicial conduct codes; (e) publish and widely disseminate annual reports describing progress made and identifying newly discovered problems; and (f) review appellate decisions and bring to the attention of trial courts those decisions which pertain to gender and race/ethnic bias.  

58. The Florida Commission reported in March 1992:
   Its work concluded, the Commission is no longer in existence. The Commission envisioned from the outset that its recommendations would be implemented during its term, and such has been the case. Accordingly, no formal implementation body or committee has been created following the expiration of the Commission’s two-year term.

The New York Commission recommended "that a new commission be established with a five year mandate subject to renewal." The Commission provided three justifications for the appointment of a successor commission:

First, the recommendations of the Commission cover many facets of the legal system, and there is no one administrative body now in existence that could effectively monitor them all. . . .

Second, the problems that the Commission has addressed are unlikely to be overcome by a single initiative. They constitute a complex set of elusive and shifting obstacles that are subject to changing social conditions. . . . A new commission could monitor manifestations of bias in the judicial system on an ongoing bias, respond to new problems as they arise, and recommend additional remedial actions as they are needed.

Finally, the problems addressed by the Commission are national in scope and are currently attracting the attention of similar bodies in many other states. . . . A new commission is needed to maintain and cultivate this cooperation.

The Commission went on to list ten tasks for its successor, similar to those listed in the Michigan Report above.

The Washington Report recommended funding by the legislature of a Supreme Court Minority and Justice Commission, which would perform the implementation and oversight duties described by the Michigan and New York reports. This emphasis on the funding source for the successor commission is unique and, perhaps, crucial to assuring the success of the recommendation.

The New Jersey Task force recommended the appointment of a permanent, standing oversight committee: the Supreme Court Committee on Minority Concerns. The Committee would report directly to the Chief Justice of the New Jersey Supreme Court. The duties would be similar to those described above.

60. NY Report, supra note 5, at 7.
61. NY Report, supra note 5, at 7.
63. WA Report, supra note 4, at xxiii.
64. NJ Report, supra note 7, at 14.
Another popular recommendation among the five states concerned the need for training of all persons involved in the courts. These training programs are differently named, but typically involve increasing the awareness of and sensitivity to minority concerns in the judicial system. The Washington Report includes a nine page chapter entitled "The Development of a Cultural Awareness Education Program: A Model for State Courts." The chapter describes a program initiated by the Washington Task Force and calls for continuation and expansion of the program. Its special emphasis is on teaching the judiciary to recognize the cultural diversity of litigants and to recognize the impact of that diversity on judicial decision-making.

The Michigan Report calls for training programs for judges, attorneys and court personnel "to increase consciousness of race/ethnic issues." The Report emphasizes the need to make this training a regular part of all substantive and procedural training provided to judges, attorneys and court personnel on any subject.

The New York Report calls for a program of "cross-cultural competence," including:

(a) the capacity to understand and appreciate different values, languages, dialects, cultures and life styles;
(b) a capacity for empathy that transcends cultural differences;
(c) avoidance of conduct that may be perceived as demeaning, discourteous or insensitive to persons from other cultural groups; and
(d) a critical understanding of stereotyped thinking and a capacity for individualized judgment.

The New Jersey Report provides eight recommendations for training, including "sensitivity training" for judges and court personnel.

65. WA Report, supra note 4, at 186-194.
66. WA Report, supra note 4, at 186-194.
67. MI Report, supra note 3, at 37.
68. MI Report, supra note 3, at 37.
70. NJ Report, supra note 7, at 17-18.
C. Reform of the Criminal Justice System

The task forces issued a wide variety of suggested reforms for the criminal justice system. Here are some examples:

1. Judges should review their own bail and sentencing decisions to ensure fairness.\(^{71}\)
2. Train judges to recognize available alternatives to money bail and alternatives to incarceration.\(^{72}\)
3. Maintain and publish sentencing statistics concerning the race of victim, defendant and complainant. Review race and ethnicity of those sentenced under mandatory minimum and habitual offender statutes. Reduce number of minority juveniles incarcerated. Reform capital sentencing statutes.\(^{73}\)
4. Study and compare various pre-trial release practices. Reform pretrial release rules.\(^{74}\)
5. Expand and strengthen services available to both youth and adult offenders.\(^{75}\)
6. Reform law enforcement hiring and training practices.\(^{76}\)
7. Programs to respond to police brutality.\(^{77}\)
8. Study of prosecutorial decision-making.\(^{78}\)
9. Reforms aimed at addressing cross-racial eyewitness identification.\(^{79}\)

Implementing these recommendations would require cooperation among state legislatures, supreme courts, trial courts, law enforcement agencies and training programs.

D. Juries

All five of the task forces recommended jury reform to address the low representation of minorities on juries and the selection of

---

71. *NY Report,* supra note 5, at 43.
72. *NY Report,* supra note 5, at 43. See also *FL Report II,* supra note 6, at 27; *MI Report,* supra note 3, at 55.
73. *NY Report,* supra note 5, at 43. See also *FL Report II,* supra note 6, at 43-45, 48; *MI Report,* supra note 3, at 55; *NJ Report,* supra note 7, at 83-197.
74. *FL Report II,* supra note 6, at 26. See also *MI Report,* supra note 3, at 55; *WA Report,* supra note 4, at 22; *NJ Report,* supra note 7, at 88-91.
75. *FL Report II,* supra note 6, at 43, 45. See also *WA Report,* supra note 4, at 19; *NJ Report,* supra note 7, at 68, 178.
76. *FL Report I,* supra note 6, at 51-55.
77. *FL Report I,* supra note 6, at 51-52.
jury members which tends to eliminate minorities from the jury. Recommendations included: increasing the sources of potential jurors;\textsuperscript{80} inquiring about race on juror questionnaires and using those responses to provide minority representation on jury lists;\textsuperscript{81} commissioning studies to investigate both minority representation on jury panels and the impact of excusal practices on representation;\textsuperscript{82} shortening jury terms of service or allowing jurors to be "on call" to decrease the financial impact of work loss during jury service;\textsuperscript{83} allowing trial judges, on their own initiative, to recognize when the use of peremptory challenges appears to be racially motivated;\textsuperscript{84} and, forbidding trial judges from asking jurors group questions about racial attitudes, but allowing attorneys to conduct such questioning.\textsuperscript{85}

\textbf{E. Language Interpreters}

The courts' common use of language interpreter services led to similar recommendations from all five state reports. The reports called for:

1. Enacting legislation requiring appointment of an interpreter for non-English speaking litigants in the court process;\textsuperscript{86}
2. Mandate inquiry of defendant's need for interpreter services at defendant's initial appearance;\textsuperscript{87}
3. Establish training and certification program for courtroom interpreters;\textsuperscript{88}
4. Ensure availability of interpreters who are not only bilingual, but who have a knowledge of cultural variations;\textsuperscript{89}

\textsuperscript{80} MI Report, supra note 3, at 49. See also FL Report II, supra note 6, at 29; NY Report, supra note 5, at 59; WA Report, supra note 4, at 16; NJ Report, supra note 7, at 219.
\textsuperscript{81} NY Report, supra note 5, at 59.
\textsuperscript{82} MI Report, supra note 3, at 49.
\textsuperscript{83} MI Report, supra note 3, at 49. See also NY Report, supra note 5, at 59.
\textsuperscript{84} MI Report, supra note 3, at 49. See also NY Report, supra note 5, at 59.
\textsuperscript{85} NY Report, supra note 5, at 59.
\textsuperscript{86} FL Report II, supra note 6, at 18. See also NY Report, supra note 5, at 52; MI Report, supra note 3, at 48; NJ Report, supra note 7, at 265.
\textsuperscript{87} FL Report II, supra note 6, at 18-19.
\textsuperscript{88} FL Report II, supra note 6, at 19. See also NY Report, supra note 5, at 52; WA Report, supra note 4, at 18.
\textsuperscript{89} NJ Report, supra note 7, at 61.
5. Inform courts of the variety of available interpreter services;90
6. Develop a code of ethics for court interpreters.91

Some of the reports also called for educational programs for non-English speaking communities concerning the judicial system.92

F. Community Outreach

Another common recommendation involved judicial outreach to minority communities. Designed to make the courts more accessible and responsive to minority court users, the programs might include, for example, dissemination of task force findings and recommendations93 or establishment of a “community law education program.”94

G. Minority Representation in the Courts

A close examination of the recommendations reveals that many involved ways to address the underrepresentation of minorities in the judiciary, in the legal profession and on court staffs. For example, in Washington, the Task Force recommended an affirmative action plan for nonjudicial court employees, called a “Workforce Diversity Program.”95 The Washington Report also called for education, funded by the state legislature, to “inform potential or interested judicial aspirants about the judicial selection process . . . .”96 In unique recommendations, the Washington Task Force supported legislation that would provide conditional scholarship support to law students who would serve as prosecutors, public defenders, law enforcement officers, or legal aid lawyers after graduation.97

The Michigan Report asked the Supreme Court to publicly support the Michigan and ABA Minority Demonstration Projects, which encourage the hiring of minorities in law firms. The Report called on law schools to recruit and retain more minority faculty

90. FL Report II, supra note 6, at 19.
91. NY Report, supra note 5, at 52.
92. NJ Report, supra note 7, at 241. See also MI Report, supra note 3, at 48.
93. MI Report, supra note 3, at 81.
94. WA Report, supra note 4, at 16.
95. WA Report, supra note , at 15.
96. WA Report, supra note , at 16.
97. WA Report, supra note 4, at 17.
STATE RESPONSES TO TASK FORCE REPORTS

members. The Michigan Report also called for general improvement in the number of minority judges appointed or elected and advancement of minority lawyers in the leadership of state and local bar associations.

The Florida Commission made specific recommendations concerning the experiences of minority women. Those recommendations encouraged the promotion and hiring of minority women by the courts, by developing an Office of Equal Employment Opportunity through the Supreme Court, by advertising relevant job openings extensively, by broadening applicant pools for judicial assistants and clerks, and by providing training opportunities to minority women employees. The Florida Report also demanded greater minority representation among government lawyers, in law firms, and in law schools. Along with New York, Florida called for reform of the Bar Examination to eliminate racial and ethnic bias in the exam itself.

H. Amend Codes of Judicial/Professional Conduct

Perhaps one of the most controversial recommendations, two Task Forces recommended that the rules for judicial and attorney conduct should explicitly render discriminatory conduct unacceptable. The Michigan proposal makes "invidious discrimination" a violation of the attorney and judicial codes and calls for the amendment of certain Court Rules to make invidious discrimination by the court a basis for disqualification of a judge.

The Florida Task Force offered reform of the Code of Judicial Conduct by citing the ABA’s model standard to be inserted into Canon 3:

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race [or ethnicity] ... and shall not permit staff, court

98. MI Report, supra note 3, at 70.
99. MI Report, supra note 3, at 69.
100. FL Report II, supra note 6, at 58-60.
102. FL Report II, supra note 6, at 121-123. See also NY Report, supra note 5, at 80.
103. MI Report, supra note 3, at 79.
officials and others subject to the court’s direction and control to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race [or ethnicity] . . . . This Section [] does not preclude legitimate advocacy when race [or ethnicity] . . . are issues in the proceeding.\textsuperscript{104}


An attorney shall not discriminate in employment, partnership, or compensation decisions, on the basis of race or ethnicity, absent a bona fide occupational qualification pertaining to the particular candidate. Moreover, an attorney shall not, in the performance of his or her legal duties, by words or conduct, manifest bias or prejudice based on race or ethnicity toward clients, litigants, jurors, witnesses, attorneys, or others with whom the attorney deals in a professional capacity.\textsuperscript{105}

The recommendations of both the Michigan and Florida Task Forces spurred state bar action, but with amended language as discussed below in Section IV.E.

IV. STATE RESPONSES TO TASK FORCE RECOMMENDATIONS

This section describes responses to the task force reports by state supreme courts, legislatures and bar associations. This process of response and reform is ongoing and often unsystematic. Therefore, this section is by no means an exhaustive list of all actions taken in reaction to the reports. Nevertheless, it will provide several illustrations of the kinds of reforms provoked by the reports.

A. Permanent Commissions

Two states have successfully established the permanent commissions on race and ethnic bias proposed in the task force reports.\textsuperscript{106}

\textsuperscript{104} FL Report II, supra note 6, at 89.
\textsuperscript{105} FL Report II, supra note 6, at 90. See the general recommendation at FL Report II, supra note 6, at 93.
\textsuperscript{106} Florida did not recommend a successor commission and New Jersey’s report is so recent that no action has yet been taken on the recommendation.
The Washington State Minority and Justice Task Force issued its final report in December 1990. By unanimous order, on October 4, 1990, the Washington Supreme Court established a successor, the Minority and Justice Commission. The Commission is large, consisting of twenty voting members and twenty-four non-voting "technical support members." In 1991, the Washington legislature approved a $200,000 budget for the Commission, down from the $492,000 proposed by the Commission. The Commission operates through four subcommittees: workforce diversity; research; education; and bar liaison.107

In November 1991, Chief Judge Sol Wachtler appointed a successor commission in New York. The Judge appointed eleven members to the Implementation Commission.108 The Commission has a paid Executive Director who closely monitors responses to the recommendations of the original Commission and tracks the daily operations of the judicial and non-judicial components of the court system.109 The Implementation Commission meets monthly and is expected to issue a progress report soon.110

The Michigan Supreme Court never implemented the joint recommendation of the Race/Ethnic and Gender Task Forces for the appointment of a Standing Committee on Racial/Ethnic and Gender Issues in the Courts. Three years after the issuance of the 1989 Task Force Report, the Supreme Court appointed two staff members to monitor the Court's minority hiring practices and to aid in the implementation of the Task Force Recommendations.111 It is possible that one reason the Court avoided the appointment of a large standing committee was due to budgetary restraints. The Washington State Task Force avoided this problem by going to the legislature for separate funding for its Commission. This underscores the importance of addressing both the legislature and courts in developing implementation plans. Unfortunately, the Michigan Supreme Court's fail-


110. Id.

111. Telephone contact with State Court Administrator's Office by author (March 23, 1993).
ure to appoint a Standing Committee can also be interpreted as a lack of dedication to the implementation of the Task Force recommendations.\textsuperscript{112} As time passes, any impetus for change created by the publishing of the Report can be lost if no central body is appointed to monitor and encourage progress.

In an effort to monitor its own progress in responding to both the race/ethnic and gender bias reports, the State Bar of Michigan added a member to its staff whose sole responsibility is to encourage and monitor the implementation of the Task Force recommendations within the State Bar. The State Bar Commissioners also appointed a Committee of bar members to monitor implementation of the reports within the bar association. While these changes are important to the State Bar’s role in carrying on the work of the Task Force, the Bar cannot direct the courts at which most of the recommendations were aimed.

**B. Judicial, Staff and Attorney Training**

The Washington Task Force implemented its educational program before the issuance of its final report. Designed in three phases, the program teaches cultural awareness to court personnel, from judges to bailiffs to public defenders.\textsuperscript{113} The Washington Task Force

\textsuperscript{112} However, the Supreme Court has taken other action to support the issuance of the Report. The Michigan Supreme Court issued an Administrative Order commending the Task Force’s work and urging implementation of the recommendations to the judges and employees of the state trial courts. Also, the Court sent 1500 copies of a memo to judges and court personnel throughout the state, stating that the Supreme Court will not tolerate discrimination. Former Chief Justice Dorothy Comstock Riley sent an open letter to all members of the State Bar of Michigan regarding the Task Force Report. \textit{Michigan Status Report to the National Consortium of Task Forces on Racial/Ethnic Bias in the Courts} (May 30, 1992) (on file with the author) [hereinafter \textit{MI Report to Consortium}].

\textsuperscript{113} Phase one involved a three-hour presentation by Justice Juanita Kidd Stout, Pennsylvania Supreme Court (retired) and Justice Bruce Wright, New York Supreme Court. The Justices “shared their personal experiences and views on the existence of individual and institutional biases and how biases can be manifested in the courts and legal system.” \textit{WA Report, supra} note 4, at 192. Phase I also included a ninety minute presentation by a consultant entitled “Philosophical Aspects of Cultural Differences,” which “focused on the historical origins and development of cultural norms and values and the impact such value systems have on judges’ behavior . . . .” \textit{WA Report, supra} note 4, at 192.

Phase II of the program included a two-day seminar by a consulting firm at five sites throughout the State. Participants studied the treatment of minorities in the courts, through experiential exercises, lectures, and small and large group discussions. \textit{WA Report, supra} note 4, at 192.

The third phase of the program is planned as several one-day seminars on various topics. During 1992, two judges conducted pilot training programs in their courts, to be followed-up by six one-day regional cultural diversity training seminars. \textit{WA Report to Consortium, supra} note 107.
shared its educational program with other organizations involved in court training programs and published letters of thanks from the National Center for State Courts and the National Judicial College in its final report.\textsuperscript{114}

In Michigan, the Michigan Judicial Institute, which is responsible for judicial training and the State Court Administrator's Office have taken steps to implement task force training recommendations. First, and often overlooked, both agencies have "taken steps to ensure more balanced gender and racial/ethnic composition of trainers and participants when organizing conferences, training functions, and committees."\textsuperscript{115} In the same way, the State Bar Committee for the Expansion of Under-Represented Groups in the Law has worked with the Institute of Continuing Legal Education to increase the representation of women and minorities among the Institute's faculty.

Both the Michigan Judicial Institute and the State Bar of Michigan produced videotapes on bias in the profession, which have been widely distributed. The Institute has also incorporated training related to race/ethnic bias into many of its continuing education programs.\textsuperscript{116}

The State Court Administrator's Office has conducted race/ethnic bias training for its own staff. The Office serves as a liaison to other court organizations such as the Michigan Association of Court Administrators and regularly suggests training programs to other organizations which involve "integration of topics that address gender and racial bias in the courts."\textsuperscript{117}

As a result of the Interim Report of the New Jersey Task Force on Minority Concerns, the Administrative Office of the Courts embarked on a training effort. In 1986, the Office had provided a program entitled "Affirmative Action: The Next Phase" to "all 8,000 judicial employees and judges."\textsuperscript{118} In 1991, the Office was planning a follow-up program, in response to the Task Force Interim Report, entitled "Beyond AA/EEO: Understanding Your Role in a
Multi-Cultural Workforce." Pilot offerings of the program occurred in 1991, with more to follow.\(^{119}\) The Administrative Office also reported that sensitivity training had been offered annually at the New Jersey Judicial Colleges since 1983. The Office also planned a comprehensive training program in response to specific issues cited by the Task Force.\(^ {120}\)

C. Reform of the Criminal Justice System

The Florida Commission experienced success in implementing many of its recommendations through the passage of reform legislation. During its 1991 session, the Florida legislature unanimously passed a package of reforms, including the following four in the area of criminal justice, designed to:

1. Ensure minority representation on important commissions responsible for developing the State's policies and training curricula in the juvenile justice area;
2. Create a Civil Rights Division in the Attorney General’s Office with the authority to investigate, enjoin, and, if appropriate, obtain financial recovery following racial harassment by any individual, including law enforcement officers;
3. Strengthen significantly the training mandated for law enforcement officers and executives in areas related to racial and ethnic minorities; and,
4. Provide for research and training projects on a continuing basis, utilizing community colleges and universities, so as to improve law enforcement interaction with minorities.\(^ {121}\)

This success again highlights the need for legislative involvement in the proposed reforms.

In Washington, the Research Subcommittee of the Minority and Justice Commission is planning a study of prosecutorial discretion, as recommended by the Task Force.\(^ {122}\)

New Jersey developed a community outreach program concerning the juvenile court system in response to a Task Force recommendation. The program involved distribution of a brochure describing the

\(^{119}\) NJ Appendix A4, supra note 118.
\(^{120}\) NJ Appendix A4, supra note 118.
\(^{121}\) FL Report II, supra note 6, at 2.
\(^{122}\) WA Report to Consortium, supra note 107.
rehabilitative purposes of the juvenile system and the services that are available to families. In addition, the State Administrative Office distributed a radio public service announcement aimed at informing the public of available family services and providing a number to be called for more information.\textsuperscript{123}

\textbf{D. Minority Representation in the Courts}

On January 4, 1990, the Office of Court Administration adopted a plan for affirmative action in hiring throughout the Unified Court System of New York. The “Workforce Diversity Program” originated in an interim report by the Commission in July 1989, which cited the “overwhelmingly white complexion of the Unified Court System (USC)” and the “aura of unfairness (thus projected) . . . because minorities seemed to be barred from within . . . .”\textsuperscript{124}

The Program required the following:

\begin{enumerate}
\item The appointment of a committee to oversee and facilitate the implementation of all recommendations approved by the Chief Judge;
\item Local court managers would develop strategies, goals and timetables for affirmative action recruitment and hiring and submit the plan for approval by the Chief Administrator;
\item Performance evaluations of all managers in the Unified Court System would consider each manager’s efforts to achieve affirmative action goals;
\item Existing geographical promotion units would be replaced by a statewide promotional unit;
\item Cultural sensitivity would become a goal of all Unified Court System employees; and,
\item The Equal Employment Opportunity Office would be strengthened.\textsuperscript{125}
\end{enumerate}

The Commission went on to recommend that the Office of Court Administration engage in research aimed at protecting the Workforce Diversity Program from legal challenge.\textsuperscript{126}

\textsuperscript{123.} \textit{NJ Appendix A4, supra} note 118.
\textsuperscript{124.} \textit{NY Report, supra} note 5, at 102, 105.
\textsuperscript{125.} \textit{NY Report, supra} note 5, at 105.
\textsuperscript{126.} \textit{NY Report, supra} note 5, at 106.
The Washington Minority and Justice Commission’s Workforce Diversity Subcommittee has three projects: “producing a job recruitment resource book . . .; developing and presenting a recruitment training program to help courts select ‘front line’ employees with greater sensitivity to the cultural makeup of the courts’ clientele; and planning a recruitment pamphlet for prospective employees to explain various jobs within the court.”\(^{127}\)

Along with New Jersey’s extensive affirmative action/equal employment opportunity training described above, the Administrative Office of the Courts has responded to the Task Force’s concerns about the underrepresentation of minorities among court volunteers. The Office formed a committee of volunteer representatives and Office staff in September 1990, which was to develop a plan “to establish a Standard for Determining Underrepresentation (SDU) of minorities on volunteer committees, boards and programs.”\(^ {128}\) The Office developed a program to gather data concerning volunteers and to assist volunteer coordinators in recruiting minorities. This is an example of various projects reported by the Administrative Office aimed at increasing minority participation throughout the court system.\(^ {129}\)

In Michigan, the State Court Administrator’s Office has developed a questionnaire to research the demographics of court employees throughout the state. The Office also runs “Management Assistance Projects for a variety of courts which includes recommendations regarding access and bias.”\(^ {130}\) The State Bar of Michigan has pressed its Sections, Committees and Councils to consider the recommendations of the Task Force and to work to increase minority representation.

The Governor of Florida, Lawton Chiles, advanced the Florida Commission’s recommendation for increased diversity among the individuals who select Florida’s judges. In 1991, Governor Chiles made 26 appointments to the judicial nominating commissions around the state. Twenty-three of the 26 appointees were racial and ethnic minorities.\(^ {131}\) This is an excellent example of the value of cooperation from the state’s Executive Branch in implementing change.

---

128. *NJ Appendix A4*, supra note 118.
129. *NJ Appendix A4*, supra note 118.
130. *MI Report to Consortium*, supra note 112.
E. Codes of Conduct

The State Bar of Michigan, after a heated debate at its September 1990 annual meeting, submitted to the Michigan Supreme Court proposed amendments to the Rules of Professional Conduct and to the Judicial Code of Conduct prohibiting invidious discrimination by attorneys and judges. The proposal included the recommendations of the Task Force, but also added a section prohibiting judges and lawyers from belonging to public or private clubs which discriminate. The Supreme Court requested comments from members of the Bar on both the State Bar Proposal and on the Task Force proposal. The Court has failed to take any action on the proposed rule changes to date.

In January 1993, certain listed members of The Florida Bar and the board of governors of The Florida Bar filed jointly a petition to amend the rules regulating the bar. The recommendation, although joint, offered alternative language as to one of the proposals because the bar and the listed members disagreed "as to the necessity of a provision requiring another agency to make a prior finding of improper discriminatory practices before the bar may take disciplinary action." 134

Both parties agreed that rule 4-8.4(d) should be amended to state:

A lawyer shall not:

* * *

(d) engage in conduct that is prejudicial to the administration of justice, including to knowingly or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation or age; 135

132. See supra note 36, at 5. Judge Hood, Chair of the Michigan Task Force, went on to comment that the language approved by the State Bar "goes further than, and is a great improvement on, the language suggested by the joint task force recommendations." Supra note 36, at 6.

133. See supra note 80.

134. Joint Petition to Amend Rules Regulating The Florida Bar (January 1993) (on file with author). I wish to thank Mr. Frank Scruggs of Steel, Hector and Davis in Miami, Florida, former Chair of the Florida Supreme Court Racial and Ethnic Bias Study Commission for his help in providing information on recent developments in Florida.

135. Id. at 2-4.
The petition goes on to make alternative proposals covering discrimination by attorneys in employment, partnership or compensation decisions. The board of governors propose a rule which would discipline an attorney if there is a prior finding of discrimination by an authorized agency or tribunal. The alternative proposal by listed members of the bar, would allow the bar disciplinary procedures to proceed against an attorney without a prior finding by another agency or tribunal. The petition is pending with the Supreme Court of Florida.

F. National Consortium

Although not a state response to the task force and commission reports, the formation of the National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts marked an important step in promoting further studies and supporting the implementation of recommendations. The Consortium held its fourth annual meeting in Seattle, Washington on May 30, 1992. The Consortium’s Coordinator position usually rotates on an annual basis among representatives of the state task forces. For 1993, the Coordinator is Dr. Yolanda P. Marlow, Project Director of the New Jersey Supreme Court Task Force on Minority Concerns.

Founded in 1988, the Consortium was created: 1) to report on program activities of existing task forces and commissions; 2) to provide information on how to create and conduct task forces and commissions; 3) to provide an annual forum for the discussion of progress on state program activities and on recommended reforms; and 4) to actively encourage other states to create investigative bodies to study race and ethnic bias in the courts. The Coordinator makes presentations to state and national organizations in an effort to promote all of these goals. The Consortium is planning the im-

136. Id. at 4-7.
137. Dr. Marlow can be reached at:
   Administrative Office of the Courts
   Justice Hughes Complex, CN 988
   Trenton, New Jersey 08625
   609/633-8108

138. Id.
minent release of its *Handbook on Racial and Ethnic Bias Task Forces.*

V. DISCUSSION

A review of the published reports, their findings, recommendations, and early outcomes, reveals a mixed result. The consistency of findings among the states strengthens each report's conclusions that reform is needed in the areas of: treatment of minorities by the courts; representation of minorities throughout the judiciary, profession and court workforce; pretrial release and sentencing policies; jury selection; and the availability and quality of language interpreters.

The responses of the five states reviewed here have reflected the benefits and drawbacks of the task force model. The publicity and inherent credibility given to each of the task forces or commissions inspired a certain level of support. Most courts could agree to more training for everyone and to implement equal employment opportunity policies, many of which already existed. The more difficult proposals, however, involving more money or more controversial changes, like jury selection reform, universal availability of interpreters and reform of the codes of conduct, were less successful.

It appears that three elements may be most vital to achieving actual reform: appointment of an implementing body; involvement of the legislature; and strong individual leadership.

A. Implementing Body

A body charged with implementing the recommendations of the task force is essential. The Michigan experience, which can point to many successes, nevertheless illustrates the consequent lack of central focus on accomplishing the goals of the task force when no standing committee is appointed. No one can put sufficient energy into implementation on a voluntary basis when there is no public body pressuring the courts, legislature, or executive to implement needed reforms.

B. Legislative Initiatives

The value of legislative initiatives is obvious after reviewing the experiences of Florida and Washington. Those task forces did not

139. *Id.*
140. *See supra,* pp. 941-42.
leave certain reforms to the discretion of the Governor or the Supreme Court, but fashioned legislation which made the reforms real and immediate.

The Florida Commission seemed to take pride in having had clear goals and a plan to implement its recommendations during the life of the Commission. At first blush this may seem limiting, however, the Florida approach may serve as a practical guide when faced with limited resources. The Washington Commission may have been disappointed in the decrease in its initial appropriation from the legislature, but appeared to be miles ahead of other successor commissions because it had a budget available.

C. Individual Leadership

Individual leadership makes a difference in the outcome of task force reports. Task forces should be careful, early on, to enlist the support of individuals who can make the changes happen. Throughout the task force reports there are stories of individuals without whom many of the successes would not have been possible.

Obtaining support from leaders from all three branches of government can also be key to success.

D. Educational Value

Finally, it is important to point out the inherent educational value of the work and reports of the task forces and commissions themselves. In each state, all of the members of the task forces received an education in race and ethnic bias and how that bias affects the courts. The public, through media coverage, attendance at public hearings and review of the reports themselves, received a similar education about bias. The public also learned that the issue was important enough to merit the appointment of the task forces. The Florida Commission also relied heavily on publicity through the media to promote its goals, which may be more powerful over a short time span.

The reports are an important teaching and research tool. They are also a vital tool for advocating change. I would urge every law school library and local bar library to acquire at least one copy of each report for their permanent collection. The reports should be used in law school classrooms to discuss bias and to create remedies. Each local bar library should have at least its own state report on hand.
The reports themselves now exist for all time as documentation of the problems faced by minorities in the courts. 141 Perhaps someday they will be merely historical documents, describing the days when courts were failing the promise of "Justice for All." Until then, the reports represent both a record of our failures and a blueprint of our hopes for change.

VI. CONCLUSION

Individuals, through their own work and professional relationships, strive to improve our courts daily. The Task Forces and Commissions represent concerted efforts to study and respond to race and ethnic bias in state courts. Although state responses to the published reports of these efforts have been mixed, a trend has clearly been set for reflection on bias in the courts and action to remedy its harmful effects. The people of Minnesota now have an opportunity to continue this trend and to respond with energy and optimism to the nation's newest task force report.

141. On availability of the published reports see supra note 8. The publication of the Minnesota report in the Hamline Law Review is an excellent method for making the report easily accessible in the future. Precedent was set for this practice when the New Jersey Supreme Court Task Force on Women in the Courts was published by the Fordham Law Review. Rand Jack and Dana Crowley Jack, Women Lawyers: Archetype and Alternatives, 57 FORDHAM L. REV 933 (1989).