

South Dakota
Equal Justice Commission



2006
Final Report
and Recommendations

South Dakota Equal Justice Commission Final Report

The South Dakota Supreme Court created the Equal Justice Commission to investigate, among other things, perceptions of unfairness in our state judicial system based on race, ethnicity, or minority status.¹ Upon completion of its investigation, the Commission was required to submit a public report with recommendations to the South Dakota Supreme Court. The following is the Commission's Final Report and Recommendations.

"Will this just be another Committee who listens to us and does nothing?"

Commission Members: The Equal Justice Commission consists of the following eleven persons: Co-Chair Chief Tribal Judge (Ret.) Patrick A. Lee, Rapid City; Co-Chair Justice John K. Konenkamp, Rapid City; Roger Campbell, Pierre; Circuit Judge David R. Gienapp, Brookings; Fr. Stephen Huffstetter, SCJ, Chamberlain; G. Verne Goodsell, Esq., Rapid City; Jeff A. Larson, Esq., Sioux Falls; Daryl Russell, Aberdeen; Anthony M. Sanchez, Esq., Pierre; Circuit Judge Kathleen F. Trandahl, Winner; and Chief Tribal Judge (Ret.) Cheryl J. Three Stars Valandra, Mission.

Executive Director: Tracey Fischer, Esq.

Legal Adviser: Lynn E. Sudbeck, Esq.

Investigative Methods: To inquire into public, and especially minority, perceptions of the South Dakota Unified Judicial System, the Commission conducted interviews and public hearings at fifteen sites across the state. These sites included eight Indian reservations and three penitentiaries, as well as the cities of Pierre, Rapid City, Sioux Falls, and Vermillion. The Commission also received numerous letters and written testimonials. Additionally, the Commission considered statistical research studies published by Professors Richard Braunstein, Steve Feimer, and Amy Schweinle of the University of South Dakota.

Findings and Recommendations

Having completed its investigation as directed by the South Dakota Supreme Court, the Commission hereby makes the following Findings and Recommendations:

1. Unfairness in the System

"We are supposed to be all equal."

Section 1.1 Findings on Unfairness

- 1.1.1 Some individual instances of unfair treatment of minorities, whether intentional or not, do occur in South Dakota's criminal justice system. There is a strongly held perception among minority people in South Dakota, especially Native Americans, that the judicial system shows favoritism toward non-minorities.

- 1.1.2 This perception is tied up with the belief that there is disparate enforcement of the law in South Dakota.
- 1.1.3 Many minority people believe that minorities are charged with crimes in circumstances where non-minorities are not charged or that minority people are treated more harshly in charging decisions.
- 1.1.4 Minority people express the perception that court system personnel at all levels lack understanding of and sensitivity to persons of different cultures.
- 1.1.5 While many court personnel believe that no problem exists with regard to treatment and demeanor toward minority and non-English-speaking litigants, many minority people do not share that perception.
- 1.1.6 Many minority people perceive the court system as biased against them in the setting of bail and pretrial release.
- 1.1.7 Many minority people perceive that race and ethnicity make a significant difference in the substance of plea negotiations.
- 1.1.8 Minority defendants often see no real distinction between the authority of the police, the prosecutor, the court-appointed attorney, and the judge. The perceived close relationships between those holding these positions are viewed as tending to weigh against minorities.
- 1.1.9 Minority people brought into the judicial system often complain that they did not receive adequate explanation of the rights and resources available to them.
- 1.1.10 There is anecdotal evidence indicating that some racial and ethnic minorities are more likely to plead guilty without fully understanding the immediate and long-term consequences.
- 1.1.11 For some recent immigrants, there is a lack of knowledge about the serious residency and citizenship consequences of pleading guilty to state offenses.

Section 1.2 Conclusions on Unfairness

- 1.2.1 It is an indisputable fact that Native Americans are overrepresented in the criminal justice system. Thus perceptions we heard from many minority people have an undeniable basis in reality. Why this overrepresentation exists cannot be fully answered simply by calling for opinions, and the statistical studies do not reveal any definitive answers.
- 1.2.2 In view of the fact that Native American overrepresentation is a reality, the contribution of the criminal court system itself to this overrepresentation must be closely monitored. Further research is required to fully understand the impact of minority status at each step in the criminal justice process, including arrest, charging, bail, appointment of counsel, plea negotiation, and sentencing.

- 1.2.3 South Dakota is a diverse state racially and ethnically and is becoming more so. Our courts are the most visible societal example of racial and ethnic fairness, or lack thereof, in this State.
- 1.2.4 An essential component of impartial judicial demeanor is respect for everyone involved in the court system. Such respect demands that judges foster an atmosphere of fairness and neutrality in the courts for litigants, witnesses, and other court users, whether minority or non-minority.
- 1.2.5 A justice system perceived by a substantial number of minority people to be unfair must take measures to improve its interaction with those minorities because the appearance of fairness is nearly as important as fairness itself.
- 1.2.6 Although exact numbers are unavailable, the Commission perceives that racial and ethnic minorities are substantially underrepresented as employees at every level of the Unified Judicial System and the South Dakota Department of Corrections.
- 1.2.7 An impartial system of justice should be as diverse as the people it serves. Public perceptions of fairness will improve when the personnel in the justice system more closely reflect the diversity of our state.
- 1.2.8 The Commission believes that racial and ethnic minorities are also substantially underrepresented in other groups and agencies that interact with the Unified Judicial System, including attorneys, law enforcement officers, social service workers, mental health providers, and others.
- 1.2.9 Perceptions of the equality of the justice system are affected by the lack of diversity in the court system and in the offices of state's attorneys, public defenders, and court-appointed private counsel.
- 1.2.10 There currently exists no cultural competency training in the Unified Judicial System. Without a thorough understanding and appreciation of cultural differences and how those differences shape encounters with the judicial system, there will continue to be mistrust and negative perceptions among the minority people our judicial system serves.

Section 1.3 Recommendations on Unfairness

- 1.3.1 Judges should be vigilant against personally exhibiting or allowing court personnel or attorneys to exhibit behavior based on stereotypical or negative views toward minorities.
- 1.3.2 UJS should educate judges and court personnel about the public perception that there exists bias and insensitivity toward minority and non-English-speaking litigants and their attorneys.
- 1.3.3 UJS should incorporate the findings and recommendations of this report into its educational programs for all judges and court staff.
- 1.3.4 All court personnel in the Unified Judicial System would benefit from cultural competency training. This would include training on understanding and increasing awareness of potential disparities in the criminal justice system for people of different cultures and the

implications those differences may carry. Training should also include how cultural beliefs shape encounters with the justice system; ways to increase valuing and respect for differences; and the development of skills for interacting with people of different cultures. The Commission recommends that UJS implement periodic mandatory cultural competency training for all UJS personnel.

- 1.3.5 UJS should encourage recruitment of minority employees throughout the state.
- 1.3.6 The South Dakota State and Tribal Judge forum should be reestablished.
- 1.3.7 Tribal court judges should be included as faculty in diversity training programs and should continue to be encouraged to attend judicial education programs.
- 1.3.8 The Supreme Court should establish a standing public education committee to educate the public about the judicial system and should encourage judges to help educate their communities and school districts.
- 1.3.9 The Supreme Court and the other appointing authorities should appoint qualified minority people to serve on the South Dakota Board of Pardons and Paroles.
- 1.3.10 UJS should work to develop additional fairness programs with a special emphasis on issues related to minority and non-English-speaking litigants.
- 1.3.11 The Supreme Court should create a process to address complaints about issues of race involving UJS personnel.
- 1.3.12 The Judicial Evaluation form sent to South Dakota attorneys, judges, and court personnel by the Judicial Evaluation Committee should include a question regarding the judge's tolerance for racial diversity.
- 1.3.13 UJS should encourage the local courts to develop outreach programs designed to enhance access to the courts by minority and non-English-speaking persons.
- 1.3.14 UJS should recommend to the South Dakota Board of Regents that a minimum of two to three hours in Native American culture and history be a mandatory graduation requirement from a 4-year public university in South Dakota. A similar program should be recommended for the University of South Dakota School of Law's curriculum for those students who have not already fulfilled the undergraduate requirement. Additionally, the State Board of Education should encourage or mandate studies in Native American culture and history in the high schools of the State of South Dakota.
- 1.3.15 The UJS and local courts should volunteer to assist immigrant and culturally diverse communities in understanding their rights and responsibilities under the South Dakota legal system.

- 1.3.16 Alternative dispute resolution in lieu of formal charges and alternatives to incarceration, where appropriate, should be available to everyone involved with the South Dakota Judicial System.

2. Language Interpretation

"People don't know the system, and the system doesn't know them"

Section 2.1 Findings on Language Interpretation

- 2.1.1 Those persons not sufficiently fluent in English have the same rights and protections as all others involved in the court system. These individuals must be given the opportunity to fully understand their rights and responsibilities in both the civil and criminal justice system.
- 2.1.2 South Dakota has become a very linguistically diverse state. Consequently, the need for language interpreters is great. The Unified Judicial System does not have adequate interpreters available to assist with non-English speaking defendants, victims, and witnesses.
- 2.1.3 Currently there are no uniform standards in South Dakota for qualifying language interpreters. South Dakota does not have a certification process to ensure that the interpreters used in our courts are competent and translating accurately, even for commonly spoken languages.
- 2.1.4 The Commission believes that many, but not all, Native Americans in South Dakota are fluent in English, even if it is a second language.
- 2.1.5 There are many languages spoken in South Dakota, especially in the Sioux Falls area.
- 2.1.6 South Dakota law provides that when “a witness cannot communicate or understand the English language the court shall procure and appoint a disinterested interpreter or translator. . . .” SDCL 19-3-7; 19-3-14. Interpreters must be qualified (SDCL 19-14-4), but there is no adequate definition of the term “qualified interpreter.” Uniform standards must be created to ensure that translations are accurate.

Section 2.2 Recommendations on Language Interpretation

- 2.2.1 The Supreme Court should explore creating comprehensive guidelines for providing adequate court interpretation and legal translation services for all people in need of interpreters. These guidelines would include (1) the training, testing, and certification to be required of interpreters who work in the court system; (2) the training in the processes of the legal system to be required of court interpreters; and (3) the uniform standards to govern all phases of interpreted court proceedings and how costs would be funded and allocated.

- 2.2.2 The Supreme Court should adopt a policy that requires all judicial forms and documents used by people involved in court proceedings to be drafted in easily translatable English and to be translated into such additional languages as the State Court Administrator approves. All such translations are to be made by approved legal translators, and should be printed at levels of quality equal to that of the corresponding English versions.
- 2.2.3 The Supreme Court should adopt policies and programs to orient and sensitize all court personnel who deliver services to people in need of interpreters with regard to the importance and complexities of communicating with people of diverse linguistic and cultural backgrounds. This orientation should include instruction regarding techniques for working with court interpreters.

3. Juvenile Justice and Minority Children

“We’ve got to work together.”

Section 3.1 Findings on Juvenile Justice and Minority Children

- 3.1.1 In the opinion of some people involved with the juvenile justice system, there is a gross disparity in the percentage of minority children who are brought into the juvenile system for delinquency offenses.
- 3.1.2 There is a perception that juvenile diversion programs are not as available for minority youth as they are for non-minority youth. This is especially true for areas around reservations.
- 3.1.3 The juvenile justice system does not keep sufficient and accurate race-specific data so as to determine whether the system operates in a biased manner for the minority people it processes.
- 3.1.4 Some minorities are distrustful of the juvenile justice system and that distrust is based on perceived bias and the absence of minority personnel within the system itself. Many minority people perceive juvenile system personnel, including those in the Office of Court Services, the Department of Corrections, and the Department of Social Services as indifferent or hostile to cultural differences.
- 3.1.5 There is an urgent need for family based services, especially on or near the Indian reservations, to prevent the disproportionate removal of minority children from their homes.
- 3.1.6 Children from minority communities are grossly overrepresented in the foster care system.

Section 3.2 Recommendations on Juvenile Justice

- 3.2.1 The Supreme Court should require the collection of accurate race-specific data on all people being brought into the juvenile court system.
- 3.2.2 UJS should make significant efforts in the recruitment, training, retention, and promotion of minority personnel within the juvenile justice

system. Minority court services officers are in an advantageous position to understand the juvenile in the social context of his or her community and to make informed recommendations on an appropriate disposition.

- 3.2.3 The Legislature, in cooperation with affected state agencies and local government, should develop and fund culturally specific programs for minority youth for both in-home and out-of-home placements which will emphasize the acquisition of skills most needed by minority juveniles in order to give them the best possible chance at rehabilitation and prevent their return to the juvenile justice system.
- 3.2.4 The Office of Court Services and the Department of Corrections should provide programs allowing for culturally relevant and locally available dispositional options for minority juveniles, as alternatives to removal from the home.
- 3.2.5 Efforts should be made by the State of South Dakota to work out reciprocal juvenile probation agreements with the tribes so that Native American juveniles who return to a reservation can receive supervision and those who leave the reservation can receive supervision.

4. Attorneys

Section 4.1 Findings on Attorneys

- 4.1.1 Many attorneys representing Native American clients appear to have insufficient knowledge of Indian Law and Lakota and Dakota history and culture.
- 4.1.2 Although the courts in South Dakota, both state and federal, deal with a considerable number of Indian Law issues, and although the South Dakota School of Law offers courses in Indian Law, the South Dakota Bar Examination contains no Indian Law questions.
- 4.1.3 Many lawyers representing and prosecuting minority people lack cross-cultural training.
- 4.1.4 There appears to be little or no cultural-competency training required of prosecutors and defense lawyers.
- 4.1.5 Attorneys who regularly represent minority people are frequently perceived by minority people as being ignorant of minority culture.
- 4.1.6 At times, court-appointed lawyers, especially in rural areas, provide inadequate legal services to minority defendants. Compensation and expense reimbursement are inadequate for rural attorneys.
- 4.1.7 Minority attorneys are seriously underrepresented in both prosecution and criminal defense offices, and in the State Bar as a whole, across the state.

Section 4.2 Recommendations on Attorneys

- 4.2.1 The Supreme Court should encourage cultural competency training at continuing legal education seminars offered by the State Bar of South

Dakota, the Attorney General's Office, the State's Attorneys' Association, and the South Dakota Trial Lawyers Association.

- 4.2.2 Prosecution and defense offices should take all necessary steps to improve the recruitment, retention, and promotion of minority people, including employees who serve in support personnel and victim advocate roles.
- 4.2.3 Law firms should consider mentoring programs for minority attorneys.
- 4.2.4 The Supreme Court should recommend to the South Dakota Board of Bar Examiners that an Indian Law question be included in the South Dakota Bar Exam.
- 4.2.5 The State Bar should work collaboratively with local bar associations and community groups to encourage more minority attorneys to seek appointment or election to judicial positions.
- 4.2.6 The Judicial Qualifications Commission should work with the State Bar and the Governor's office in determining what the Commission can do to assist in the development of qualified judicial candidates who are from varied racial and ethnic groups.
- 4.2.7 This Commission encourages the Governor to increase judicial diversity through his judicial appointments.
- 4.2.8 For the purpose of evaluating and recommending judicial candidates, UJS should periodically collect and submit data on diversity in the UJS to the Judicial Qualifications Commission.
- 4.2.9 Mileage reimbursement for rural attorneys should be raised to a level commensurate with the actual cost of traveling.

5. Juries

Section 5.1 Findings on Juries

- 5.1.1 Juries in South Dakota rarely represent the racial composition of a community.
- 5.1.2 Minority people have a general distrust of the criminal justice system and exclusion from being seated on juries fosters that distrust.
- 5.1.3 On the other hand, some minority people avoid jury service for cultural reasons.
- 5.1.4 The definition of "family" under traditional Native American culture is more expansive than the definition of "family" according to South Dakota law. As a result, many prospective Native American jurors are being stricken from the jury list after identifying themselves as being a family member of the defendant, the alleged victim, or a witness in the case.
- 5.1.5 Grand and petit juries need minority members to truly reflect the whole community if a jury's decision is to reflect the community's judgment.

Section 5.2 Recommendations on Juries

- 5.2.1 UJS and the State Bar of South Dakota should use public education programs to increase awareness about the purpose and function of grand and petit juries. An education program should be established to educate the public, especially minorities, regarding the jury system and how it works.
- 5.2.2 UJS and the State Bar should explore efforts to increase minority representation on grand and petit juries.
- 5.2.3 The State Bar should regularly offer continuing legal education topics on challenging jury panels and the use of peremptory strikes.

6. Criminal Justice -- Arrests and Stops

“We have all these ‘rights,’ and we’re still being hammered.”

Section 6.1 Findings on Arrests and Stops

- 6.1.1 Although the decisions to bring people before the courts are initiated by law enforcement and by prosecutors, the courts need to be ever vigilant not to tolerate or allow racial profiling to go unchecked under the rule of law.
- 6.1.2 No statistical information is available regarding who law enforcement officers decide to stop, release, warn, cite, or arrest, and whether ethnicity plays a part in those decisions.
- 6.1.3 An impartial and conscientious system of justice must take cognizance of the processes and methods that bring people before it for adjudication.
- 6.1.4 The Commission heard one common complaint all across South Dakota: Native American people feel unfairly targeted for traffic stops by law enforcement officers who pull them over without a traffic violation or for pretextual reasons.
- 6.1.5 Given the disproportionate number of Native Americans in South Dakota’s criminal justice system and in the penitentiaries, the Commission believes that this complaint should not be ignored.
- 6.1.6 Some other jurisdictions require the collection of racial and ethnic data on the people law enforcement officers stop.² This data collection is an important way for law enforcement agencies to be accountable for the stop practices of their officers. “Agencies that actively monitor their own behavior are much more likely to know if a problem exists, and are in a position to manage the real or perceived behavior with factual information. Absent this information, the agency simply cannot comprehensively respond to allegations of profiling.”³
- 6.1.7 Some of South Dakota’s law enforcement leaders insist that keeping statistics on the racial makeup of every person a law enforcement officer stops on the road would be burdensome and unworkable. We believe the benefits of having accurate data outweigh any incidental burden to law enforcement agencies.

Section 6.2 Recommendations on Arrests and Stops

- 6.2.1 This Commission encourages the State of South Dakota to initiate a pilot program to document the racial makeup of all persons stopped by law enforcement officers on South Dakota highways. The information collected should include the reason for the stop and the disposition (release, warning, citation, arrest).
- 6.2.2 All three branches of South Dakota government should maintain efforts to identify and eliminate the causes that lead to disproportionately high minority arrests and incarceration.

7. Criminal Justice -- Pretrial Processes

Section 7.1 Findings on Pretrial Processes

- 7.1.1 Because of ties to Indian reservations, where no agreements exist for extraditing those who fail to appear in court on criminal charges, Native Americans are less likely to be released on reasonable bail or on their own recognizance than non-minorities arrested under similar circumstances.
- 7.1.2 Minority defendants who are unable to obtain pretrial release sometimes choose to plead guilty because they believe they will be released from custody more quickly than if they exercise their right to trial.
- 7.1.3 Minority people sometimes choose to plead guilty to charges against them because of the perception that they will not receive a fair trial and because they do not sufficiently understand the legal system.
- 7.1.4 State's attorneys and city attorneys are almost totally autonomous when it comes to deciding who will be charged with a public offense and how serious the charge will be. There is little or no oversight of their charging decisions. While this discretion is an important executive function, it should be applied without regard to race, sex, religion, national origin, or socio-economic status.
- 7.1.5 There is tremendous variation among victim advocacy services (where they exist at all) throughout the state. Variation, and in many cases, the lack of these services, may affect charging, negotiation, and sentencing practices.
- 7.1.6 No statistical information is available on who prosecutors decide not to prosecute, to whom they give favorable plea negotiations and whether ethnicity plays a part in those decisions.

Section 7.2 Recommendations on Pretrial Processes

- 7.2.1 An objective scale should be used by prosecutors, judges, and evaluators as a model in developing neutral pretrial release tools based on factors which relate only to pretrial failure to appear and risk of pretrial crime.
- 7.2.2 We encourage the Attorney General of South Dakota to conduct as a pilot project the collection of data from prosecutors in selected counties on charging and plea negotiating decisions and the racial makeup of those affected.

- 7.2.3 Prosecutors and defense lawyers in every jurisdiction should be sensitive to the potential of race influencing charging decisions and plea agreements.
- 7.2.4 The Legislature should fund more victims' advocacy services in rural areas.

8. Criminal Justice -- Dispositions

Section 8.1 Findings on Dispositions

- 8.1.1 Native Americans, both men and women, make up a disproportionately high share of the South Dakota prison population. In some instances this disproportionality is more evident in crimes like first degree manslaughter where sentences can be imposed that range from no prison time up to life in prison. According to statistics from the Department of Corrections, of those inmates serving life imprisonment for first degree manslaughter, forty percent are Native American.
- 8.1.2 Although the statistical study of state court sentencing performed by Professors Richard Braunstein, Steve Feimer, and Amy Schweinle suggests that minorities are not receiving harsher sentences because of their minority status, this fact does not relieve courts of the continuing obligation to be aware of strong perceptions to the contrary and to ensure that ethnicity and minority status should never affect sentencing decisions.
- 8.1.3 Professor Braunstein's explanation to the Commission that income and employment status appear to be strong determiners in sentencing decisions is a cause for concern and should be furthered studied. Professor Braunstein's study does not factor in the subjectivity of charging decisions.
- 8.1.4 UJS does not have an easily accessible database of sentencing decisions that can be accessed based on race and other factors.
- 8.1.5 Many people believe that the courts sentence Native American and other minority defendants in ways that work at cross-purposes with their cultural norms, placing people far away from their families and cultural support systems that could aid them in rehabilitation, treatment, and recovery.
- 8.1.6 Presentence reports prepared by UJS court services officers contain sentencing recommendations that are often followed by judges.
- 8.1.7 Court services officers are disproportionately non-minority in comparison to their clientele.
- 8.1.8 As with all UJS personnel, court services officers need cultural competency training.
- 8.1.9 The state does not provide enough supervision and treatment services in rural areas and there are too few treatment programs designed for minority offenders.

- 8.1.10 Little state-wide data is kept on crime victims, and that which is kept generally does not include race.
- 8.1.11 There are too few post-release resources for parolees and probationers on or near reservations. Often Native American defendants are incarcerated in locations where it is difficult for them to access a cultural support system that can aid in rehabilitation, treatment, and recovery.

Section 8.2 Recommendations on Dispositions

- 8.2.1 The South Dakota Office of Tribal Governmental Relations should meet with Tribal leaders to negotiate a plan regarding bilateral extradition and probation supervision agreements that would be beneficial to both State and Tribal governments and Native Americans involved in the judicial system at both the State and Tribal level.
- 8.2.2 UJS should hire more court services officers who are minority members.
- 8.2.3 The Supreme Court should encourage the creation of more culturally specific treatment programs, and court services officers and judges should be encouraged to divert appropriate minority people into such programs.
- 8.2.4 Judges and court services officers should receive training on racially and culturally neutral sentencing determinations.
- 8.2.5 UJS should maintain a database of the racial makeup of all persons sentenced on felonies and class one misdemeanors so that sentencing decisions can be completely and routinely analyzed and summarized by race and other elements. This information should be provided in an annual report
- 8.2.6 UJS should offer intensive probation on a statewide basis to minority and non-English speaking probationers in order to provide them with greater support in completing probation conditions successfully. In minority communities where it is presently used, it is working very well.
- 8.2.7 The Department of Corrections should encourage all correctional staff to receive training on Native American religious practices. The Department should continue working with religious groups, including tribal members, to coordinate religious practices and ensure that those religious practices in the prison are respected.
- 8.2.8 Efforts should be made to create halfway houses on the highly populated Indian reservations to assist the transition of Native Americans paroled from the South Dakota penitentiary system.

9. Other Matters

- 9.1 The Commission heard considerable testimony from individuals regarding similar problems of racial unfairness in the federal courts. Although issues within the federal system are outside the scope of the Commission's authority, the Commission will send a copy of this report to the federal courts in South Dakota.

- 9.2 The Commission also heard many complaints about the tribal courts and tribal government. These issues were not part of the Commission's work and thus it makes no findings or recommendations.

10. Conclusion

“We've got to see justice.”

Permanent Commission. The Commission's work is not finished. The task is too large and the need too great to accomplish all the Commission set out to do. The Supreme Court in cooperation with the Governor, the Legislature, the State Bar of South Dakota, and others, should appoint a permanent Equal Justice Commission to carry on the recommendations in this report, make further recommendation as needed, and continue the work of the Commission.⁴

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1. A copy of the Supreme Court's order creating the Commission is attached.
 2. Practitioners Guide for Addressing Racial Profiling, p. 14 (Lamberth Consulting, Spring 2005).
 3. Id.
 4. The Supreme Court thanks the members of the Commission for their generous contribution of time and effort in this vital endeavor. The Supreme Court also thanks the State Bar of South Dakota for its financial contribution to help defray part of the costs for the work of this Commission

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

**ORDER
FOR
EQUAL JUSTICE COMMISSION**

Whereas the presence of racial or minority discrimination and bias impairs the imposition of justice, and

Whereas the South Dakota Unified Judicial System is constitutionally required to dispense justice fairly and equitably to all persons involved with the South Dakota state court system, and

Whereas the eradication of any discrimination and bias is our goal in the administration of justice,

Now, we, the Justices of the South Dakota Supreme Court, hereby create the Equal Justice Commission to proceed as directed below.

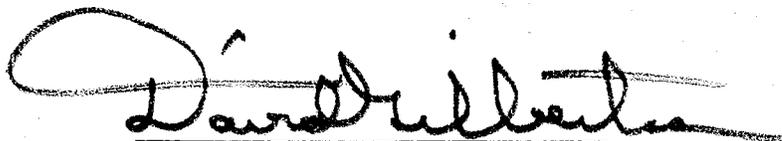
ORDERED that an eleven member Equal Justice Commission, composed of citizens, judges, and lawyers, shall be created with consultation from the Governor and the President of the State Bar of South Dakota; the Commission will have co-chairpersons, Justice John K. Konenkamp and retired Oglala Sioux Tribal Court Chief Judge Patrick A. Lee; the Commission shall perform the following:

1. Identify areas in which there is the perception of unfairness based on race, ethnicity, or minority status and the possible role of state courts and attorneys in creating unfairness;
2. Consider any available data and public input on bias in the South Dakota state judicial system and its dispensation of justice;
3. Formulate and propose guidelines, standards, and procedures to ensure equal justice in South Dakota's judicial system, including recommending court performance standards and empirical methods to measure whether those standards are being met;

4. Explore ways to promote better understanding of ethnic and racial minorities appearing in the judicial system;
5. Recommend appropriate judicial and legal education course materials and programs on equality, including appropriate instruction to be included in South Dakota's new judge and new lawyer orientation programs;
6. Serve as a resource to the media;
7. Advise the South Dakota Supreme Court on possible needed legislation to be submitted through the Unified Judicial System to further promote equal justice in the state judicial system;
8. Recommend a mechanism for the processing of complaints about biased behavior of judges, lawyers, and court personnel;
9. Collaborate with the Judicial Qualifications Commission to encourage greater racial and gender diversity in the appointment of justices, circuit judges, and magistrates;
10. Act as a resource to the South Dakota State Bar and the USD Law School in recommending teaching, curricula, and continuing education to promote the elimination of biased conduct on the part of attorneys; and
11. Within eighteen months, submit a report to the South Dakota Supreme Court stating the findings of the Commission and its recommendations.

DATED at Pierre, South Dakota, this 2nd day of January, 2004.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

PARTICIPATING: Chief Justice David Gilbertson, Justices Richard W. Sabers,
John K. Konenkamp, Steven L. Zinter and Judith K. Meierhenry.

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JAN 02 2004


Clerk

South Dakota Supreme Court Announces Creation of Equal Justice Commission

Today Chief Justice David Gilbertson announced the creation of a Commission to identify any possible areas in the South Dakota Judicial System in which there is a perception of unfairness based on race or ethnicity. The Supreme Court appointed Justice John K. Konenkamp and former Chief Judge Patrick A. Lee of the Oglala Sioux Tribal Court to co-chair the new Commission. The eleven member Equal Justice Commission will hold public hearings and make final recommendations to the South Dakota Supreme Court. Composed of citizens, lawyers, and judges, the Commission's members will be appointed by the Supreme Court, the Governor, and the President of the State Bar. The remaining members will be appointed in the next few weeks.