Is Minnesota's Judicial System Really Guilty of Racism?

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False certainties and powerful taboos inhibit the public discussion of fundamental issues in Minnesota. Among the certainties that urgently require critical examination rather than uncritical assent is the proposition that the criminal justice system is biased against minorities, especially African Americans. This proposition has become so widely accepted that it is no longer subject to debate—certainly not in Minnesota, where taboos governing the

discussion of issues related to race seem to exert a special power. The time for genuine discussion of racial disparities in the Minnesota criminal justice system is long overdue; the prevailing public consensus that such disparities are a function of racial bias in the courts is both mistaken and destructive. Many who know better choose to remain silent or to confine the expression of their real views to the kitchen table.

That this public consensus exists cannot reasonably be disputed. The assertion that racial bias permeates the criminal justice system was the subject of an all-day Minnesota Public Radio symposium—"Is There Bias in the Minnesota Criminal Justice System?"—held in June at the University of Minnesota Law School and broadcast around the state. Every one of the symposium's five featured speakers lent support to an affirmative answer to the symposium's question. The claim that Minnesota's criminal justice system is racially biased was likewise the theme of a lengthy feature article entitled "Racial Disparity in the Criminal Justice System," by former Hennepin County attorney Thomas Johnson and Cheryl Heilman, in the May/June issue of ***Bench & Bar,*** the official publication of the Minnesota State Bar Association. The magazine supplied the article with a heading, consistent with the theme of the article, that seemed to refer to Minnesota's criminal justice system as "an embarrassment to all Minnesotans." (Johnson and Heilman are officers of the Council on Crime and Justice, a foundation-supported organization performing a multiyear, multimillion-dollar study of the subject discussed in their article.)

The Task Force on Racial Bias in the Courts

The assertion that the criminal justice system is racially biased gained respectability in the 1980s and 1990s, when a number of state and federal courts and bar associations released studies addressing the issue. Not to be outdone by courts elsewhere, in December 1990 the Minnesota Supreme Court commissioned a forty-member Task Force on Racial Bias in the Judicial System to analyze whether such bias infected Minnesota's court system. The task force was chaired by Rosalie Wahl, then a justice of the Supreme Court, and was supported by a professional staff of writers and statisticians.

The task force touted its "diversity," noting that "people of color comprised a significant percentage of the task force. The membership was also diverse along gender, age, and geographic lines." Like most such groups that tout their "diversity," the task force achieved a uniformity of thought that would otherwise be amazing in a group so large. Not a single member dissented from its findings.

The result of the task force's inquiry was foreordained. No one doubted that the task force would find evidence of racial bias in Minnesota's courts. Indeed, the assignment given the task force by the Supreme Court seemed to assume the conclusion that such bias

existed. The task force was directed to "explore the ***extent*** to which racial bias exists in the Minnesota court system"; to "document, where found, the existence of discriminatory treatment of minority litigants, witnesses, jurors, and of discriminatory hiring and treatment of minority judicial, legal, and court personnel; and to "recommend methods to eliminate racial bias in the courts" (emphasis added).

The task force delivered its report in April 1993. As anticipated, the task force claimed that its research had documented pervasive racial bias in Minnesota's courts. The task force report is the authoritative source of support for the assertion that racial bias permeates the Minnesota criminal justice system and is still frequently cited to this effect. Earlier this year, Rosalie Wahl herself cited the report in a ***Star Tribune*** op-ed piece on alleged racial profiling by the Minneapolis police. She referred to the task force report as the "Supreme Court's groundbreaking study of racial bias in the state judicial system" and described it as having revealed "that the great discretion vested in our judicial officers, our prosecutors and our police officers is more likely to be exercised favorably on behalf of those most like themselves and that the system is mostly a white system." The task force report deserves serious attention for its continued role in the public discussion of racial bias in Minnesota. Nevertheless, it has received no critical scrutiny or analysis beyond a single story in the ***Star Tribune*** published shortly after the report was released; the story included a few skeptical quotations.

As Justice Wahl's comment suggests, the task force report made dramatic allegations of racial bias in the Minnesota criminal justice system. Remarkably, however, the task force specifically disclaimed any duty to inquire into whether there is, in fact, any bias against minorities in Minnesota's judicial system:

> The term "bias" is very broad—so broad and nebulous that to have built an inquiry on whether or not there is "bias" against people of color in the justice system would likely have resulted in the subtle reinforcement of one of institutional racism's main bulwarks: denial.

In other words, the task force admitted that if it had carried out an objective search for evidence of bias, it likely would have found that none existed.

Racial Disparities in the Criminal Justice System

In support of its claim of pervasive bias, the task force relied on two types of data. First, it cited statistics showing that people of color, and especially African Americans, are arrested for criminal conduct, convicted of crimes, and incarcerated in numbers that are vastly disproportionate to their share of the population. Thus, in its first ten pages the report states no fewer than three times that "people of color" constitute 6 percent of Minnesota's population, but constitute 45 percent of the state's prison population. The report similarly notes that although African Americans constitute just 12 percent of

the population of the United States, they make up 46 percent of the nation's prison population.

The task force considered these numbers to be irrefutable evidence of racial bias. In a brief bow to common knowledge, however, it did address the obvious retort that African Americans are disproportionately arrested, convicted, and incarcerated because they commit a disproportionate number of crimes:

> Many white Americans may shrug their shoulders at these figures because "everyone knows" that people of color commit vastly more crime. What our research indicates—what everyone ***should*** know—is that after examining similarly situated offenders convicted of the same offenses, people of color are ***imprisoned*** at grossly disproportionate rates.

Whether the task force's research shows any such thing is discussed in this essay. Initially, however, it should be noted that a vast body of professional literature, unacknowledged by the Supreme Court's task force, demonstrates that racial disparities in national arrest and imprisonment rates are a reflection of racial disparities in offending rates. This is the taboo that generally governs discussion of the issue and that the task force was unwilling to violate—the fact that blacks commit a vastly disproportionate share of serious criminal offenses, and are therefore vastly overrepresented in every stage of criminal proceedings, from arrest through prosecution, conviction, and imprisonment.

The Scholarly Consensus on Racial Disparities

Professor Michael Tonry of the University of Minnesota Law School is an impeccably liberal critic of the criminal justice system. He is also, however, a genuine scholar. In his review of the professional studies and research on this issue, Professor Tonry summarized the evidence as follows:

> For nearly a decade there has been a near consensus among scholars and policy analysts that most of the black punishment disproportions result not from racial bias or discrimination within the system but from patterns of black offending and of blacks' criminal records. . . . The evidence seems clear that the main reason black incarceration rates are substantially higher than those for whites is that black crime rates for imprisonable crimes are substantially higher than those for whites.

Chapter 2 of Professor Tonry's 1995 book ***Malign Neglect,*** from which this passage is taken, summarizes the substantial, sophisticated professional studies that have been published over the past twenty-five years.

To the same effect is University of Pennsylvania professor John DiIulio's 1996 review of the professional studies in this area:

> Is there anything social science research can do to help dispel all the ambivalence and confusion crowding around the subject of race and crime? At least it can tell the truth, as the data disclose it, about the reality of black crime and punishment. The bottom line of most of the best

> research is that America's justice system is not racist, not anymore, as it undoubtedly was a generation ago. . . . If blacks are overrepresented in the ranks of the imprisoned, it is because blacks are overrepresented in the criminal ranks—and in the violent criminal ranks at that.

In the drier words of James Q. Wilson, perhaps America's greatest living social scientist, in his 1985 book ***Crime and Human Nature:***

> In sum, the preponderance of evidence—arrest data, victim surveys, and homicide statistics—confirms the higher rate of most kinds of common crimes among blacks and the much higher rate of violent crime.

One statistic from the most recently available data dramatically illustrates the point made by these scholars. In 1999, the federal government's crime statistics indicated that the murder rate among whites was 3.5 per 100,000, while the murder rate for blacks was 25.5 per 100,000, seven times the white rate. Nowhere in the task force's 138-page report are such basic facts regarding racial disparities in crime rates acknowledged.

In short, the relevant professional literature demonstrates that it is absurd to assert that "people of color are imprisoned at grossly disproportionate rates" because of prejudice against them in the criminal justice system. The professional literature addressing this issue and refuting this proposition is not cited, summarized, or refuted in the task force report.

It is interesting to note that intellectual consistency is not a hallmark of the Minnesota Supreme Court's task forces. In the late 1980s, the Court appointed a task force on gender fairness in the courts. The gender fairness task force reported in 1989. It found that men were imprisoned for felony offenses in Minnesota at vastly higher rates, and for longer periods of time, than women. However, the task force did not attribute this discrepancy to gender bias against men. According to the gender fairness task force, the differing imprisonment rates and sentence lengths for men and women offenders result from a greater percentage of men committing crimes of violence and having longer criminal records. This obvious and natural explanation was politically correct in the case of the gender fairness task force and was therefore acknowledged; it was not politically correct in the case of the racial bias task force and was therefore suppressed.

The Task Force Studies

But what of the racial bias task force's claim that "our research indicates . . . that after examining similarly situated offenders convicted of the same offenses, people of color are ***imprisoned*** at grossly disproportionate rates"? Do the task force's data really document bias against minorities in Minnesota's court system, in sentencing or otherwise? Here the task force relied on studies it included in the appendix to its report.

The data and statistical analyses underlying the task force's conclusions are set forth in Appendix D to the task force's report. Appendix D includes

four studies and thirty sets of data. Although the task force report focuses on alleged racial disparities, the most notable disparity in the report is the disparity between the text of the report and the appendix of data compiled by the researchers and statisticians who supported the work of the task force. Although the text of the report purports to be based on the data contained in the appendix, the data virtually refute the text of the report.

The four studies included in the appendix are of possible racial bias in (1) juvenile case processing; (2) the incidence and length of jail time served by Minnesota offenders; (3) Hennepin County misdemeanor processing; and (4) imprisonment rates and rates of departure from sentences recommended under the Minnesota sentencing guidelines. The thirty data sets are as follows:

1. Juvenile Certification to Adult Court
2. Attorney Representation—Juvenile
3. Private Representation—Juvenile
4. Detention—Juvenile
5. Removal From Home—Juvenile
6. All Jail Time—Felons
7. Post-Disposition Jail Time—Felons
8. Jail Time—Felons
9. Hennepin County Misdemeanor —Charging Method
10. Hennepin County Misdemeanor —No Bail Required
11. Hennepin County Misdemeanor —Bail Amount
12. Hennepin County Misdemeanor —Trial Rate
13. Hennepin County Misdemeanor —Guilty Plea
14. Hennepin County Misdemeanor—Attorney Representation
15. Hennepin County Misdemeanor —Private Attorney
16. Hennepin County Misdemeanor —Conviction Rates
17. Hennepin County Misdemeanor —Case Dismissal
18. Hennepin County Misdemeanor —Continued for Dismissal
19. Hennepin County Misdemeanor —Probation
20. Hennepin County Misdemeanor —Fine
21. Hennepin County Misdemeanor —Jail Sentence
22. Hennepin County Misdemeanor —Length of Jail Sentence
23. Sentencing Guidelines—Mitigated Departure
24. Sentencing Guidelines—Aggravated Departure
25. Sentencing Guidelines—Mitigated Durational Departure
26. Sentencing Guidelines—Aggravated Durational Departure
27. Sentencing Guidelines—Criminal Sexual Conduct
28. Sentencing Guidelines—Aggravated Robbery
29. Sentencing Guidelines—Assault in the Second Degree
30. Sentencing Guidelines—Dangerous Weapons

What is the big picture regarding these data sets? In raw numbers, in eleven of the thirty data sets, there was no material difference between minorities and whites. In eight of the data sets, minorities fared better than whites. These included frequency of

representation by an attorney in juvenile court; amount of time spent in jail after a felony conviction; frequency of misdemeanor guilty pleas; frequency of representation by an attorney in misdemeanor cases; rate of conviction for misdemeanor offenses; frequency with which misdemeanor charges were dismissed; frequency with which misdemeanor charges resulted in a fine; and length of jail sentences following misdemeanor convictions.

Thus, in nineteen of the thirty data sets, minorities fared as well as, or better than, whites. In the remaining eleven data sets, there was a raw number discrepancy that favored whites over minorities. In five of these instances the raw number discrepancy was found by the researchers not to be statistically significant, while in the six others, proper controls for obviously important variables (such as the number and severity of prior convictions) were lacking. Overall, the data simply do not support the assertion that racial bias permeates the criminal justice system; systematic bias would not produce these results.

It is worth examining these studies carried out by the task force researchers in greater detail. The studies labor mightily to find "statistically significant" disparities in treatment that are correlated with race. A discussion of the meaning and use of the concept of "statistical significance," a concept that the appendix studies frequently misuse, is beyond the scope of this essay. Suffice it to say that for tests of statistical significance to produce meaningful results, controls must be included for all relevant variables. (Criminology professor William Wilbanks provides a valuable discussion of "statistical significance" in this context in his 1987 book ***The Myth of a Racist Criminal Justice System.***) The few instances in which the researchers claim to have found significant racial disparities involve the omission of obviously relevant variables or weak associations that in fact disappear when a subset of data is incorporated in the larger set to which it belongs.

Juvenile Case Processing

The first of the four studies is of juvenile case processing in Hennepin County and fifteen selected outstate counties over the period 1987–1991; the study includes more than 18,000 cases. The study found that too few juveniles in this sample were certified for treatment as adults to determine if there was disparate treatment that correlated with race. However, the data did not suggest discrimination in the certification of juveniles to adult court; an extremely small percentage of both whites and minorities were certified for adult treatment. The data also indicated that minorities were represented by attorneys more frequently than whites both at adjudication hearings, in which guilt or innocence is determined, and at disposition, in which the judge decides the proper treatment of the juvenile.

On the other hand, the study suggested that there was a "significant association" of race and detention rates, as well as "a problem" with respect to disparities in removal from home. On closer examination, these assertions do not hold up. The study

acknowledged that its statistical "model [for predicting detention based on the race of the juvenile] was capable of predicting a 'yes' response in a limited number of cases." The study therefore acknowledged the possibility that the model did not fit the data and that there may have been other (nonracial) variables that influenced the detention decision but were not included in the analysis. A model that is not predictive is not reliable and may not properly be used to establish a causal relationship.

With respect to removal from home, the study found that the "rate of removal is quite similar for whites and minorities" in most (seventeen of twenty) offense categories both in Hennepin County and outstate. Moreover, the disparities in the remaining offense categories essentially disappeared when all offense categories were aggregated. The study also found that all the variables it considered (offense type, prior offense history, race, gender, attorney representation at disposition, and detention) ***with the exception of race*** were statistically significant in predicting the probability of the juvenile's removal from home in Hennepin County. As to the outstate data, the study found that all the variables were statistically significant, but that "race was the weakest of the predictor variables." (No numerical value was given for the variable.) The study further acknowledged that "there may be other variables that influence the detention decision which we have not included in our analysis." It is neither fair nor accurate to conclude that the study provides meaningful evidence of racial bias in the juvenile system, and the study itself states finally that it "is not possible to say that minorities are treated more harshly simply because of their skin color."

Hennepin County Misdemeanor Processing

The researchers' study of misdemeanor processing in Hennepin County is particularly interesting because it provides a glimpse, in miniature, of Minnesota's criminal justice system.

The Hennepin County misdemeanor study looked at three offenses—assault, prostitution, and theft—and included 19,000 cases from the period 1989–1992. The study broke down the data on each of these three offenses into only two categories: (1) race and (2) prior record versus no prior record. Thus, there was a total of six categories for whites and six for minorities.

Most of the cases included in the study were assault prosecutions. Assault accounted for 11,656 of the cases in the sample, or 62 percent. Forty-five percent of all assault convictions involved minority defendants, mostly blacks. This number represents the kind of racial disparity that the text of the task force report takes as irrefutable evidence of racism in the judicial system. The vast majority of these assault prosecutions—72 percent—were for domestic assault.

The gender bias task force report referred to earlier devoted considerable attention to the difficulty of prosecuting domestic assault cases and recommended several reforms to facilitate prosecution of this offense. Consistent

with the gender bias task force conclusions, the racial bias task force report found that Hennepin County's assault prosecutions have the highest dismissal rate of the three offenses studied, probably because victims of domestic assault are often unwilling to testify against the perpetrator. The racial bias task force study also found that assault cases brought against minority defendants are much more likely to be dismissed than those brought against white defendants.

On its face, this finding would seem to indicate a lack of prejudice against minority defendants. The task force, however, considered these data to be evidence of law enforcement bias against minority ***victims.*** This illustrates the perversity of the task force's catch-22 logic—harsh treatment of minority defendants is evidence of bias against minorities, but lenient treatment of minority defendants is also evidence of bias against minorities.

The task force's Hennepin County misdemeanor study tracked cases from arrest or charge to sentencing. At several points in the process, the study found no significant differences by race: in the method by which defendants were charged (by arrest or otherwise), in the amount of bail, in the rate at which cases went to trial, in the rate at which cases were continued for dismissal, and in the length of jail sentences.

At several points in the process, the study found differences by race that favored minorities, sometimes to a significant degree. These included guilty pleas (whites pled guilty more frequently than blacks), attorney representation (minorities were more likely to be represented), dismissal rates (charges against minorities were more likely to be dismissed), probation rates, and imposition of fines. The data would seem to negate any possibility of racial bias, since whites were both prosecuted at a higher rate and convicted at a higher rate than minorities, and minorities were less likely to plead guilty and more likely to be represented by counsel than whites. A system biased against minorities could not possibly produce these results.

On the other hand, the task force study found just two points in the misdemeanor process where minorities were statistically disfavored: pretrial release without bail, and rate of imposition of jail sentences following convictions. These findings raise the question whether the relevant variables were included in the task force's analysis.

The single most important variable that bears on whether bail is imposed, as well as on whether a misdemeanor defendant is sentenced to jail following conviction, is the defendant's prior record. Thus, an adequate statistical study of these events must take prior record into account. The task force study's attempt to do this failed, however, in two vital respects. First, the study distinguished only between those defendants who had a prior record and those who had no prior record at all. It controlled for neither the number nor the nature of previous convictions. Second, the data included no information about convictions that occurred prior to 1989, the first year of the study. Thus, a defendant who had convictions prior to 1989, but none after

1989, was arbitrarily classified as a defendant with no prior record. The study's analysis of defendants having "no prior record" is therefore utterly fictitious.

In short, a fair reading of the data on Hennepin County's misdemeanor cases is that they show no evidence whatsoever of racial bias. On the contrary, the data indicate that whites are both prosecuted and convicted at a higher rate than minorities. Moreover, the study notes that the Minnesota Supreme Court's 1992 analysis of sentencing for felony convictions had reached a conclusion inconsistent with systemic racial bias. According to that study, blacks and whites convicted of felonies in the Minnesota state courts are incarcerated at comparable rates for comparable lengths of time, without regard to race, when the number and severity of prior convictions are included as variables.

Two Sentencing Studies

The two remaining studies involved sentencing data. The first of these two studies examined the use of jail as a sanction and the length of jail sentences imposed on Minnesota felons. This was an appropriate subject of inquiry. Surely, if Minnesota's court system is biased against minorities, that bias would show up in greater incidence and length of jail sentences for minorities compared to whites convicted of similar offenses and with similar records. The task force's study was based on a total of 4,190 cases from thirty-seven Minnesota counties, where sentences were imposed between November 1986 and October 1987.

The fundamental analysis carried out by this study related to the length of jail sentences imposed for similar felonies. The study analyzed sentences imposed after conviction and concluded that with respect to time served following disposition, "race was not significant in predicting the jail outcome." In fact, a slightly higher percentage of white offenders (63.7 percent) compared to minority offenders (60.5 percent) served jail time after conviction.

On the other hand, when the study looked at the incidence of pre-conviction jail time, it found that African Americans (but not Indians or Hispanics) were more likely to serve time. Not surprisingly, the study noted that "since the analysis counted pretrial jail time as a stay in jail, it is possible that African Americans had a more difficult time making bail (which may be explained by their higher unemployment rate)." Difficulty in making bail was the only possible explanation suggested by the study for the pre-conviction discrepancy that it identified. But even with pre-disposition jail time included, the study acknowledged that race was virtually irrelevant as a predictor of total jail time served:

> The current analysis indicated that offense severity, criminal history, gender, and employment status actually explained most of the variance in total jail time served for this model. Including racial status in the model offers less than 1% additional explanation for jail length variance.

In other words, the study found that nonracial factors accounted for more than 99 percent of the difference between white and black defendants in total jail time served. The appendix study summarized its conclusions regarding sentencing practices in Minnesota's courts with these words:

> It is fairly safe to state that race had very little direct influence in determining total length of jail time served, and no direct influence in the length of post disposition jail terms.

It is interesting to note that the study did find that gender was a highly significant factor in predicting jail time served. Gender trailed only the defendant's use of a weapon, and whether he pled guilty, as a statistically significant predictor of jail time served. On the basis of the study's data, one could conclude that men were discriminated against to an extent that dwarfed any differences by race. The study, however, was not commissioned to search for bias against men, and did not comment on the gender data other than to note that "jail resources are usually more scarce for females than males," and to speculate that "there may be a reluctance to detain or sentence [women who commit welfare or food stamp fraud] to jail terms, especially if they are single parents." The study did not mention the obvious difference in crime rates between men and women; following such a course of thought to its logical conclusion would have had unacceptable implications for the subject of racial disparities. It is difficult to imagine the task force offering such casual rationalizations for racial discrimination had comparable evidence of such discrimination appeared in the sentencing data.

The fourth of the appendix studies also focused on sentencing data. The study examined imprisonment rates and sentencing guidelines departure data for Minnesota felons using two samples, one for felons sentenced in 1990 and one for felons sentenced during the period 1986–1990. Minnesota has adopted sentencing guidelines that limit the discretion judges can exercise in sentencing convicted defendants. The guidelines provide presumptive sentences based on the severity of a defendant's offense combined with the record of the defendant's prior offenses. The guidelines prescribe whether a given defendant should be sentenced to prison and, if so, the length of the prison sentence. If the judge departs from a presumptive recommendation of imprisonment, the outcome is referred to as a mitigated dispositional departure; if a judge sentences a defendant to prison even though the guidelines recommend no incarceration, the outcome is an aggravated dispositional departure. Overall, the study concludes that "there is not a strong measurable relationship between race and dispositional departures, either mitigated or aggravated."

The study performed a similar analysis for departures from the recommended length of a given prison sentence, so-called durational departures. Minorities were the beneficiaries of more mitigated durational departures in both the 1990 and the 1986–1990 data. The result was the reverse for aggravated dispositional departures,

although the study concluded that there was "no strong relationship or significant associations between race and durational departure rates."

The study then examined imprisonment rates for four "specific person offenses"—criminal sexual conduct, aggravated robbery, second degree assault, and dangerous weapons offenses —each of which carries a presumptive sentence requiring incarceration under the sentencing guidelines. This study unfortunately included an obviously inadequate control for the crucial variable of criminal history, distinguishing only between defendants "with no criminal history" and those "with criminal history." The study does not appear to have taken into account the extent of a defendant's prior criminal record for those categorized as "with criminal history." Without detailing the conclusions regarding each of the four offenses and two time periods, the study can fairly be summarized as having found that the overall mitigated and aggravated dispositional departure rates revealed no connection between race and imprisonment for the sentencing data on the four offenses in the aggregate; at the same time it found a statistically significant association between race and imprisonment rates for various subsets of the data on the offenses individually. If there is no statistically significant differential in the aggregate mitigation departure rate, however, the statistical significance of the differential in the imprisonment rates for the offenses individually appears anomalous. The study itself states that the differential in imprisonment rates for certain of the offenses individually was "most likely diluted in the analysis of the overall mitigated departure rate." This is an explanation that raises more questions than it answers. Overall, the results in any event contradict a finding of racial bias in sentencing.

The Triumph of Politics over Evidence

Thus, in significant respects the task force researchers' own studies of the data indicated that there was no evidence of racial bias in Minnesota's court system. One might have expected this happy conclusion to be trumpeted far and wide; the fact that Minnesota has achieved a color-blind criminal justice system should have been considered good news by everyone. Unfortunately, this did not happen. Little attention or analysis was devoted to the appendix to the task force report or the data it contained. Rather, in a press conference held to announce the task force's findings, Justice Wahl herself focused attention on the task force report's dramatic allegations of racial bias in the judicial system. The media dutifully followed. This happened because the work of the task force was driven by politics, not scholarly pursuit of the truth, and Minnesota's news media share the task force's political bent.

Instead of acknowledging the optimistic implications of its data, the task force shrouded its conclusions in a fog of neo-Marxist rhetoric:

> The issue of attempting to use legal means to limit certain choices or specific groups of people brings into

> sharp focus an extremely critical aspect of the dynamics of racism: that people who live in the midst of a culture, yet have been relegated to the status of permanent outsiders, must somehow be controlled. It appears that the more a racial/cultural group finds its members ***locked out*** of equal economic opportunity by prejudice, the more it will find its members disproportionately ***locked up*** or otherwise under the direct control of state authorities. This is because maintaining a racial caste system, something we as a nation have always been loath to admit we have, ***requires*** a complex system of formal and informal controls.

Following this neo-Marxist train of thought, in which race replaces class as the source of oppression, the task force report leveled an extremely serious indictment of Minnesota's legal system:

> In the specific case of African Americans, although the justice system is no longer made to enforce the ultimate social control of slavery or the complex codes of legal segregation that took its place, the justice system still finds itself used as a powerful tool of the pervasive prejudice and the subtle, often elaborately camouflaged discrimination that still deeply scars our national life.

This indictment is somewhat jarring in the context of Minnesota history. Minnesota entered the Union as a free state in 1858. Large numbers of Minnesotans served in the Union army that fought to free the slaves; one famous regiment of Minnesotans heroically saved the day and helped turn the tide of the Civil War at Gettysburg. Minnesota has never had "codes of legal segregation" discriminating against blacks or other minorities.

A Patronizing Exercise

But perhaps it is a mistake to take this indictment of Minnesota's legal system seriously. To our knowledge, no one has publicly commented on the incongruity between the task force's generalized denunciation of "racism," Minnesota's "racial caste system," and our court system's "pervasive prejudice" and "subtle . . . discrimination" on the one hand, and its demure reluctance to name names and expose racists on the other. After all, most of the data collected by the task force related to decisions made by Minnesota judges. If those data really showed "racism" and "pervasive prejudice," it would have been a simple matter to use the data to identify the racist Minnesota judges who have imposed a "racial caste system" on the state's minorities. If the task force really believed what it said about "racism," duty required it to identify the racist judges whose biased decisions produced a "racial caste system." Yet the task force was silent as to the identity of these racist judges. Why?

The answer seems obvious. The task force knew that its data did not support the claim of racial bias that it asserted in the text of its report. The task force knew that if it identified the judges whose decisions were allegedly biased, those judges would have been willing and able to defend themselves by pointing out that the task force's data contained no evidence of racism at all, but rather documented an impressively color-blind system of justice. One is left to believe that task

force members were unfamiliar with the data in their own study, as the only alternative explanation is that they were disingenuous in interpreting the data. They refrained from naming names and fell back on the familiar but meaningless shibboleth of "institutional racism."

We ourselves have practiced law in the Minnesota state courts for a combined total of nearly fifty years without observing any hint of the systemic racism or bigotry alleged in the task force report. We suspect that one reason for the task force's failure to name names is that the members' experience with Minnesota's courts may have been the same as ours.

The Campaign against Law Enforcement

The Supreme Court continues to defend the racial bias task force report on the ground that it addresses the perception of racial bias in the criminal justice system among some racial minorities. It is difficult to understand, however, how unfounded charges of institutional racial bias emanating from the highest court in the state of Minnesota can alleviate the perception of racial bias in the criminal justice system among Minnesota's racial minorities. Inaccurate charges of racism compound the problem; they do not mitigate it or contribute to its resolution. They undermine confidence in institutions that are in fact doing their job—in the case of Minnesota's criminal justice system, doing a good job, under difficult circumstances, without regard to race.

Yet the task force report does more than aggravate the perception of racial bias in the judicial system among minorities. In the name of racial equity the political left has undertaken a campaign against every stage of law enforcement, from arrest through prosecution, conviction, and punishment. Justice Wahl's recent op-ed piece citing the task force report to support the charge of racial profiling by the Minneapolis police shows how the report has become a part of this campaign, a campaign that only promises to gather steam in the coming days. When the racial bias task force report is used as support for this anti–law enforcement campaign, its continuing effects can be nothing but destructive. It should be obvious that if police refrain from law enforcement for fear of being labeled racist, and if courts refuse to punish the serious offenders, disproportionately minority, who themselves prey on minority neighborhoods, the great harm that follows will fall on the law-abiding members of these communities.

In the face of continuing and ill-founded charges of a racist criminal justice system, the absence of any debate on the underlying facts is remarkable. Where are the authorities who will defend the work of the police, the prosecutors who will speak up for the integrity of their work, the judges who will defend their own honor, and the media that will air informed argument concerning a fundamental matter of public importance? The silence is deafening. ■